

The Corporate Transparency Act: Coming Soon to Most Businesses Near You

Legal Alert

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The Corporate Transparency Act (“CTA”), was enacted by Congress on January 1, 2021 as part of the National Defense Authorization Act.

The stated purpose of the CTA is to enable and advance national security intelligence and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity by requiring more entities to report personal information about those who own, control and form an entity to the Financial Crimes Enforcement Network of the United States Department of Treasury (“FinCEN”).

Notably, these additional reporting requirements are not effective yet, but rather will become effective on the date the Department of Treasury promulgates the final regulations, which is expected to occur before December 31, 2021. While the CTA has the admirable goal of preventing money-laundering and enhancing security, it also creates important procedural hurdles that will impact countless businesses in the coming years.

Generally, state law governs the formation and maintenance of business entities.

However, the CTA varies from this norm by creating a unique federal filing that many businesses will have to complete.

A “Reporting Company” under the CTA is a corporation, limited liability company, other similar entity created by filing a document under state law, or an entity that is formed under the law of a foreign country and is registered to do business in the United States.

This definition leaves some questions unanswered.

For example, are general partnerships, limited liability partnerships, and limited partnerships included in this definition?

Not all companies are required to report under the CTA, namely: (1) companies that employ more than 20 persons full time, report revenues of more than \$5 million on tax returns, and have a physical, operating presence in the United States; (2) many financial services companies, including banks, credit unions, and certain accounting firms; (3) churches, charities, and other non-profit organizations; and (4) publicly traded companies.

Each company required to report under the CTA must identify each beneficial owner and certain identifying information about the beneficial owners, namely names, dates of birth, addresses, and passport, driver’s license, or other government-issued identification.

A “beneficial owner” is any individual who, directly or indirectly, exercises substantial control over an entity or owns or controls at least 25% of the ownership interests in an entity.

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Newly formed entities must report the required information to FinCEN at the time of its registration, whereas entities already in existence as of CTA's effective date must report the required information to FinCEN within two years of the effective date.

Should any of the reporting information provided by a reporting company change, those changes must be reported in a "timely" manner, but not later than one year after the change has occurred.

Violations of the CTA come with possible civil and criminal penalties.

A person who willfully provides or attempts to provide false or fraudulent ownership information or who willfully fails to complete or update beneficial ownership to FinCEN may be subject to (i) a civil penalty of not more than \$500 per day the violation has not been remedied up to a maximum of \$250,000 or a fine of not more than \$10,000, (ii) imprisonment for not more than 2 years, or (iii) both.

The CTA does create a safe harbor where there is reason to believe the submitted information was accurate and corrected information is voluntarily filed within 90 days.

We will learn more as the Department of Treasury finalizes and releases the CTA's regulations, but it is clear that the passage of CTA will create notable changes for business compliance. We at Flaster Greenberg will follow the developments of the CTA and are happy to answer any questions. If you or your business need legal advice, please consider contacting any member of Flaster Greenberg's

Business & Corporate Department.