



The Federal Corporate Transparency Act v. New York's Proposed LLC Transparency Act: What Businesses Need to Know Now

Beginning on January 1, 2024, millions of businesses will be required to make certain disclosures to the federal government, and in light of a proposed bill that recently passed the New York State Assembly, possibly to New York State.

As we have discussed in prior RMF Corporate Law Alerts (see [here](#) and [here](#)), the federal Corporate Transparency Act (the "CTA") became law on January 1, 2021 and the reporting to period to the Financial Crimes Enforcement Network ("FinCEN") is effective as of January 1, 2024.

While earlier this summer, the New York State Assembly passed the LLC Transparency Act (Senate Bill S995B), which sets out to amend New York's Limited Liability Company Law, Governor Kathy Hochul will have to sign the bill before it goes into law. As of the date of this RMF Corporate Law Alert, the bill has not yet been delivered to the Governor, which leaves the questions of whether and when eligible limited liability companies ("LLCs") will have to comply, in flux. However, many anticipate that this bill will be delivered and signed into law in the coming weeks.

For LLCs formed or otherwise authorized to do business in New York, this means that it *may* potentially be required to make disclosures to New York State and the federal government about the nature of the individuals that constitute its "beneficial owners." Note however, in terms of administrative burden, New York's proposed law contemplates permitting LLCs to file a copy of the report that it filed with FinCEN in satisfaction of the New York reporting requirements.

Both the New York bill and the federal CTA aim to investigate and otherwise deter illicit activity, including money laundering, terrorist financing, fraud, corruption and tax fraud schemes, of which in the past, individual owners' identities have been obfuscated by complex corporate structures. New York's proposed law was modeled based on the federal CTA, and thus, there are many parallels, including the definition of "beneficial owner" which New York cross-references to the definition in the federal CTA and which is defined as any individual who, directly or indirectly, either exercises substantial control over a reporting company or owns or controls at least twenty five percent (25%) of the reporting company's ownership interests. There are also a few key differences between what the federal CTA requires and what New York is proposing.

Notably, the scope of New York's proposed law is far more tailored than the federal law. The federal law requires company and beneficial ownership disclosure from non-exempt entities, including, but not limited to, domestic and foreign corporations, LLCs and any other entities formed under the law of a foreign country and registered to do business in any state within the United States or Tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the laws of a state or Indian tribe. New York's requirement requires beneficial ownership disclosure *only from* LLCs formed in New York and/or qualified to do business in New York.

Another key difference between the federal law and New York's proposed law is how the information will be stored, and further, who will have access to the information. The federal CTA provides that beneficial ownership information will be kept in a non-public secure database known as Beneficial Ownership Secure System ("BOSS") to be monitored by FinCEN. However, beneficial ownership information in FinCEN's BOSS database may be made available upon receipt of a request that is made through "appropriate protocols." To the contrary, unless a "significant privacy interest" can be demonstrated, New York's proposed law requires the New York Secretary of State to maintain a public online database, which will display the full legal name of each beneficial owner of the LLC and the business address of the LLC. Certain additional information that LLCs may be required to furnish to the New York Secretary of State, including each beneficial owner's date of birth, will not be uploaded to the public database, but will be accessible to law enforcement or pursuant to a court order. New York's proposed law stops short of requiring the LLC's operating agreement to be filed with the Secretary of State. The federal law also does not require this disclosure.

Corporations and partnerships in New York are not contemplated under New York's proposed law, but New York corporations and some partnerships may be required to make federal disclosures to FinCEN unless otherwise exempted. Notably, Delaware – a state known for its business friendly laws and courts - does not have, nor has their legislature proposed to date, a public searchable database of beneficial owners. However, new and existing Delaware LLCs and other non-exempt reporting entities will be required to make federal disclosures pursuant to the CTA.

RMF continues to monitor developments of both the fast approaching implementation of the federal law, as well as the enactment of New York's law and will continue to provide updates. If you have any questions or would like to discuss how this applies to your business, please contact:

Russell H. Stern, Esq.
516.663.6582
rstern@rmfpc.com

Alexandra C. Piscitello, Esq.
516.663.6653
apiscitello@rmfpc.com