Reporting Rules for the Corporate Transparency Act Continue to Evolve

April 23, 2024

Reporting rules for The Corporate Transparency Act ("CTA") took effect on January 1, 2024. The new rules require certain business entities (like some corporations, partnerships and LLCs), each defined as a "reporting company", to file information reports with the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). These information reports generally must include information about

1. the "beneficial owners" of the reporting companies, which includes individuals who either:
    1. Own at least 25% of the ownership interests of the reporting company; or
    2. exercise substantial control over the reporting company;
2. the "company applicants" of the reporting companies, which includes individuals who either:
    1. directly file the documents that creates or registers the reporting companies with governmental entities; or
    2. is primarily responsible for directing or controlling such filing; and
3. other information about the reporting company.

Willful failure to follow the reporting rules may result in civil penalties of up to $500 for each day that the violation continues; and/or criminal penalties of up to two years in prison and/or a fine of up to $10,000.

For a reporting company that exists before January 1, 2024, the due date for filing the information reports with FinCEN is January 1, 2025. For a new reporting company created between January 1, 2024, and December 31, 2024, the information report is generally due 90 days after formation or registration. For a new reporting company created on or after January 1, 2025, the information report is generally due 30 days after formation or registration. After the initial information report has been filed, any changes in beneficial ownership information must be reported to FinCEN within 30 days after becoming aware of the change.

Those forming a new reporting company need to give consideration to the reporting timelines. Identifying all of the beneficial owners and gathering the required reporting information prior to forming the new entity will aid in satisfying the reporting requirements timely.

For those with reporting companies that existed prior to January 1, 2024, the reporting is not due until January 1, 2025 and it could prove wise to postpone reporting until the second half of 2024 as FinCEN may issue more guidance on unclear areas of the rules.

Further guidance is expected from FinCEN as to defining beneficial ownership when a trust owns an interest in a reporting company. The rules provide that an individual may directly or indirectly own or control an ownership interest of a reporting company through a trust in the following ways:

1. as a trustee with the authority to dispose of trust assets;
2. as a beneficiary who:
    1. is the sole permissible recipient of income and principal from the trust; or
    2. has the right to demand or withdraw substantially all of the assets from the trust; or
3. is a grantor or settlor who has the right to revoke the trust or otherwise withdraw assets from the trust.

On April 18, 2024, FinCEN updated its FAQ page which included a discussion on considerations for reporting a corporate trustee as a beneficial owner.

Additional information and resources from FinCEN about the CTA and the rules are available on the FinCEN website: https://www.fincen.gov/boi, including a Small Entity Compliance Guide and a list of Frequently Asked Questions.

Lathrop GPM has been closely following developments regarding the CTA. View all of our CTA updates at our CTA Client Resource Center.

Special thanks to former Lathrop GPM Associate Zack Royle, who helped in the drafting of this article. Zack is now Vice President, Trust Administrator at Country Club Trust Company.