Barley Snyder

An Overview of the Corporate Transparency Act

PUBLISHED ON

August 25, 2022

Historically, businesses in the United States have been able to organize and operate without disclosing their ownership or management information. This standard practice, however, will likely become a relic of the past in light of new federal legislation requiring the disclosure of such information. Enacted into law on January 1, 2021, the Corporate Transparency Act (the "Act") requires that certain corporate entities disclose to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") their true owners and other personal identifying information in an effort to assist law enforcement in combatting money laundering as well as the use of shell companies to perpetuate fraud and other illicit activity. In the coming months, FinCEN is likely to announce the Act's compliance deadlines, which may take effect as soon as this year.

Who Has a Reporting Obligation?

Generally, most corporate entities registered in any U.S. state or territory will have a reporting obligation. Specifically, the Act requires that "reporting companies," disclose to FinCEN "beneficial ownership" information. The Act broadly defines a "reporting company" as a corporation, limited liability company, or other similar entity that is created with a secretary of state or formed under the law of a foreign country and registered to do business in the U.S. That means if your business is: (i) registered in Pennsylvania (or any other U.S. state or territory) or (ii) formed under the laws of a foreign country and registered to do business in the U.S., the Act will generally apply to the entity.

Are There any Exceptions?

While the definition of a "reporting company" is expansive, the Act explicitly carves out 23 different types of entities from the definition of a "reporting company" and, therefore, exempts those entities from disclosing information with respect to their true owners. Some of those excluded entities include certain non-profits; certain types of entities in heavily regulated settings such as banks and insurance companies; and "large operating companies," which are "companies that employ more than 20 employees on a full-time basis in the United States" and "filed in the previous year federal income tax returns in the United States demonstrating more than $5,000,000 in gross receipts or sales in the aggregate," and have an "operating presence at a physical office within the United States."

What Information Must a Reporting Company Disclose?

If an entity falls under the category of a "reporting company," it must disclose certain personal information of its "beneficial owners." A beneficial owner is defined as: an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.

For those individuals, a "reporting company" must disclose, among other things, their:

- full legal name,
- date of birth, and
- current, as of the date on which the report is delivered, residential or business street address.

When is the Deadline to Report?

The exact compliance date remains an open question. The Treasury Department has, however, issued proposed regulations and, once enacted, the compliance date for any reporting company formed or registered *before* the effective date of the regulations must, within one year thereafter, submit their initial reports to FinCEN. While reporting companies formed *after* the effective date will have a compliance deadline of 14 days after formation to provide a beneficial ownership report.

What are the Penalties for Non-Compliance?

The Act provides that failure to provide a report will result in a civil penalty of up to $500 for each day of noncompliance plus a fine of up to $10,000. Willful failure to comply could trigger more severe criminal sanctions, including up to two years imprisonment.

What's next?

The proposed regulations will likely take effect this year, meaning there will be a relatively brief compliance window if the proposed regulations are enacted as currently drafted. Considering this timeframe, corporate entities should be analyzing whether they fall into the category of a "reporting company" and, if so, identifying beneficial owners and gathering the necessary identifying information for those individuals now. The business attorneys at Barley Snyder are ready to help with this analysis. If you have questions regarding this article, please contact **me** or any member of our **Business Practice Group**.

WRITTEN BY:

Erica R. Townes

Associate

Tel: (717) 718-7580

Email: etownes@barley.com