

October 10, 2022

NEW BENEFICIAL OWNER REPORTING REQUIREMENTS UNDER THE CORPORATE TRANSPARENCY ACT

Historically, state and federal laws afforded small business owners a great deal of anonymity. However, the Corporate Transparency Act (“CTA”) is set to change this. The CTA was enacted by Congress on January 1, 2021, as part of the Anti-Money Laundering Act of 2020 and is intended to curtail money laundering and terrorist financing. To achieve the CTA’s goals, domestic and foreign entities doing business in the United States will soon be obligated to meet certain reporting requirements. In September, the Department of Treasury’s Financial Crimes Enforcement Network (“FinCEN”) finalized one of three sets of regulations specifying the procedures and methods of reporting. Companies can look to these rules, as well as the proposed rules, to understand how to comply with this new law to avoid criminal and civil penalties.

Reporting Requirements: Who, What, and When?

The CTA requires “reporting companies” to submit specific information about their beneficial owners to FinCEN. The definition of reporting companies includes any domestic corporation, limited liability company, or similar entity created by filing a document with the secretary of state or similar office. Foreign entities doing business within the United States are also included in this definition. However, the CTA sets out an exception from the definition of “reporting companies” for companies that have more than 20 full-time employees in the United States, more than \$5 million in gross receipts or sales, and an operating presence at a physical office in the United States. Other highly regulated organizations like banks, credit unions, and investment funds as well as charities and publicly traded companies are also excluded from the definition. The reporting company must provide FinCEN information about itself and those involved with the entity. First, the reporting company must report (i) its name, (ii) any DBAs it uses, (iii) its address, and (iv) other identifying information including its taxpayer identification number. Second, the company must identify the natural persons controlling the entity and the persons who filed formation documents. This includes the person’s (i) name, (ii) date of birth, (iii) address, and (iv) unique identifying number from an acceptable identification document. This is a stark departure from the anonymity that some small business owners enjoy with respect to their companies; however, importantly, information provided to FinCEN will not be public record and will be kept in a confidential database available only to certain government agencies, including the IRS and FBI. To further safeguard this information, the CTA subjects government employees to civil and criminal penalties for unauthorized disclosure or use of reported information. The timing for reporting under the CTA will depend on the date of the entity formation. Entities formed before the

regulations take effect will have one year from the effective date of the regulations to file initial reports. Entities formed after the effective date must file initial reports within 30 days of formation. The effective date of the CTA's reporting requirement is January 1, 2024, but businesses should prepare now to disclose ownership information. Failure to comply with the CTA's reporting requirements carries potential criminal and civil penalties, including a civil penalty of up to \$500 per day and criminal penalties of up to \$10,000 and up to two years' imprisonment.

JAH Can Help

These rules are complicated and can come with hefty penalties if your business fails to comply. The **corporate attorneys** at JAH are available to assist you with the procedures needed to fulfill the Corporate Transparency Act requirements. If you are in need of assistance, contact a member of our **Corporate Group** or complete our **General Contact Form**.

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