

The New Corporate Transparency Act

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Background

Today, the financial services industry (banks, investment advisers, broker-dealers, etc.) are subject to a variety of anti-money laundering regulations and reporting requirements. These requirements include having anti-money laundering policies, filing suspicious activity reports with governmental authorities, checking the list of persons barred from using U.S. financial services providers by the U.S. Office of Foreign Assets and Control (“OFAC”), and satisfying “Know Your Customer” regulatory requirements (“KYC”). But, until now other types of businesses operating in the USA did not have such requirements. That will change on January 1, 2024, when most U.S. business entities will become subject to a new anti-money laundering regulatory regime named the “Corporate Transparency Act.”

The business entity may be required to report a control person’s or investor’s beneficial owner’s identity to the U.S. Treasury Department’s Financial Crimes Enforcement Network if such person exercises control over business entity or beneficially owns more than twenty-five percent (25%) of the business entity as the end of 2024.

If a person exercises “control” over or owns more than twenty-five percent (25%) of a business entity, the business entity may be required to report such ownership to the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”). Congress adopted the Corporate Transparency Act (“CTA”) as part of the Anti-Money Laundering Act of 2020, which was included in the National Defense Authorization Act for Fiscal 2021.¹ The National Defense Authorization Act for Fiscal 2021 was adopted via Congressional override of President Trump’s veto on January 1, 2021 (322-87 in the House and 81-13 in the Senate).² The effective date is January 1, 2024.³ The business entity will be required to report its beneficial owners which includes: “any individual who, directly or indirectly, either exercises substantial control over such reporting (business entity) or owns or controls at least 25 percent of the ownership interests of such reporting (business entity).”⁴ Investors will be generally be passive and not qualify as persons with substantial control under the CTA. But, if an investor owns twenty-five percent (25%) or more beneficial ownership in the business entity, the business entity will be required to report such ownership to FINCEN by December 31, 2024. If the reported person obtains a FINCEN identifier, the report will be the FINCEN identifier. If there is no FINCEN identifier, the CTA and its rules require the submission of the beneficial owner’s full legal name, date of birth, current address, and a unique identification number, and an “image of the document from which the unique identifying number...was obtained.”⁵ The unique identification number can come from a valid passport, valid

¹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498, 59,499 (September 30, 2022).

² Sahil Kapur and Dareh Gregorian, *Congress overrides Trump’s veto for the first time on major military bill*, NBC NEWS (Jan. 1, 2021, 1:34 PM), <https://www.nbcnews.com/politics/congress/congress-overrides-trump-s-veto-first-time-major-military-bill-n1252652>.

³ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022).

⁴ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)).

⁵ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(1)(ii)).

driver license, or other valid identification document issued to the individual by the state, local government or Indian tribe. The CTA also includes a \$500 per day penalty for failure to comply.⁶

On September 22, 2022, the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) issued the final rules under the CTA.⁷ The following summary derives from both the CTA and the FinCEN rules.

Why Did Congress Adopt the CTA?

Congress believes the collection of beneficial owner information will help law enforcement, by shedding light on criminals who seek to evade taxes, hide illicit wealth, or defraud US citizens.⁸ Congress also believes the rule will enhance US National Security by making it harder for individuals or foreign state-sponsored enterprises to hide behind shell companies.⁹ As such, the CTA expands anti-money laundering obligations to most business entities doing business in the United States and will require that business entities disclose to FinCEN information about the natural persons who directly and indirectly own designated percentages of those business entities’ equity or otherwise have required indicia of control over the entity.¹⁰ The CTA has a litany of Congressional findings justifying the CTA and the costs it imposes on American businesses.¹¹ These findings include:

- (1) more than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year;
- (2) most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State;
- (3) malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including 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, harming the national security interests of the United States and allies of the United States;
- (4) money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting “Matryoshka” dolls, across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process;
- (5) Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar

⁶ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020).

⁷ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022).

