



## The Corporate Transparency Act: Less Anonymity, More Reporting for Business Owners

Upon Congress' enactment of the National Defense Authorization Act for Fiscal Year 2021 (the "**NDAA**") on January 1, 2021, the Corporate Transparency Act (the "**CTA**") became law. On September 29, 2022, final rules were issued by the Financial Crimes Enforcement Network ("**FinCEN**"), an arm of the United States' Department of Treasury. The CTA will go into full effect on January 1, 2024 (the "**Effective Date**") and will expand the regulatory power of FinCen.

In recent years, Congress has identified pitfalls in the United States' corporate regulatory environment, which have led to an uptick in money laundering, terrorist financing, fraud, corruption and tax fraud schemes. Congress believes that this can, at least in part, be attributed to (i) shell and front companies being employed to obfuscate identities and (ii) the minimal information that most business entities are presently required to disclose at formation and in their annual tax filings. The CTA aims to promote transparency by increasing the depth of information that certain existing and newly formed entities are required to supply to the federal government.

Unless exempt, the CTA will apply to both domestic and foreign reporting companies, which by definition is "any corporation, limited liability company or similar entity that is (i) created by the filing a document with the secretary of state or a similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or similar office under the laws of a State or Indian Tribe" (each a "**Reporting Company**"). This includes (subject to the applicability of the exemptions in the CTA) corporations, limited liability companies, limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships. Because sole proprietorships, general partnerships and certain trusts are not "created by the filing a document with the secretary of state or a similar office under the law of a State or Indian Tribe," it is believed that they are exempt.

If a company is deemed to be a Reporting Company, it must file a report containing company and beneficial ownership information with FinCEN (the "**Report**") and otherwise adhere to the CTA's requirements. The Report requires that in addition to the company name, trade name, address, state of formation and taxpayer identification number (EIN), that the Beneficial Owner(s) provide their full legal name, date of birth, current address and unique identifying number, such as an unexpired driver's license number, passport number or military identification card.

A “**Beneficial Owner**” is defined in the CTA as any *individual* who directly or indirectly (a) owns or controls twenty five percent (25%) or more of the company (e.g., members, shareholders, etc.) or (b) exercises substantial control over the company (e.g., officers, directors, general partners etc. or those who otherwise exercise control rising to the level of being substantial). The use of the term “individual” in the CTA is believed to mean natural persons and not entities. As such, entities that own or substantially control a Reporting Company, if not exempt, are otherwise obligated to separately file a Report containing each of their owning and/or controlling individuals’ Beneficial Owner information. It is important to note that under the CTA, an individual can be considered a Beneficial Owner even without holding an actual ownership interest in the Reporting Company.

The CTA identifies twenty-three (23) types of companies that are exempt from its requirements and thus, do not have to comply with the Report requirement. Additionally, any company that is owned by an exempt entity will also be deemed to be exempt from the CTA. Exempt entities are typically those entities that are already subject to federal reporting requirements and include, but are not limited to: (1) banks and bank, savings or loan holding companies; (2) federal or state credit unions; (3) brokers and dealers registered under the Securities Exchange Act of 1934 (the “**1934 Act**”); (4) exchange or clearing agencies registered under the 1934 Act; (5) investment advisers; (6) insurance companies; (7) public accounting firms registered in accordance with the Sarbanes-Oxley Act of 2002; and (8) large operating companies, defined as entities that (a) employ more than twenty (20) full time employees in the United States; (b) have an operating presence at a physical office in the United States and (c) have filed a federal income tax or information return for the previous year showing more than Five Million Dollars (\$5,000,000.00) in gross receipts or sales excluding gross receipts or sales from sources outside of the United States.

New Reporting Companies formed after the Effective Date will have thirty (30) days after the entity is formed or approved by the state to file its initial Report with FinCEN. Reporting Companies formed before the Effective Date will have one (1) year from that date to file its initial Report. Those entities who “willfully” fail to file their Report or provide false information in their Report are subject to: (i) civil penalties up to Five Hundred Dollars (\$500.00) for each day that there is a willful failure to report complete information, and (ii) criminal penalties up to Ten Thousand Dollars (\$10,000.00) or prison for up to two (2) years, or both. The CTA contains a safe harbor from such civil and criminal liability for the submission of inaccurate information if the entity that submitted the Report voluntarily and promptly corrects the Report within thirty (30) days of filing.

All information collected pursuant to the CTA will be stored in a non-public database and will be available only by request by: (1) a federal law enforcement agency; (2) a state, local, or tribal law enforcement agency, if authorized by a court order; (3) a federal agency on behalf of a foreign country, if the request is pursuant to an international agreement; or (4) a financial institution for customer due diligence purposes and if authorized by the Reporting Company (i.e., a bank).

Additional rulemaking is expected. According to FinCen's September 29, 2022 *Beneficial Ownership Information Reporting Rule Fact Sheet*, the reporting rule is one of three rulemakings planned as part of the rollout of the CTA. Ahead of the Effective Date, FinCEN intends to: (1) establish rules for who may access beneficial ownership information, for what purposes, and what safeguards will be required to ensure that the information is secured and protected; and (2) revise FinCEN's customer due diligence rule.

In the spring of 2022, the New York Senate introduced similar legislation via Senate Bill S8439, however, this bill remains in committee. The proposal was very similar to the CTA, but permitted greater access by third parties to the states' proposed database of beneficial ownership data. Delaware, a notoriously corporate-friendly state has not proposed any such enhanced transparency regulations, but like New York, its non-exempt entities will be subject to the federal CTA upon the Effective Date.

This RMF news alert seeks to highlight the key aspects of the CTA for non-exempt Reporting Companies. If you own or control a business, your company will most likely be required to file a Report with FinCEN - unless there is an applicable exemption. If you have any questions or would like to discuss how this applies to your business, please contact:

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