

Jim's Perspective...

Corporate Transparency Act

Recently, I attended a webinar sponsored by the Corporate Counsel Section of the Nebraska State Bar Association. Two attorneys gave a presentation about a federal law that I had never heard of. Congress passed the Corporate Transparency Act (CTA) in 2021. This law was part of the federal Anti-Money Laundering Act which made a number of changes to federal anti-money laundering laws. All of this was done because apparently the United States lagged behind a number of other developed countries in its safeguards designed to prevent the flow of illicit money to people and various entities involved in illegal activities. This includes human and drug trafficking, and financing of terrorism. It is also intended to prevent illicit use of the U.S. financial system by corrupt actors such as oligarchs who attempt money laundering, or hiding money and other assets, in the United States.

The CTA is enforced by the federal Financial Crimes Enforcement Network (FinCEN). FinCEN issued a final rule for enforcement of the CTA in September of 2022. The CTA goes into effect January 1, 2024. Existing companies will have until the end of 2024 (one year) to file a “beneficial owner” disclosure report form with FinCEN. Businesses created or registered after January 1, 2024, will have 30 days to file the business owner report form, following the date the business is created or registered. The webinar speakers said the CTA disclosure form will affect approximately 30 million business entities in the United States and worldwide. CTA applies to corporations, LLCs, limited partnerships and other entities created by filing a document with a secretary of state or any similar office under a state law. The U.S. Treasury Department has indicated that entities which are not created through the filing of a document with a secretary of state such as sole proprietorships, certain types of trusts and general partnerships fall outside the scope of CTA. Once a beneficial owner report has been filed, an additional report is only required if the information provided in the initial report changes.

Under the FinCEN rule, a beneficial owner includes any individual who, directly or indirectly, either (1) exercises substantial control over the business, or (2) owns or controls at least 25 percent of the ownership interest of a business. The CTA rule does exempt five types of individuals from the definition of “business owner.” Not sure who those are.

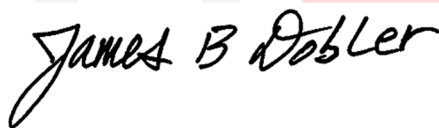
The penalties for failure to file the beneficial owner disclosure report can result in criminal penalties of up to \$10,000 and imprisonment for up to two years. The CTA contains a safe harbor from penalties or some form of civil liability for the submission of inaccurate information if the person who submitted the report voluntarily and promptly corrects the business owner report within 90 days. There is also a civil penalty of up to \$500 for each day the failure to file continues.

The CTA contains 23 categories of companies that are exempt from the CTA reporting obligations. The speakers in the corporate counsel seminar mentioned that there are a number of exemptions from the act related to companies that are already significantly regulated at the state or federal level. The speakers mentioned that insurance companies are exempt from the CTA.

Nothing was said about agents. I looked at the FinCEN final rule in the Federal Register. It shows that insurance producers are exempt. Hooray! This part of the rule exempting insurance producers is found at 87 Federal Register page 59541. The complete rule is 99 pages. Also, I thought you would be interested to know that the original rule only applied to insurance producers that “have an operating presence at a physical office.” There were “comments” received by FinCEN that persuaded FinCEN to amend the proposed rule and include agents operating the agency in their place of residency as exempt from CTA. Not sure who submitted comments.

It should be noted that the focus of the CTA law is on shell companies and other entities with limited or no operations. This is, in part, why there are 23 categories of companies that are exempt from the CTA. Because the focus is on shell companies, there is one other significant exemption I want to mention. A business entity is exempt if it (1) employs more than twenty employees; (2) filed in the previous tax year a tax return demonstrating more than \$5 million in gross receipts or sales; and (3) has an operating presence at a physical office within the United States. Subsidiaries of such an entity are also excluded.

I bring this federal law and regulation to your attention because it could affect many of your commercial, or business, clients. I suspect there will be a lot of business owners who won't know about this federal law. It will just be good for agents to know that it is out there. Also, I am certainly no expert on this topic. The law and regulation is very extensive, and so, it might be wise to check with your attorney to make sure your agency does not have to comply with the CTA. Also, at some point, FinCEN will publish a Small Entity Compliance Guide which will be available at its web site.



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