⁸ See Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020) and FinCEN, Beneficial Ownership Information Reporting Rule Fact Sheet, September 29, 2022, <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>.

⁹ See Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020) and FinCEN, Beneficial Ownership Information Reporting Rule Fact Sheet, September 29, 2022, <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>.

¹⁰ FinCen, Beneficial Ownership Information Reporting Rule Fact Sheet, September 29, 2022, <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>

¹¹ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6402 (2020).

- entities formed under the laws of the States is needed to—
- (a) set a clear, Federal standard for incorporation practices;
 - (b) protect vital United States national security interests;
 - (c) protect interstate and foreign commerce;
 - (d) better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards;
- (6) beneficial ownership information collected under the amendments made by this title is sensitive information and will be directly available only to authorized government authorities, subject to effective safeguards and controls, to—
- (a) facilitate important national security, intelligence, and law enforcement activities; and
 - (b) confirm beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law;
- (7) consistent with applicable law, the Secretary of the Treasury shall—
- (a) maintain the information (filed with FinCEN) in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect non-classified information systems at the highest security level; and
 - (b) take all steps, including regular auditing, to ensure that government authorities accessing beneficial ownership information do so only for authorized purposes consistent with this title; and
- (8) in prescribing regulations to provide for the reporting of beneficial ownership information, the Secretary shall, to the greatest extent practicable consistent with the purposes of this title—
- (a) seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information;
 - (b) provide clarity to reporting companies concerning the identification of their beneficial owners; and
 - (c) collect information in a form and manner that is reasonably designed to generate a database that is highly useful to national security, intelligence, and law enforcement agencies and Federal functional regulators.¹²

What Business Entities does the CTA Apply To?

The CTA effectively shifts anti-money laundering compliance from financial services providers to the business entities doing business in the United States. With designated exceptions the CTA applies to all corporations, limited liability companies “or other similar entity” that is “created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe . . . or formed under the law of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or a similar office under the laws of a State or Indian Tribe.”¹³ That is an incredibly broad definition. In its final rules

¹² Corporate Transparency Act, H.R. 6395, 116th Cong. § 6402 (2020).

¹³ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(c)(i) and (ii)).

FinCEN determined that, beyond corporations and limited liability companies, the CTA also applies to limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships.¹⁴ FinCEN functionally determined that if a business entity files documents with a secretary of state or similar agency, then the CTA applies to it – unless specifically excepted.¹⁵

The CTA and the FinCEN rules have 23 types of business entities to which the CTA is not applicable.¹⁶ Those exceptions are:

- (1) SEC-reporting issuers;
- (2) Any entity with that is established under the laws of the United States, an Indian Tribe or a State, or a political subdivision of a state that exercises governmental authority on behalf of such governmental entity;
- (3) Banks and Savings and Loans;
- (4) Credit Unions;
- (5) Bank and Savings and Loans Holding Companies;
- (6) Money Services Businesses registered with FinCEN;
- (7) Federally Registered Securities Broker-Dealers;
- (8) Federally Registered Securities Exchanges and Clearing Agencies;
- (9) Other Entities Registered with the U.S. Securities and Exchange Commission under the Securities Exchange Act of 1934, including municipal securities dealers, municipal advisors, transfer agents, and nationally recognized statistical rating organizations;
- (10) SEC-registered investment companies, e.g. mutual funds, exchange traded funds, and business development corporations;
- (11) SEC-registered investment advisers and venture capital fund advisers;
- (12) Insurance companies;
- (13) State-licensed insurance producer;
- (14) Entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act, including futures commission merchants, introducing brokers, swap dealers, major swap participants, commodity pool operators, or commodity trading advisers;
- (15) Public accounting firms registered with the Public Company Accounting Oversight Board (PCAOB);
- (16) Regulated public utilities that provide telecommunications services, electrical power, natural gas, or water and sewer services within the United States;
- (17) Financial market utilities designated by the Financial Stability Oversight Council under the Payment, Clearing and Settlement Supervision Act of 2010;
- (18) Pooled investment vehicles advised or operated by banks, registered securities broker-dealers, registered investment advisers, and registered venture capital fund advisers;
- (19) Certain tax-exempt entities, including entities that are exempt from taxes under Section 501(c)(3) of the Internal Revenue Code of 1986, political organizations as defined in Section 527(e)(1) of the Internal Revenue Code

