

The Bankler Report

October 10, 2022

INTRODUCTION

In January 2021, the Corporate Transparency Act (CTA) was enacted as part of the National Defense Authorization Act (NDAA). On December 7, 2021, **proposed regulations** were issued by the Treasury's Financial Crimes Enforcement Network. The **Final Regulations**, which consist of 330 pages, were released on September 29, 2022. Below is a quick summary of the major provisions:

A. Background:

1. **Treasury official stated:** "The final rule . . . represent[s] a sea change in how corporate transparency works in this country...FinCEN has made every effort to get it right. We've worked hard to make sure that this rule is consistent with the goals that Congress set in the CTA — that is, to develop a beneficial ownership database that will be useful to law enforcement and national security agencies while at the same time minimizing the burden on reporting companies."
2. **New database** – The CTA establishes a federal database operated by FinCEN. It is estimated that as many as 30 million entities (corporations, limited liability companies, and similar companies) must report the identities of natural persons who qualify as beneficial owners.
3. **Service providers** – Small law and accounting firms will not only be dealing directly with the affected companies, but are also subjected to the same reporting requirements. The CTA requires the Department of Treasury (which includes its agencies FinCEN, IRS, etc.) to take reasonable steps to provide persons notice of their reporting obligations.

B. Reporting Companies:

1. **Reporting companies defined** – The CTA states that a company or business that is required to file a beneficial ownership report is referred to as a "reporting company." It is broadly defined to include a corporation, LLC, or similar entity that is created by filing a document with a secretary of state or a similar office under the law of a state or Native American tribe. It also includes an entity formed under the laws of a foreign country and registered to do business in the U.S.
2. **Exceptions to reporting companies** – There are some 20+ exceptions to these provisions, but, in general, most privately held companies will be required to file, unless the entity:
 - a. Employs more than 20 employees on a full-time basis in the U.S.
 - b. Filed in the previous year a federal income tax return having more than \$5,000,000 of gross receipts or sales including sales of (i) other entities owned by the entity and (ii) other entities through which the entity operates **AND**
 - c. Has an operating presence at a physical office within the U.S.

There is also an exception for dormant entities formed before the enactment of the CTA.

3. **Broad definition of reporting companies** – The broad sweeping definitions, with the very limited exceptions, means that most corporations, LLCs, etc. that are “small businesses” would be required to comply with this filing requirement.

C. Reportable Beneficial Ownership:

1. **25% ownership interest** –The CTA defines a beneficial owner, whose identity must be reported to FinCEN, in terms of the exercise of control, ownership or control of a 25% interest.
2. **Beneficial Owner definition excludes** –
 - a. Minor children, if parent or guardian is reported.
 - b. Individuals acting as nominee (also intermediary, custodian, or agent) on behalf of another individual.
 - c. Individual acting solely as employee of the entity and whose control from such entity is derived solely from employment.
 - d. Individuals whose only interest in the entity is through a right of inheritance, or
 - e. Creditors of the entity, unless they have additional powers.
3. **Required identifying information** – Basically, the information that a reporting company must provide consists of information identifying the company itself and its beneficial owners. For each required beneficial owner, the required information includes full legal name, date of birth, residential or business street address, and a unique identifying number from an acceptable legal document such as a driver’s license or passport.
4. **Deadlines – *After final regulations*** are issued, there will be four situations in which a reporting company must file a report.
 - a. Existing reporting companies will be required to file a report no later than 1 year after the effective date of the final regulations.
 - b. Newly formed reporting companies, whether domestic or foreign, must file a report within 30 calendar days of formation.
 - c. A reporting company must file a corrected report 30 calendar days after the date on which it becomes aware or has reason to know that any of the required information in any report was inaccurate when filed and remains inaccurate.
 - d. A reporting company must file an updated report, within 30 calendar days, setting out changes to the information previously reported.
5. **Penalties** – FinCEN may impose a civil penalty of \$500 per day for as long as the willful failure continues without being remedied. However, the CTA provides for a fine of \$10,000 and imprisonment for up to 2 years for a willful failure. **In this instance, willfulness means a voluntary, intentional violation of a known legal duty!**

This report only discusses specific provisions that we consider to be of general interest to business owners and is not a complete discussion of either the CTA or the **final regulations, which are effective January 1, 2024**. Please feel free to contact us with your specific questions.