

Corporate Update - Summary of The Corporate Transparency Act

Wegman Hessler Client Alert

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The Corporate Transparency Act (the “Act”) comprises one section of the National Defense Authorization Act. The purpose of the Act is to provide the federal government information pertinent to identifying and stopping instances of corporate crime. The Act requires certain entities to provide information to the Financial Crimes Enforcement Network (“FINCEN”), part of the United States Treasury Department. The information collected by FINCEN will be used to create a private database that will help monitor and stop illegal corporate activity. The requirements of the Act will take effect on the effective date of the regulations prescribed by the Secretary of the Treasury, which will be published no later than January 1, 2022.

What Entities Must Report Information Under the Act?

Under the Act, all “reporting companies” must make required filings. The term reporting companies is defined broadly in the Act as any entity that is created by the filing of a document with a secretary of state or similar office under the law of a state. However, 31 U.S.C. § 5336(a)(11)(B) of the Act carves out a multitude of exceptions to this broad definition. Without repeating the list of exceptions verbatim, the general categories of entities exempted from the scope of the Act are entities registered with the Securities Exchange Commission (the “SEC”), banks, credit unions, tax-exempt Section 501(c) corporations, and subsidiaries of any of these entities. One pertinent exception that may apply to some entities not registered with the SEC or publicly traded is contained in 31 U.S.C. § 5336(a)(11)(B)(xxi) which exempts entities from reporting requirements if the entity (i) employs more than 20 people; (ii) filed a Federal tax return showing greater than \$5,000,000 in gross receipts; and (iii) operates a physical office within the United States.

Who, Within the Entity, Must File Reports Under the Act?

Under the Act, all “beneficial owners” of reporting companies must report beneficial ownership information (defined below). A beneficial owner is an individual who exercises substantial control over the covered entity or owns or controls 25% or more of the covered entity. It is important to note that the definition of beneficial owner references an individual (as opposed to an entity or person), so ownership and control, as it relates to the definition of beneficial owner under the Act, must be traced to an individual.

What Information Must be Reported Under the Act?

Beneficial owners of reporting companies must file “beneficial ownership information.” Beneficial ownership information is the name, date of birth, current residential or business address, and unique identifying number from a government issued identification document of each beneficial owner of a reporting company.

When Must Information be Reported?

Based on 31 U.S.C. § 5336(b)(5), the Secretary of the Treasury is required to promulgate regulations regarding the implementation of the Act no later than January 1, 2022. These regulations will stipulate the required reporting dates for entities covered under the Act.

How Will the Information that is Reported be Used?

As mentioned briefly above, once the filings required under the Act are made, FINCEN will use the data to construct a database housing all reporting companies’ information. The Federal Government states that the information reported will be used on a confidential basis. However, FINCEN may disclose information housed in the database upon request in certain circumstances. Namely, these circumstances include requests from a federal agency engaged in national security or law enforcement activity, requests from state or local authorities authorized by a court in a criminal or civil investigation, requests from a federal agency on behalf of a foreign law enforcement agency, and requests by financial institutions to satisfy due diligence requirements under applicable law. Of course, notwithstanding the confidentiality of the reporting information, there will always be concerns regarding potential breaches in cyber security.

How will the Act be Enforced?

As enforcement mechanisms, the Act provides for monetary penalties in the event a person willfully provides false beneficial ownership information or willfully fails to report a complete set of beneficial ownership information. Violations under the Act carry a maximum civil penalty of \$500 a day and a maximum criminal penalty of a \$10,000 fine and up to two years imprisonment.

The provisions of the Corporate Transparency Act may affect businesses of different sizes and structures, and it is generally advisable to consult legal counsel regarding the application, reporting requirements, and enforcement of the Act. Wegman Hessler stands ready to assist you or your business with navigating these changes in the upcoming months and beyond. If you have any questions or need assistance, please do not hesitate to contact a Wegman Hessler Business Services attorney.