FinCEN Issues Final Rule Establishing Beneficial Ownership Reporting Requirements Under CTA

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On September 29, 2022, the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN) issued a final rule (the Final Rule) establishing beneficial ownership information reporting requirements for non-exempt business entities under the Corporate Transparency Act (the "CTA"). The primary purpose of the CTA is to prevent money laundering, including the use of shell companies to conceal proceeds of corrupt and criminal acts. These regulations, discussed below, will take effect on January 1, 2024.

Requirements Under the Final Rule

Under the Final Rule, certain business entities must file identifying information concerning themselves, their "company applicants," and their "beneficial owners" with FinCEN. A "company applicant" is an individual who files the incorporating documents for the company or is primarily responsible for directing or controlling such filing by another individual. A "beneficial owner" is an individual who, directly or indirectly, owns 25% or more of the ownership interest in or exercises "substantial control" over the company. An individual exercises "substantial control" if that individual: (i) serves as a senior officer of the company, (ii) has authority over appointment or removal of any senior officer or a majority of the board of directors of the company, (iii) has substantial influence over important decisions by the company, or (iv) has any other form of substantial control.

The reporting requirements for such business entities include its legal name (and any trade or d/b/a names), business street address, jurisdiction of formation or registration, and taxpayer identification number (including its EIN number). The reporting requirements for company applicants and beneficial owners include the individual's full legal name, date of birth, current residential street address (except for a company applicant engaged in the business of corporate formation, who must instead report the business street address of such business), and identifying number from an acceptable identification document along with an image of that document. The information disclosed to FinCEN is stored in a confidential, non-public database. FinCEN may only disclose such information to certain government authorities and to financial institutions under limited circumstances.

Who Must File?

Companies that are subject to the reporting requirements include domestic and foreign corporations, LLCs, and entities that are created or registered to do business in any state jurisdiction by filing a document with a secretary of state or other similar office. General partnerships appear to be excluded from the reporting requirements.

Companies created or registered before January 1, 2024, have until January 1, 2025, to file their initial reports. Companies created or registered after January 1, 2024, must file their reports within 30 days after such creation or registration. Companies must report any changes to the reported information within 30 days from when the relevant change occurs. This would include, for example, any change in the beneficial owners previously reported.

Who Is Exempt?

There are 23 types of entities that are exempt from the reporting requirements. Such exempted entities include public companies, banks and credit unions, insurance companies, pooled investment vehicles, and tax-exempt entities. Large operating companies are also exempt if they employ more than 20 full-time employees, have a physical operating presence in the U.S., and generate at least $5 million in annual gross receipts or sales from sources inside the U.S.

What Are The Penalties For Non-Compliance?

There are both civil and criminal penalties for failing to comply with the reporting requirements. Civil penalties include fines of $500 per day, with a maximum of up to $10,000, for a failure to timely report. Moreover, willfully failing to report or knowingly providing inaccurate information can result in criminal penalties, including up to two years of imprisonment.

Additional State Reporting Requirements

In addition to complying with the CTA, companies must also comply with applicable state-level reporting requirements. Notably, New York and Pennsylvania have enacted, or are in the process of enacting, laws imposing reporting requirements on companies similar to the CTA.

New York

Under the proposed LLC Transparency Act, currently awaiting Governor Hochul's signature, LLCs would be required to report their beneficial ownership information upon formation or registration in New York. LLCs formed or registered in New York prior to the effective date of the bill would also be required to report such information. Notably, the bill incorporates the CTA definition of "beneficial owner" by reference, and would require the same disclosures for beneficial owners as the CTA. Unlike its federal counterpart, however: (i) the reporting requirements would only apply to LLCs, (ii) the beneficial owner's business street address would need to be disclosed, rather than its residential street address, (iii) there would be less significant civil penalties and no criminal penalties for non-compliance, and (iv) the reported information would be stored in a publicly accessible online database. The bill is to take effect one year after becoming law.

In addition, the New York City Department of Finance currently requires shell companies engaging in residential real estate transactions to report all of its members or immediate owners (but not its beneficial owners). Similarly, New York State requires LLCs buying or selling one-to four-unit residential buildings to disclose the names of all their members (but not their beneficial owners). In addition, FinCEN requires title companies to verify the true beneficial owners of shell companies engaged in residential, all-cash real estate transactions that exceed $300,000.00 in value in New York City.

Pennsylvania

Under Act 122, which takes effect on January 2, 2024, businesses registered with Pennsylvania must file annual (rather than decennial) reports disclosing the names and titles of each individual who is a principal officer and the name of at least one director, member, or partner. Businesses that must file such annual reports include domestic and foreign corporations, LLCs, and partnerships. Unlike the CTA, these disclosures are not required during the first year of the business's existence and are accessible to the public.

California

We are also advised that there are two bills in California that are similar to the CTA and the NY law, but which have not made it out of committee yet.

If you have questions or would like further information, please contact Ralph E. Arpajian (Arpajianr@whiteandwilliams.com; 215.864.6232) or Manny Marcos (Marcosm@whiteandwilliams.com; 646.766.1353), or a member of our Real Estate Practice.