

Part 1: Addressing and Demystifying Common Denials Surrounding the Upcoming CTA

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CTA Denial #1: “I am a sophisticated business owner, and I have never heard of this.”

The enactment of the CTA in 2021 came as a shock to many (to some, a much later aftershock). However, the CTA’s intent—to end the position of the United States as a haven for “shell” companies used in the commission of money laundering, terrorist financing, financial and tax fraud, and other domestic and international illicit activity and corrupt practices—was present in proposed federal legislation for decades.

The CTA marks a seismic shift in the legal landscape for businesses operating in the United States. Prior to the CTA, entity beneficial owner disclosure was solely (if at all) the purview of state or tribal law. Now it is a focus and purview of federal law enforcement agencies.

The CTA has largely flown under the radar to date, but it is now time to become educated on the actions that may be taken prior to the CTA’s January 1, 2024, implementation date, and after. The Act’s impact on and implications for businesses, particularly small businesses, are complicated and difficult to succinctly communicate, and the CTA has not received widespread mass media attention. In fact, federal lawmakers and industry groups have decried the lack of CTA public education undertaken by FinCEN to date.

Many professional advisers and business professionals have been caught off guard by this fundamental change in business entity law, now taking on a federal facet for the first time. Those who are aware have, by and large, taken a wait-and-see approach to either advising their clients and business associates or evaluating their own compliance profile. This is because much of the mechanics of compliance remains elusive. The ability for businesses to begin directly interfacing with FinCEN on filing and compliance continues to be in the future, giving those persons “in the know” little to offer as current action items—causing many to defer sounding the alarm bell until more is known from FinCEN. However, the wait must end, as there is limited and dwindling time remaining to take action before the window of opportunity closes at the end of 2023.

Conclusion

The Corporate Transparency Act is a new beneficial owner reporting requirement in the United

States. Beginning January 1, 2024, tens of millions of U.S. business entities, and their beneficial owners, will become subject to FinCEN's new requirements which were originally designed to catch "bad" actors choosing to hide behind the "corporate veil." Whether you like it, hate it, or are indifferent, the CTA is here to stay. Compliance is both mandatory and advisable. Now is the time to discuss this with your legal team for guidance.

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