New reporting rules

What you need to know about the Corporate Transparency Act

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On January 1, 2021, Congress passed the Corporate Transparency Act (CTA) with the purpose of combating "money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption." The CTA requires companies — many of which have been historically unregulated — to file reports identifying its beneficial owners with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN).

The CTA's effective date is slated around January 2022. The Secretary of the Treasury will issue procedures and standards to implement the provisions of the CTA. Until the Secretary's regulations are issued, Reporting Companies (defined below) are not required to submit the required information.

Smart Business spoke with Charles W. Ormsby, Jr., managing member of Semanoff Ormsby Greenberg & Torchia, LLC, to get a summary of the CTA's reporting requirements.

WHAT IS A "REPORTING COMPANY" AND WHICH ORGANIZATIONS FIT THAT DEFINITION?

Every corporation or limited liability company that's registered to do business in the United States must file a report with FinCEN containing a list of their beneficial owners. Although the vast majority of businesses fit this definition of a reporting company, the CTA includes a long list of exempt entities. Most notably, the following entities are exempt:

- Corporations or LLCs with twenty or more full time employees, sales over $5 million, and an operating presence at a physical United States office;
- Public utility companies;
- Banks and credit unions;
- Government entities; and
- Nonprofits.

If a company is considered an exempt entity, it need not provide information on its beneficial owners, but it will have to submit a written certification that states it qualifies as an exempt entity under the CTA.

WHAT INFORMATION ARE REPORTING COMPANIES REQUIRED TO PROVIDE?

A reporting company is required to identify all its beneficial owners. A beneficial owner is defined as an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over the entity or owns or controls not less than 25 percent of the ownership interests of the entity. A beneficial owner does not include a minor child; an individual acting as a nominee, intermediary, custodian or agent of another individual; an employee whose economic benefits derive solely from being an employee of the company; an individual whose ownership was gained through right of inheritance; or the entity's creditor.

A reporting company must provide the following information of each beneficial owner of the company:

- Full name;
- Date of birth;
- Current residential or business street address; and
- A form of identification such as passport, driver's license, or personal identification card.

WHEN IS THE DEADLINE TO SUBMIT REQUIRED INFORMATION?

Existing reporting companies will have two years from the effective date to submit reports to FinCEN. After the effective date, newly formed or registered reporting companies must submit their reports to FinCEN at the time they are formed or registered. Reporting companies will be required to update their beneficial owner information annually.

WHAT ARE THE PENALTIES FOR VIOLATING THE CTA?

A person who knowingly provides false or fraudulent information, willfully fails to provide complete or updated beneficial information, or knowingly discloses the existence of a subpoena or other request for beneficial ownership information is in violation of the CTA. Any person who violates the CTA is liable for a civil penalty not to exceed $10,000 and may be imprisoned for not more than three years. •