



Corporate Transparency Act: The End of Entity Ownership Anonymity?

Congress passed the Corporate Transparency Act (CTA) on January 1, 2021 as part of the overall 2021 National Defense Authorization Act to create a federal beneficial ownership registry applicable to small, privately-held business entities. In an attempt to crack down on the use of shell companies to facilitate the laundering of criminal proceeds, the CTA requires covered entities to report their “beneficial owners” and “applicants” to the Financial Crimes Enforcement Network (FinCEN). Reporting obligations under the CTA will take effect on the effective date of the regulations, which must be issued by the Treasury Secretary by January 1, 2022. While the regulations are necessary to provide additional guidance, the basic framework of the CTA is summarized below:

Under the CTA a “reporting company” must report certain beneficial ownership information to FinCEN. As a general rule, a “reporting company” is any corporation, limited liability company, limited partnership or similar entity that is either created by filing a formation document with a secretary of state (or similar office) or is formed under the law of a foreign country and is registered to do business in the United States. The definition of “reporting company” exempts approximately two dozen categories of companies. One important exemption from the reporting requirements of the CTA is for entities that (i) employ more than twenty full-time employees in the U.S., (ii) filed a federal income tax return in the previous year demonstrating more than \$5 million in gross sales (including subsidiaries), and (iii) have a physical office in the U.S. In addition, it appears that common law trusts are exempt from the filing requirements. More clarification is needed as to who is required to file a report with FinCEN.

Entities required to report under the CTA are required to submit to FinCEN the following information for each beneficial owner and applicant of such reporting company: (1) full legal name, (2) date of birth, (3) current residential or business address and (4) a unique identifying number from an acceptable identification document (e.g.: US passport, US or state government ID, driver’s license or a foreign passport). A “beneficial owner” is defined as an individual who, directly or indirectly, (1) exercises substantial control over the entity or (2) owns or controls not less than 25% of the ownership interests of the entity. An “applicant” is the individual who files an application to form a reporting company. Additional clarification under the regulations is required as to when an applicant is deemed to file an application (e.g., is the applicant the person signing the formation document as organizer or the person who files the application?).

The timing for a reporting company's compliance with the CTA depends on whether such company was formed prior to or after the effective date of the implementing regulations. If the reporting company was formed prior to the effective date, it will have two years to deliver its beneficial ownership reports to FinCEN. Entities formed after the effective date must comply with the CTA upon formation. To the extent a reporting company's beneficial ownership changes, it has one year after the date of change to submit an updated report to FinCEN. Any person that commits reporting violations may be liable for up to \$500 per day, not to exceed \$10,000, and may face up to two years in prison.

We will continue to monitor the development of the CTA regulations and alert you to any significant updates when they become available.

This summary is not intended to be relied upon as legal advice, and it does not create an attorney-client relationship with those to whom it is sent or who otherwise gain access to it. Instead, it has been prepared for general informational purposes only, and it is not a substitute for a legal consultation. If you would like to discuss how the Corporate Transparency Act may affect your situation, please contact Adam Haberfield at amh@olss.com or Samantha Alexander at sta@olss.com.