

NIESAR & VESTAL LLP

Law Alert

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Preparing for Compliance with the Federal Corporate Transparency Act Reporting of Beneficial Ownership

Beginning on January 1, 2024, most newly formed businesses and many existing businesses, including those formed as LLCs, will be required to file reports with the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of Treasury under the Corporate Transparency Act (the “CTA”). On September 29, 2022, FinCEN issued a highly anticipated final rule, Beneficial Ownership Information Reporting Requirements (the “Final Rule”), implementing the CTA.

The CTA was adopted to combat a perceived misuse of closely held entities for money laundering and financing terrorism. While most entities will be required to report ownership and management persons, the information will **not** be publicly available. The information will be available to state law enforcement authorities and to “a Federal agency engaged in national security, intelligence, or law enforcement activity.”

Under the CTA, the great majority of closely held domestic businesses and foreign businesses registered to do business in the United States will be required to disclose personal identifying information about their beneficial owners, senior officers, and other control persons to FinCEN.

The Final Rule becomes effective on January 1, 2024. Reporting companies created or registered prior to that date will have a one-year grace period (until January 1, 2025) to file their initial reports. Reporting companies created or registered on or after January 1, 2024 will have 30 days to file their initial reports.

“Reporting companies” are defined as any corporation, limited liability company or other “similar entity” that is created by the filing of a document with a secretary of state or similar office in any state or territory or with a federally recognized Indian Tribe or that is formed under the laws of a foreign country and is registered to do business in the United States by a similar filing. The CTA exempts 23 categories of entities from the definition of “reporting company” and empowers FinCEN to create new exemptions. Exempted entities include large operating companies — companies with 20 or more full-time U.S. employees, more than \$5 million in U.S.-sourced revenue, and a physical operating presence in the U.S.

We recommend that all reporting companies and their legal counsel begin to identify the parties about whom a filing must be made and collect the necessary information on an ongoing basis to timely make required filings under the CTA. The obligations imposed by the CTA will likely require a significant compliance effort for some reporting companies, particularly entities

with complex ownership structures that do not qualify for an exemption. For example, formation/governing documents or other documents binding on the company typically include confidentiality obligations; they should now include carve-outs sufficient to allow the company to satisfy its reporting obligations under the CTA, without violating the confidentiality obligations.

A reporting company, directly and through a company applicant, is required to report to FinCEN specified information about itself and each of its beneficial owners, company applicants and control persons.

The information for the reporting company must include its full name, any trade name or “doing business as” name that it uses, the business street address, the state or Tribal jurisdiction of formation (or for a foreign reporting company, the state or Tribal jurisdiction where such company first registers), and an IRS Taxpayer Identification Number or, in the alternative, a Dun & Bradstreet DUNS or Legal Entity Identifier number. For beneficial owners and control persons, the information must include the person’s full legal name, date of birth, current residential address, and a unique identifying number from an acceptable source, such as a passport, driver’s license or other government issued identifying number (identifying the issuing authority). An identifying number (a “FinCEN identifier”) will be obtainable from FinCEN and can be supplied to a reporting company for filing with FinCEN and to banks and financial institutions to satisfy their “know your customer” obligations under the Bank Secrecy Act. A company applicant or beneficial owner also must provide a copy of a government issued picture ID that includes the disclosed identification number or, in the alternative, a FinCEN identifier.

A “beneficial owner” is **broadly defined** to include each individual who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, (i) exercises “substantial control” over the reporting company; or (ii) owns or controls not less than 25% of the ownership interests of the reporting company.

The Final Rule takes an expansive view of who exercises substantial control over a reporting company, including, for example, board members, managers and managing members of an LLC, executive officers, and others exercising similar control over important matters concerning a reporting company.

Willful failure to report complete beneficial ownership information to FinCEN or to update that information or willfully providing false beneficial ownership information is subject to a daily civil penalty and a criminal fine and possible imprisonment.

This law alert only provides the general framework of the various obligations imposed by the CTA. If you have any questions regarding the most efficient ways to ensure that your business will be compliant, please feel free to contact Gerald Niesar (gniesar@nvlawllp.com), Oscar Escobar (oescobar@nvlawllp.com) or Carolina Aricu (caricu@nvlawllp.com).

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