¹⁴ FinCen, Beneficial Ownership Information Reporting Rule Fact Sheet, September 29, 2022, <https://www.fincen.gov/beneficial-ownership-information-reporting-rule-fact-sheet>

¹⁵ See Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(c)(i) and (ii)).

¹⁶ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498, 59,539 (September 30, 2022).

of 1986, or a trust described in Section 4947(a) of the Internal Revenue Code of 1986;

- (20) Entities assisting tax-exempt entities, including entities that exclusively operate to provide financial assistance to, or hold governance rights over, the above-referenced tax-exempt entities; is formed in the United States, is beneficially owned, or controlled exclusively by one or more U.S. citizens or lawful permanent residents, and derives at least a majority of its funding from one or more U.S. citizens or lawful permanent residents;
- (21) A business entity that has more than 20 full-time employees in the U.S., has an operating presence at a physical office within the U.S., and has filed federal income tax or information returns in the U.S. for the previous year reporting more than \$5 million in gross receipts or sales for that year, excluding gross receipts or sales from sources outside the U.S.;
- (22) A business entity whose ownership interests are controlled or wholly owned by one or more entities described above as excluded from the CTA; and
- (23) Inactive entities that were in existence before January 1, 2020, are not engaged in an active business, are not directly or indirectly, wholly or partially, owned by a non-U.S. person, have not experienced any change of ownership in the preceding twelve-month period, and has not sent or received any funds in the amount greater than \$1,000, either directly or through any financial account in which the entity or any of its affiliates has any interest in the preceding 12-month period; and does not otherwise own any kind or type of assets, whether in the U.S. or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.¹⁷

Who are the Beneficial Owners and Control Persons whom the CTA Requires to be Reported to FinCEN?

“Beneficial Owner” under the CTA and the FinCEN rules means an individual related to a CTA-reporting business entity who is required to be disclosed to FinCEN.¹⁸ Beneficial Owner means “any individual who, directly or indirectly, either exercises substantial control over such reporting (business entity) or owns or controls at least 25 percent of the ownership interests of such reporting (business entity).”¹⁹ There are five exceptions to the definition of Beneficial Owner.²⁰ The exceptions include: (i) minor children, (ii) individuals “acting as a nominee, intermediary, custodian, or agent on behalf of another individual,” (iii) an employee acting solely as an employee, (iv) “an individual whose only interest...is a future interest,” and (v) a creditor.²¹

¹⁷ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498, 59,539 (September 30, 2022).

¹⁸ See Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)).

¹⁹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)).

²⁰ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)(3)).

²¹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)(3)).

The CTA's FinCEN rules provide standards as to the meaning of "substantial control" and "ownership interests."²² "Substantial Control" includes the following roles in connection with a reporting business entity:

- (1) Serving as a senior officer;
- (2) Has authority over the appointment or removal of any senior officer or a majority of the board of directors;
- (3) Directs, determines, or has substantial influence over important decisions made by the reporting business entity, including decisions regarding:
 - a. The nature, scope, and attributes of the business of the reporting business entity, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting business entity;
 - b. The reorganization, dissolution, or merger of the reporting business entity;
 - c. Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting business entity;
 - d. The selection or termination of business lines or ventures, or geographic focus, of the reporting business entity;
 - e. Compensation schemes and incentive programs for senior officers;
 - f. The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
 - g. Amendments of any substantial governance documents of the reporting business entity, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures;
- (4) Has any other form of substantial control over the reporting business entity.²³

Ownership Interests "means:

- (1) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust;...
- (2) Any capital or profit interest in an entity;
- (3) Any instrument convertible, with or without consideration, into any share or instrument described in...this section, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in...this section, regardless of whether characterized as debt;
- (4) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in...this section ...except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting business entity; or
- (5) Any other instrument, contract, arrangement, understanding, relationship, or

²² Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)(1) and (2)).

