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A Business Owner's Guide to the Corporate Transparency Act

2022 New Regulations and Recommendations

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2022 UPDATE ON THE CORPORATE TRANSPARENCY ACT

IMPORTANT DETAILS FOR OUR BUSINESS CLIENTS

by Jacob E. Debus, Esq.

The Corporate Transparency Act (CTA) is a historic new law impacting millions of America's existing small corporations and LLCs, as well as newly formed entities. This new law requires the disclosure and reporting of business ownership information directly to the Financial Crimes Enforcement Network (FinCEN), a division of the U.S. Department of Treasury.

This is the first time in history that the federal government will create and maintain a database of private company ownership for law enforcement purposes. The purpose is to enhance national security by preventing the use of corporations and LLCs for criminal activities, such as money laundering.

The period for public comment regarding the CTA expired on February 7, 2022. FinCEN is expected to finalize the regulations and begin enforcement of the CTA's regulations at some point this year.

Willful violations are subject to substantial fines (\$500/day) and criminal penalties (up to \$10,000), including prison time. We urge you not to wait to comply with this new law.

Businesses required to file under the CTA include all LLCs, corporations, and similar entities that meet the following criteria:

- Less than 20 employees;
- Less than \$5 million in reported annual revenue, and
- Has a physical office in the United States.



WHAT ACTION BUSINESS OWNERS AND OPERATORS MUST TAKE IN 2022 FOR THE CTA

There are several things small business leaders need to know and do to prepare for the finalized CTA regulations in 2022.

Make sure your company records are up to date.

Be sure they include current information about your business, owners, and shareholders. This includes names, addresses, and ownership percentages. You'll need to keep this information updated throughout the year.

Be sure your business is preparing the correct reports.

The CTA will require businesses to file annual reports detailing their activities and ownership structure. This includes annual meeting minutes and other reporting. You can find more information on the FinCEN website or get in touch with Wegman Hessler directly to help you stay on top of what's now required for your business.

If you're not certain that your business is taking the right steps to be prepared for the finalized regulations of the CTA, get in touch.

We will work with you to take the necessary steps to meet the expectations of the new law.

Once finalized, failure to comply with the CTA can result in significant penalties, so it is important to take action now to make sure your business is up to date.



FREQUENTLY ASKED QUESTIONS REGARDING THE 2022 CORPORATE TRANSPARENCY ACT

“What is the Corporate Transparency Act?”

The Corporate Transparency Act (CTA) comprises one section of the National Defense Authorization Act. As previously mentioned, the purpose of the CTA is to provide the federal government with information pertinent to identifying and stopping instances of corporate crime. The CTA 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 public comment period for the CTA expired on February 7, 2022, and the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) is expected to finalize and begin enforcement of the CTA’s regulations at some point this year.

“What entities must report information under the CTA?”

Under the CTA, all “reporting companies” must make required filings. The term reporting companies is defined broadly in the CTA 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 CTA 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 CTA 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 CTA?”

Under the CTA, 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 CTA, must be traced to an individual.

“What information must be reported under the CTA?”

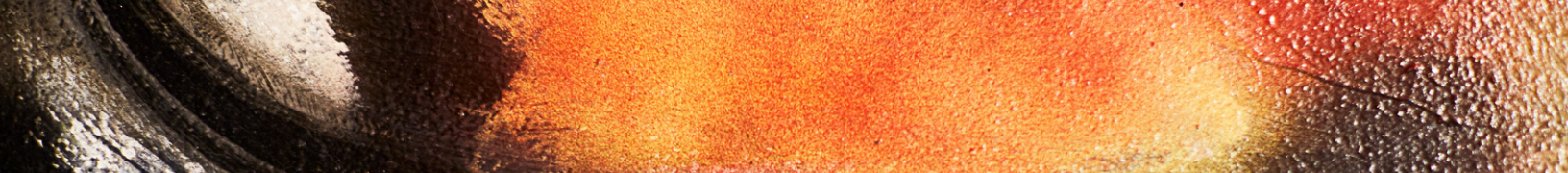
Beneficial owners of reporting companies must file “beneficial ownership information.” Beneficial ownership information is the name, date of birth, current residential or business address, and unique identifying number from a government issued identification document of each beneficial owner of a reporting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

“When must information be reported?”

Based on 31 U.S.C. § 5336(b)(5), the Secretary of the Treasury was required to make the regulations and details regarding the implementation of the CTA known to the public no later than January 1, 2022. The period for public comment regarding the CTA expired on February 7, 2022, so final regulations on the required reporting dates for entities covered under the CTA are expected to be released in the near future.

“How will the CTA be enforced?”

As enforcement mechanisms, the CTA 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 CTA carry a maximum civil penalty of \$500 a day, a maximum criminal penalty of a \$10,000 fine, and up to two years imprisonment.



“How will the information that is reported be used?”

As mentioned briefly above, once the filings required under the CTA 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 federal agencies engaged in national security or law enforcement activities, 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.

“What should I do next?”

The provisions of the CTA may affect businesses of different sizes and structures. It is generally advisable to consult legal counsel regarding the application, reporting requirements, and enforcement of the CTA to help navigate these changes in the months ahead.

If you have any questions or need assistance, please do not hesitate to contact a Wegman Hessler business services attorney. We stand ready to assist you in meeting the new requirements.

Wegman Hessler specializes in business law for business leaders, applying legal discipline to solve business problems to help business owners run smarter. For more than 50 years, this Cleveland business law firm has provided full service strategic legal counsel for closely held businesses. Practice areas include: business law; business litigation; estate planning and wealth protection; intellectual property; divorce and family law for business owners; product recall counsel; employee matters; commercial real estate; business acquisition, and more. Get in touch to learn more.

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