Time to Prepare for the Corporate Transparency Act

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On January 1, 2021, Congress passed the Corporate Transparency Act ("CTA"), which set out to bring the United States' reporting requirements for corporations in line with the rest of the world for purposes of combatting money laundering and other financial crimes. The CTA imposes the requirement that all entities formed by filing with a secretary of state's office, with limited exceptions, must report certain personal information regarding their ultimate Beneficial Owner(s) and Company Applicant(s) to the Department of the Treasury.

The Financial Crimes Enforcement Network ("FinCEN") has been charged with issuing regulations to implement the CTA. In order to accomplish this task, they have divided the CTA's provisions into three major pillars, each with its own rules.

Pillar No. 1

The first of these pillars is the reporting requirement itself. To implement this requirement, FinCEN issued the final rule on Beneficial Ownership Reporting Requirements on September 30, 2022 ("Final Rule"). This Final Rule outlined the details of who is required to report, what information needs to be reported, when reports are required, and who is exempt. The effective date of the final rule is January 1, 2024. From that day forward, every new entity formed will have 30 days following its formation to report its Beneficial Owners and Company Applicants to FinCEN. All companies existing prior to the effective date will have until January 1, 2025 to report their Beneficial Owners, but will not be required to report Company Applicants. Further, the rule creates an ongoing affirmative duty for all companies to report changes in their Beneficial Ownership Information within 30 days of such a change.

Of special note in the Final Rule is clarification that "Company Applicant(s)" will be limited to up to two people, the person who files with the Secretary of State to form the entity, and the person (if any) who primarily controls or directs that filing. As described in the Final Rule, those two individuals might often be an attorney and a paralegal at a law firm. The full impact of that new role on the professional responsibilities of corporate attorneys and their staff remains to be seen.

Pillar No. 2

The second pillar comes in the form of FinCEN's Proposed Rule on Beneficial Ownership Information Access and Safeguards and Use of FinCEN Identifiers for Entities ("Access Rule"). This proposed rule outlines the five categories of entities or individuals who will have access to the Beneficial Ownership Information collected by FinCEN, as well as the specific circumstances under which they will be afforded this access. Notably, the broadest access under the proposed Access Rule is granted to Treasury employees whose duties require them to access the system, including for Tax Administration as defined in the Internal Revenue Code. In plain terms, IRS agents (all of whom are Treasury Employees) will have direct access to the information regarding the beneficial owners of every company required to report under the CTA.

Pillar No. 3

The third pillar is slated to change the existing Customer Due Diligence ("CDD") requirements placed on banks and other financial institutions. These changes will be aimed at eliminating any redundancy between CDD requirements as they currently exist, and the new requirements created by the final rule on reporting and proposed rule on access. As of the date of this publication, no proposed regulatory language has been promulgated by FinCEN for this purpose.

Continue to watch this blog for CTA updates including additional information on reporting rules, information that lawyers should know about the CTA, who has access to reported information and the CTA's impact on financial institutions.

About the Authors

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