²³ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(d)(1)).

mechanism used to establish ownership.”²⁴

Who are Business Entity Applicants whom the CTA Requires to be Reported to FinCEN?

“Applicant” means “the individual who directly files the document that create the domestic reporting (business entity),” “the individual who registers a foreign reporting (business entity),” or “the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved.”²⁵ Attorneys often file such documents on behalf of clients, in which case the Applicant may be such attorney. Consequently, do not be surprised if your corporate attorney seeks a copy of the control person or 25% beneficial owner passport or driver’s license to include in its FINCEN filing disclosing such control or beneficial ownership status. A more likely result is that attorneys will stop including their name as the business entity’s “organizer.”

When do Initial Reports Need to be Filed?

Reporting companies created on or after January 1, 2024, must file the initial report with FinCEN within 30 days from the date of notice from the secretary of state’s office that the business entity has become effective or created.²⁶ For reporting companies created before January 1, 2024, the initial report must be filed with FinCEN by January 1, 2025.²⁷ If a business entity is exempt from the reporting requirements, but loses its exemption, the business entity must file the “report within 30 calendar days after the date that it no longer meets the criteria for any exemption.”²⁸

What information is Required in an Initial Report?

An initial report shall be filed with FinCEN, in the form and manner prescribed by FinCEN, and certified by each person signing the report.²⁹ An initial report must include: the full legal name of the reporting business entity, any ‘doing business as’ names, the current address of the reporting business entity, the jurisdiction of the reporting business entity, and the reporting business entity’s IRS TIN.³⁰ Further, the Initial Report must also include: the full legal name of every individual who is a “beneficial owner and every individual who is a business entity applicant, the date of birth of the individual, the current address of the individual, a unique identification number, and an “image of the document from which the unique identifying number...was obtained.”³¹ The unique identification number can come from a valid passport, valid driver license, or other valid identification document issued to the individual by the state, local government or Indian tribe.³²

²⁴ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498, 59,595 (September 30, 2022).

²⁵ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(e)(1)-(3)).

²⁶ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(1)(i) and (a)(1)(ii)).

²⁷ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(1)(iii)).

²⁸ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(1)(iv)).

²⁹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)).

³⁰ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(1)(i)).

³¹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(1)(ii)).

³² Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(1)(ii)(D)).

If an individual obtains a FinCEN identifier, the FinCEN identifier can be substituted for the individual's information required on the initial report.³³ To obtain a FinCEN identifier, the individual or reporting business entity can submit an application containing the information required in an initial report to FinCEN.³⁴ "Each FinCEN identifier shall be specific to each such individual or reporting business entity and each such individual or reporting (business entity) (including any successor reporting (business entity)) may obtain only one FinCEN identifier."³⁵

For reporting companies created before January 1, 2024, the business entity applicants do not need to be reported in the initial report.³⁶

When are Updated Reports and Corrected Reports required?

An updated report is required "[i]f there is any change with respect to required information previously submitted to FinCEN."³⁷ This includes changes to the beneficial owners and information reported about the beneficial owners.³⁸ The updated report must be filed within 30 calendar days from the date of the change.³⁹ If the "individual is a beneficial owner...by virtue of property interests or other rights subject to transfer upon death...a change is deemed to occur when the estate of the deceased beneficial owner is settled."⁴⁰ Further, if the report contains information about the parent or legal guardian of a minor, "a change with respect to required information will be deemed to occur when the minor child attains the age of majority."⁴¹

Updated reports are also required if the reporting business entity filed an initial report but later meets the criteria for an exemption from this section.⁴² The updated report must "indicate that the filing entity is no longer a reporting (business entity)."⁴³

³³ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(4)(ii)(A)).

