The Corporate Transparency Act: What It Is and What It Means for Your Business

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INSIGHTS

The Situation: The Corporate Transparency Act ("CTA") was passed by the U.S. Congress on January 1, 2021, as part of the Anti-Money Laundering Act of 2020. This new law requires certain corporate entities to report beneficial ownership information ("BOI") to the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). In December 2021, FinCEN released a notice of proposed rulemaking ("the Proposed Rule") to implement the beneficial ownership reporting requirements of the CTA. While the timing of the final rule for the CTA is uncertain, it is expected to result in additional reporting requirements for many privately held companies.

Planning Ahead:

- The CTA will require certain private business entities that operate in the U.S. to report to FinCEN information concerning its beneficial owners, including certain officers, directors, and equity holders.
- The new reporting requirements will not take effect until FinCEN issues the final rule (the timing of which is uncertain).
- Existing companies subject to the CTA will have one year from the effective date of the final rule to file their initial report. Reporting companies formed after the final rule is effective will have 14 days to file.
- Despite the uncertainty as to the precise final rule and its timing, businesses may want to consider steps to prepare for the collection and reporting of BOI.

OVERVIEW

1. Who Must File a Report?

Under the CTA, domestic and foreign corporations, LLCs, and other similar entities are considered "reporting companies," which must disclose BOI to FinCEN. More specifically, the CTA imposes reporting requirements on any entity that is 1) created by filing a document with a secretary of state or similar office of a jurisdiction within the U.S. or 2) formed under the law of a foreign country that is registered to do business within the U.S.

The CTA exempts from its definition of reporting company businesses that 1) employ more than 20 full-time employees in the U.S., 2) have filed U.S. federal income tax returns in the previous year showing more than $5 million in aggregate gross receipts or sales, and 3) maintain an operating presence at a physical office within the U.S. Also exempted are 23 categories of entities that operate in heavily regulated environments (e.g., banks and domestic credit unions, securities issuers, insurance companies, money services businesses, insurance companies, registered public accounting firms, investment advisers, and tax exempt 501(c)(3) organizations).

2. What Information Must Be Reported?

For each *beneficial owner* and *company applicant*, the Proposed Rule requires the reporting company to disclose 1) the full legal name, 2) date of birth, 3) current residential or business street address, and 4) a unique identifying number from an acceptable identification document, along with a scanned copy of the identification document (e.g., valid passport or driver's license).

Beneficial Owner

The CTA defines a beneficial owner, with certain exceptions, as any individual who, directly or indirectly, exercises substantial control over the reporting company or owns or controls at least 25% of the ownership interests of the entity.

Substantial control is described as 1) service as a senior officer of a reporting company; 2) authority over the appointment or removal of any officer or a majority or dominant minority of the board of directors (or similar body); 3) direction, determination, or decision of, or substantial influence over, important matters affecting the reporting company; or 4) any other form of substantial control over the reporting company.

Ownership interests includes equity interests as well as other interests (e.g., capital or profit interests, convertible instruments, warrants, and options).

Company Applicant

The Proposed Rule defines a company applicant as the individual who files the document that 1) forms the entity or 2) first registers the entity to do business in the U.S. A company applicant includes anyone who directs or controls the filing of the document by another.

3. When Is the Deadline for Reporting?

If a reporting company already exists when the final rule becomes effective, it will have one year to register. If a reporting company is created after the final rule becomes effective, it will have fourteen days to register. The Proposed Rule also includes deadlines for updating or correcting reported information. FinCEN has not proposed an effective date for the final version of the Proposed Rule, but it requested comments on such timing and factors to be considered.

4. What Are the Penalties for Violating the CTA?

A person who willfully fails to report information or reports inaccurate information may be subject to a civil penalty of up to $500 per day for each day a violation continues and may receive criminal sanctions including up to two years imprisonment and a fine of up to $10,000.

5. What's Next?

The deadline for comments on the Proposed Rule was February 7, 2022, and FinCEN is developing the infrastructure to administer these requirements.

This alert discusses many, but not all, potential issues with respect to the CTA and the Proposed Rule. Parker Hudson attorneys are available to answer questions or concerns you have regarding how this new law applies to you and steps businesses may need to take to prepare for its implementation.

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