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Countdown to the Corporate Transparency Act: What Companies Need to Know

Client Alert

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In less than a year, many businesses will bear the brunt of another seemingly burdensome regulatory task – reporting information about their owners to the federal government. Beginning January 1, 2024, companies, particularly small businesses, are required to report key information about their owners to Financial Crimes Enforcement Network (“FinCEN”).

The new reporting requirements are mandated by the Corporate Transparency Act (“CTA”) which was adopted on January 1, 2021 as part of the National Defense Authorization Act of 2020. The goal of the CTA is to deter money laundering and increase transparency, but the requirements may seem onerous and cryptic. Let us shed light on the facts.

Which businesses are affected?

Approximately 32 million small businesses will be impacted. There are some exemptions that may apply. For instance, businesses with 20 or more full time US employees generating more than \$5 million annually are exempt. In addition, publicly traded entities, banks, accounting firms, public utilities, and nonprofits are also exempt.

Who has to report?

“Beneficial owners” include **any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.** These include senior officers (excluding secretary or treasurer), those with the authority to appoint or remove senior officers or majority of the board, and those individuals with substantial influence over important decisions or substantial control over the reporting company.

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For entities created after January 1, 2024, “company applicants” must also report personally identifiable data. A company applicant is **an individual who files an application to form a domestic entity or registers a foreign entity to do business**. Company applicant information will only be reported once.

What information is collected?

“Beneficial owners” and “company applicants” must report four pieces of information:

- the individual's full legal name,
- date of birth,
- current residential or business street address, and
- a unique identifying number from an acceptable identification document (g., a passport)—or the individual's FinCEN identifier.

This information will be stored securely and it is not accessible to the public. Only certain employees will have access to the data.

What happens for failure to report?

Penalties apply for ignoring the reporting rules. Although the penalties tend to be targeted toward senior officers, the law is written broadly. Willfully providing false or fraudulent information or willfully failing to report complete or updated information **can bring jail time of up to 2 years and fines of \$500/day, up to \$10,000**.

Key Takeaways

Any reporting company **existing or registered before January 1, 2024, must file** its initial report with FinCEN **by January 1, 2025**. Any reporting company created or registered after January 1, 2024, must file its initial report within 30 calendar days after creation or registration. If you are planning to start a business, we recommend you take advantage of the 1-year grace period extended to businesses created before January 1, 2024. For guidance regarding entity formation and corporate governance, please contact us today.

Initial reporting deadlines will be here with the blink of an eye. To prepare, we suggest you start developing policies and procedures to comply with reporting obligations. Compile a list of beneficial owners and company applicants. Identify key employees who will track the data and report changes. For assistance with creating strategies, contact a Butzel lawyer today.

Please stay tuned for additional Butzel client alerts concerning the CTA's reporting obligations.

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Shanika Owens

313.983.6908

owens@butzel.com

Laura Johnson

248.593.3014

johnson@butzel.com

Joseph Kuzmiak

313.983.7497

kuzmiak@butzel.com