³⁴ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(4)(i)(A)-(B)).

³⁵ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(4)(i)(C)).

³⁶ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(2)).

³⁷ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(2)(i)).

³⁸ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(2)(i)).

³⁹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(2)(i)).

⁴⁰ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(2)(iii)).

⁴¹ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(2)(iv)).

⁴² Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(2)(ii)).

⁴³ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(3)(ii)).

If a report was inaccurate when filed, the reporting business entity must correct the report within 30 calendar days of the date the reporting business entity either became aware of the error or “has reason to know of the inaccuracy.”⁴⁴

Further, if the individual or reporting business entity obtains a FinCEN identifier, the individual must update any changes to the information submitted on the application to FinCEN for an identifier.⁴⁵ The changes must be submitted within 30 days of the change, or, if the information was inaccurate, within 30 calendar days of the date on which the individual or reporting business entity “becomes aware or has reason to know of the inaccuracy.”⁴⁶

What are the Penalties for Failing to Provide Beneficial Owner Information or for Providing False Beneficial Ownership Information?

It is “unlawful for any person to willfully provide or attempt to provide, false or fraudulent beneficial ownership information...; or willfully fail to report complete and updated beneficial ownership information to FinCEN.”⁴⁷ Any person that violates the CTA “shall be liable to the US for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and may be fined not more than \$10,000, imprisoned for not more than 2 years, or both.”⁴⁸ However, Congress does provide a safe harbor.⁴⁹ It states that a person shall not be subject to civil or criminal penalty under the Act if the person “has reason to believe that any report submitted by the person in accordance with [the Act] contains inaccurate information; and...voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report, submits a report containing corrected information.”⁵⁰ However, the safe harbor does not apply “if, at the time the person submits the report...the person acts for the purpose of evading the reporting requirements...and has actual knowledge that the any information contained in the report is inaccurate.”⁵¹

What Legal Challenges are pending to the CTA?

The National Small Business Association filed a lawsuit challenging the CTA in the U.S. District Court for the Northern District of Alabama in November 2022. The Court has yet to rule. Any court ruling, pro or con, will undoubtedly be appealed, first to the 11th Circuit Court of Appeals and subsequently to the U.S. Supreme Court.

Trade groups typically have much more greater chances of success challenging a rule rather than an act of Congress. Rules must be both authorized by statute and comply with the Administrative Procedures Act. But the CTA is an act of Congress and is not subject to process-oriented challenges. The only alleged claims allowed are violations of the U.S. Constitution. The CTA plaintiff alleges unconstitutional infringements on of state sovereignty, the right to privacy

⁴⁴ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(a)(3)).

⁴⁵ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(4)(iii)(A) and (B)).

⁴⁶ Beneficial Ownership Information Reporting Requirements, 87 Fed. Ref. 59,498 (September 30, 2022) (to be codified at 31 CFR § 1010.380(b)(4)(iii)(A)(1)-(2) and (B)).

⁴⁷ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020).

⁴⁸ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020).

⁴⁹ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020).

⁵⁰ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020).

⁵¹ Corporate Transparency Act, H.R. 6395, 116th Cong. § 6403 (2020).

and due process. We view this lawsuit as unlikely to delay the CTA's implementation on January 1, 2024.

Recommendations

In light of the new CTA's requirements, each business control person or significant investor in a business should prepare for CTA filings, including prompting the business entity to track down the required data on its control persons and twenty-five percent beneficial owners. As part of this, business owners should consider:

- 1) Making a list of all business entities that are either partially or wholly owned by the business owner;
- 2) Include in all securities subscription agreements a covenant for investors to provide all beneficial ownership reporting information, including, if required, copies of identification;
- 3) Consult with an attorney over the meaning of corporate documents, especially in connection with the control and beneficial ownership elements in the Corporate Transparency Act; and
- 4) Provide the names, addresses, identification, and other FINCEN-required information to FINCEN through its CTA filing portal for each beneficial owner.

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