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Final Countdown: Ready or Not, Here Comes the CTA

Insight — November 2024

This article was originally published in the November 2024 issue of Bench & Bar of Minnesota, Minnesota State Bar Association. Republished with permission.

The federal Corporate Transparency Act (CTA), which went into effect on January 1, 2024, was enacted by Congress to combat money laundering and other financial crimes by requiring a broad range of companies to disclose information about their owners and others who can exert control over the business. The CTA imposes new reporting requirements that will impact millions of businesses in the United States—any entity that is not exempt from CTA's requirements (reporting company)¹ will be obligated to file a report containing beneficial ownership information (BOI) with the Financial Crimes Enforcement Network (FinCEN), a bureau of the Department of Treasury.

No longer will businesses in the United States be able to organize and operate anonymously. As the name implies, the CTA now requires “transparency” from state-registered business entities and eliminates the privacy previously enjoyed by most companies, their senior management, and ownership.²

Reporting companies that existed prior to January 1, 2024 have until January 1, 2025 to file their initial BOI report with FinCen.³ In other words, the final countdown has started for these companies—fewer than 60 days remain for reporting companies that have not yet completed an initial BOI report and complied with the new law to do so.

Importantly, the requirements of the CTA require something more than just a “one-and-done” filing. The CTA requires a reporting company to timely file updates of changes in BOI for so long as the company still exists.⁴ All companies should evaluate their corporate governance structures to determine compliance with the CTA and ensure there are protocols and compliance processes in place for obtaining information as well as filing and updating required reports.⁵

It is incumbent upon executive officers, general counsel, and leadership of all companies, large and small, to review the CTA and understand its implications. This includes understanding that civil and criminal penalties may be imposed due to a failure to comply or a willful submission of incorrect or incomplete information to FinCEN.

Companies should perform an analysis of compliance and reporting

requirements for all entities within their structure. Some of the questions about the CTA that companies simply need to understand include the following:

- Who is required to report?
- Who is exempt?
- Who is a “beneficial owner”?
- What information must be reported? ⁶
- When are BOI reports due?
- What updates to internal protocols and documentation are necessary to ensure CTA compliance?

There are a handful of pending federal court cases challenging the constitutionality of the CTA, with at least one court finding the new law unconstitutional with respect to the specific plaintiffs in that case.⁷ These cases continue to wind their way through the courts, including appeals, with little prospect of definitive resolution prior to the impending reporting deadline that is quickly approaching at year end. Federal legislative and regulatory efforts are also underway to potentially address various aspects of the CTA, but it is unclear which (if any) changes will be implemented. In addition, FinCEN continues to issue new interpretive guidance at times that may change or update previous understandings of CTA's requirements, and such uncertainty (to be sure) presents challenges to companies trying to comply.

The implications of the CTA are significant and go beyond reporting company compliance. Banks, investment firms, financial advisors, and counsel engaged in M&A activities (among others)—entities that perform due diligence and render advisory services in connection with financing and acquisition transactions—should take note of the potential implications (and penalties) for noncompliance with the CTA's requirements.⁸ As one example, when initiating an M&A transaction, enhanced due diligence should be performed to determine whether the CTA applies, identify any potentially applicable exemptions, and ensure compliance with the CTA throughout the transaction. Buyers should confirm that the target has maintained CTA compliance by requesting its filings in due diligence and should consider the implications of the CTA when negotiating representations, warranties, closing conditions, and indemnification.

The clock is ticking on most reporting companies—a very real deadline is approaching for existing businesses that have not already complied with CTA's requirements and do not qualify for one of the CTA's narrow exemptions.⁹ All companies should evaluate the impact of the CTA on their businesses and, if necessary, implement protocols for addressing initial and ongoing compliance. The time to act is now!

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Notes

¹ The “reporting company” classification under the CTA covers millions of businesses organized in the United States (and foreign businesses registered to conduct business in the United States).

² Timothy Crisp, *Goodbye Shareholder Anonymity, Hello Transparency* (12/9/2021), www.hollandhart.com.

³ Any reporting company formed or registered between 1/1/2024 and 12/31/2024 is required to file its initial BOI report within 90 days of notice of formation or registration. Any reporting company formed or registered on or after 1/1/2025 is required to report its BOI to FinCEN within 30 days of formation or registration.

⁴ The CTA imposes a duty to update existing filings within 30 days to reflect any changes to information reported earlier. A full and irrevocable dissolution of the reporting company, which depends on applicable state law, is required before the reporting company is no longer required to update its BOI reports under the CTA.

⁵ Compliance may require a reporting company to obtain information from its beneficial owners.

⁶ J. Marcus Painter, *The CTA Is Here. Are You Ready? Do You Know Your Duties?* (1/4/2024); www.hollandhart.com; Timothy Crisp, *Continuing Reporting Obligations Under the Corporate Transparency Act: You're Never Done* (7/17/2023), www.hollandhart.com (detailing the requirements under the CTA).

⁷ George H. Singer, *The Corporate Transparency Act Isn't Dead Yet*, Law 360 (3/5/2024).

⁸ George H. Singer, *Corporate Transparency Act Takeaways for Banking Industry*, Law 360 (1/5/2024).

⁹ J. Marcus Painter, *Corporate Transparency Act Deadlines Loom: Are you Ready?*, www.hollandhart.com

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