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New Federal Reporting Requirements for Small Business Owners

Small business owners and investors will soon face new federal reporting requirements under the Corporate Transparency Act (CTA). In an effort to combat money laundering, terrorist financing, and tax fraud accomplished through illegitimate shell corporations, the CTA requires certain foreign and domestic entities to disclose personal information about their owners to the Department of Treasury's Financial Crimes Enforcement Network (FinCEN). FinCEN recently published proposed rules implementing the CTA and providing clarification on how business owners can comply with the CTA's requirements. Although these new reporting rules have yet to be finalized, this short primer gives an overview of what business owners can expect in the coming months.

Who Needs to Report?

A. Entities Required to Report

All domestic entities created by filing documents with the secretary of state or similar office within the United States (in Virginia, the State Corporation Commission) and all foreign entities formed under the law of another country and registered to do

business within the United States are considered reporting companies under the proposed rules. Most corporations, limited liability companies, limited liability partnerships, limited liability limited partnerships, business trusts, and limited partnerships fall under this definition, unless they qualify as an exempt entity as described below.

Twenty-three types of entities are exempt from reporting under the proposed rule. These exempt entities include, to name a few: banks, insurance companies, brokers or dealers in securities, accounting firms, tax exempt entities, and inactive businesses. The proposed rule also exempts large operating companies (defined as an entity with 20 or more full time US-employees, at least \$5 million in gross receipts or sales reported in the last fiscal year, and a physical office location within the US) from the reporting requirement. The CTA exempts these entities largely because they are already highly regulated by other federal laws and regulations.

B. Individuals Required to Report Within Reporting Entities

If an entity cannot claim an exemption from the reporting requirement, they must submit personal information pertaining to: 1) every individual who is a beneficial owner of the company; and 2) the individual that filed the document that formed the company (for a domestic entity) or registered the company to do business in the US (for a foreign entity).

A “beneficial owner” of a company is someone who exercises substantial control over the company or who owns or controls at least 25% of the ownership interest of the company. The proposed rule clarifies that an individual exercises substantial control over a company by serving as a senior officer, retaining authority over the appointment

or removal of any senior officer or a majority of the company's board of directors, or having substantial influence over important matters of the company like the sale of its principal assets and selection of new business ventures. "Ownership interest" refers to any equity, stock, profit interest, or proprietary interest in the company. When determining an individual's ownership interest in a company, company interests that the individual has placed in trust will be considered to belong to the individual personally if they are the sole recipient of both trust income and principal or have the right to demand distributions from the trust.

The company must also report information about the individual that filed the initial document that created the company (i.e. the person who filed the articles of organization for an LLC). The proposed regulations refer to this person as the "company applicant."

What Information Needs to Be Reported?

Each reporting company must file the following general information with FinCEN:

- Company name;
- Any alternative names through which the company is engaging in business ("d/b/a" names);
- The street address of the company's principal place of business;
- The jurisdiction of formation (i.e. the state where the articles of incorporation were filed) or registration; and
- A unique identifying number such as a TIN, EIN, DUNS, or LEI.

The reporting company must report the following information about its beneficial owners:

- Name;
- Date of birth;
- Residential street address for tax residency purposes;
- A unique identifier from a license or passport; and
- A scanned copy of their license or passport from which the identifier was obtained.

The reporting company must report the following information about the company applicant:

- Name;
- Date of birth;
- One of the following addresses:
 - o If the company applicant provides business services as a corporate or formation agent (such as an attorney), the company applicant's business address
 - o For all other company applicants, their residential street address used for tax residency purposes;
- A unique identifier from a license or passport; and
- A scanned copy of their license or passport from which the identifier was obtained.

What is the Timeline for Reporting?

Companies formed or registered after the proposed regulation is finalized will be required to report reporting company, beneficial owner, and company applicant

information within 14 calendar days of the date the company was formed or registered to do business in the United States. Companies already in existence will have one year from the effective date of the regulation to report.

Although reporting entities are not necessarily required to update their FinCEN information each year, companies are responsible for updating information within 30 calendar days after there is a change in any information previously reported, and for correcting inaccurate information within 14 calendar days of discovering the inaccuracy.

Who Can Access My Reported Information?

All information collected by FinCEN is required to be held in a confidential, secure, and non-public database.

FinCEN is, however, authorized to disclose reportable information to federal agencies in furtherance of national security or law enforcement activity, and to state and local law enforcement agencies after being presented with a court order. FinCEN may also release information to financial institution subject to customer due diligence requests with the consent of the reporting company, and to a regulatory agency of a financial institution that is investigating or supervising the institution without the reporting company's consent.

Have questions about how the Corporate Transparency Act could impact your business? Contact us to schedule a meeting at 757-969-1900.

This publication is intended for general information purposes only and is not to be construed as providing legal advice. You must consult an attorney to discuss how the laws apply to your specific situation and how to best implement a plan that will meet your individual goals and objectives. If we can be of assistance in that regard, please call us at (757) 969-1900 to schedule a consultation appointment.