

The Bankler Report

January 24, 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 Treasury's Financial Crimes Enforcement Network. Below is a quick summary of the major provisions:

A. Background:

1. **Fact Sheet** –released with these proposed regulations states that the CTA is designed to help combat corruption, money laundering, terrorist financing, tax fraud, and other illicit activity. The goal of these regulations is to “combat, to the broadest extent possible, the proliferation of anonymous shell companies that facilitate the flow and sheltering of illicit money in the United States.”
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** – It is anticipated that small law and accounting firms will not only be dealing directly with the affected companies, but also subjected to the same reporting requirements. The CTA requires 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 a 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 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.
 - d. There is also an exception for dormant entities formed before enactment of 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 child, if parent or guardian is reported
 - b. Individual 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. Individual whose only interest in the entity is through a right of inheritance, or
 - e. Creditor 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. The proposed regulations seem to indicate that a report or updated report must include a beneficial owner's complete residential street address used for tax residency purposes.
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 with 14 calendar days of formation.
 - c. A reporting company must file a corrected report 14 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 CTA or the **proposed regulations, which will enforced when they become final!** Please feel free to contact us with your specific questions.

