
Corporate Transparency Act Imposes New Reporting Requirements for U.S. Businesses

Posted on March 25, 2021

On January 1, 2021, as part of the National Defense Authorization Act for Fiscal Year 2021, Congress passed the Corporate Transparency Act (the "CTA"). In an effort to ban the anonymous shell companies that criminals use for money laundering, financial and tax fraud, drug and human trafficking and other illicit activities, the CTA will require U.S. businesses to file "beneficial ownership" information with the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). The CTA represents the first major update to U.S. anti-money laundering laws in twenty (20) years.

Reporting Companies

Subject to exceptions discussed below, the CTA's reporting requirements will apply to existing and newly formed corporations, LLCs and similar entities that are (i) formed under state law by filing a document with the Secretary of State or similar office of a state; or (ii) formed under the law of a foreign country and registered to do business in the United States by filing a document with the Secretary of State or similar office of a state.

The CTA exempts numerous entities from its reporting requirements, including without limitation, the following:

- Most financial service entities, including investment and accounting firms, banks and credit unions, investment advising and securities trading firms; and insurance companies;
- Nonprofit organizations, such as churches and charities; and
- Companies that (i) employ more than 20 individuals on a full-time basis in the United States; (ii) reported revenues on their previous year tax returns of greater than \$5,000,000.00, including other entities owned by the reporting entity or through which the reporting entity operates; and (iii) have an operating presence at a physical office in the United States.

Beneficial Owners and Required Information

The CTA requires that reporting companies in the U.S. file a report with FinCEN that includes the (i) full legal name; (ii) date of birth; (iii) current address; and (iv) unique identification number from an acceptable identification document (for example, from a unexpired driver's license or passport) of the entity's "beneficial owners" and "applicants."

Under the CTA, "beneficial owners" are individuals who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise (1) exercises substantial control over the entity or (2) owns or controls at least 25% of the ownership interest in the entity. The CTA does not define "substantial control." Likewise, the CTA does not provide guidance on how to attribute ownership interests that are held indirectly. Both of these issues are expected to be addressed in the forthcoming enabling regulations.

Certain individuals are excluded from the CTA's definition of "beneficial owner", including the following:

- Minor children, if the minor's parent's or guardian's information is otherwise properly reported;
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- An individual acting as an employee whose control is derived solely because of employment status;
- An individual whose only interest in the entity is through a right of inheritance; and
- A creditor of the entity, unless the creditor meets the requirements of a beneficial owner.

An "applicant" is any individual who files an application to form a corporation, LLC or similar entity under state law or who files an application to register a foreign entity to do business in the United States.

Timing for Compliance

The CTA's requirements will become effective once the Secretary of the Treasury issues enabling regulations, which are to be promulgated on or before January 1, 2022. Entities in existence when the enabling regulations are promulgated must report the required information not later than two (2) years after the effective date of the enabling regulations. Entities formed after the enabling regulations are promulgated must report the required information at the time of formation or registration. All reporting companies will be required to update the required information not later than one (1) year after the change beneficial ownership takes effect or there is any other change to the required information. FinCEN is expected to further detail the method of reporting the required information as part of the forthcoming enabling regulations.

Penalties for Noncompliance

Violations of the CTA's reporting requirements can lead to civil penalties of up to \$500.00 for each day the violation continues and criminal fines of up to \$10,000.00 and up to two (2) years imprisonment. The unauthorized disclosure of information collected under the CTA also carries civil penalties of up to \$500.00 for each day the violation continues, but raises the criminal fine up to \$250,000.00 and the possibility of five (5) years in prison.

If you have questions about the Corporate Transparency Act, please contact Vaughn Ramsey at vramsey@tuggleduggins.com or (336) 271-5234; Natalie Folmar at nfolmar@tuggleduggins.com or (336) 271-5220; Jesse Anderson at janderson@tuggleduggins.com or (336) 271-5208; or Spencer Krantz at skrantz@tuggleduggins.com or (336) 271-5221.

© 2021 Tuggle Duggins P.A. All Rights Reserved. The purpose of this bulletin is to provide a general summary of significant legal developments. It is not intended to constitute legal advice or a recommended course of action in any given situation. It is not intended to be, and should not be, relied upon by the recipient in making decisions of a legal nature. Moreover, information contained in this bulletin may have changed subsequent to its publication. This bulletin does not create an attorney-client relationship between Tuggle Duggins P.A. and the recipient. Therefore, please consult legal counsel before making any decisions or taking any action concerning the issues discussed herein.

400 Bellemeade Street, Suite 800
Greensboro, NC 27401

P.O. Box 2888
Greensboro, NC 27402

Phone: 336.378.1431
Fax: 336.274.6590