Roadmap for Recording: New Requirements for Businesses Under the Corporate Transparency Act

Jennifer R. Sharrow, Esq.

Businesses get ready, the federal government is implementing new reporting requirements that will bring even the smallest businesses under the purview of the U.S. Department of Treasury. All entities registered with a Secretary of State are now required to make mandatory reports which require specific and detailed information, and a failure to file these reports can result in serious penalties. This new reporting system is like nothing that has ever been required for the majority of businesses, either locally or elsewhere in the country, but the passing of the Corporate Transparency Act represents a fundamental change to the information that must be provided to the federal government by small businesses and single-purpose limited liability companies and corporations.

The Corporate Transparency Act ("CTA") was passed in 2021 as part of a suite of efforts from the federal government to crack down on money laundering across various parts of the economy. The CTA specifically targets efforts to hide monies under the guise of complicated corporate entity structuring. Whereas previously these entities enjoyed a significant amount of privacy regarding matters of ownership, under the CTA these entities will now be required to disclose detailed, personal information about their beneficial ownership. Every small business owner, and every business that assists in the formation and annual reporting requirements of the businesses, needs to know about this new reporting requirement as non-compliance can result in substantial penalties of $500 a day up to $10,000, and up to two years in jail.

<u>Who needs to file?</u>

While certain exemptions are available within the statute, in general, any corporation, limited liability company, or any similar entity which is formed by a filing with the Secretary of State needs to file reports with the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN). This requirement applies to most small businesses, fund manager entities, and real estate holding companies. Additionally, FinCEN is gathering information on what is described in the CTA as the "company applicant" – the person or organization who actually files the paperwork on behalf of the entity. For law firms, where formation documents are generally filed by a paralegal, FinCEN will require information on both the paralegal and their supervising attorney. For other service companies, this will be information on the specific person filing the organizational paperwork.

There are twenty-three exemptions from the CTA reporting requirements. Most exemptions are for entities that are already subject to considerable federal or state regulation. Examples of exempt entities include publicly traded companies and other entities that file reports with the SEC, tax-exempt entities, banks, credit unions, money services businesses, insurance companies, securities brokers and dealers, state-licensed insurance producers, public utilities, and accounting firms.

There is also an exemption for what's called a "large operating company" which is an entity that employs more than twenty full-time employees in the U.S., has an operating presence at a physical office within the U.S., and has filed a federal income tax or information return in the U.S. for the previous year with more than $5 million in gross receipts or sales.

<u>What is being reported?</u>

Entity Information: full legal name, "doing business as" name, principal office address, jurisdiction of formation, and IRS employer identification number.

Beneficial Owner Information: a "beneficial owner" is anyone who owns more than 25% of the entity, and anyone who exercises "substantial control" over the entity such as directors, LLC managers, and certain trustees. The entity will need to provide, for each beneficial owner, their full legal name, date of birth, current residential address, governmental identification information from a passport or driver's license, and a copy of that identification document.

Company Applicant Information: for new entities formed after January 1, 2024, the entity will need to provide essentially the same information on the appropriate company applicant individuals as they provide for the beneficial owners.

<u>When are the reports due?</u>

There are two timelines, one for existing businesses formed prior to January 1, 2024, and one for those new businesses formed after the start of the new year. The existing businesses have until January 1, 2025 to submit their initial reports. New businesses will have to file their initial reports to FinCEN within 30 calendar days of their initial formation. Additionally, whenever there is a change in beneficial ownership, or a change to the information of a beneficial owner, the entity will have thirty days from that change to file an updated report.

<u>Where is this information being kept?</u>

The disclosures will be made to a centralized federal database under FinCEN. These reports will not be accessible to the general public, but will solely be used by law enforcement agencies, government regulators of financial institutions, the Treasury Department, and certain foreign authorities requesting information through federal agencies.

<u>How to prepare now?</u>

Entities should first consult with an attorney to understand whether they qualify for an exemption or whether the CTA will require them to submit reports to FinCEN. Then, the owners and managers should decide when they want to file their initial disclosure and begin the process of gathering the required reporting information. Finally, it is highly recommended that they implement a system to keep the reporting information accurate and up-to-date so that they know when updated reports need to be filed. The reporting companies should communicate with their clients to assist in filing these new reports, and to have their own information ready and available to disclose to FinCEN.