

CRAIN CURRENCY

October 23, 2023

FAMILY OFFICE MANAGEMENT

What you don't know matters! Family offices prep for Corporate Transparency Act

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With the global proliferation of legislation and regulation requiring increased reporting and disclosure of formerly private information and data, family offices that leverage or invest in technology will benefit in compliance, efficiency and productivity. In the U.S., the federal Corporate Transparency Act (CTA) may be the catalyst for family offices to finally fully leverage or upgrade their technology platforms.

Is your family office ready for this new compliance issue?

Starting Jan. 1, 2024, the CTA will affect compliance and privacy for many family offices, private investors and privately held entities. Requiring these companies to identify all beneficial owners across their operations will fill a transparency gap for the U.S. government across nonpublic small businesses (i.e., fewer than 20 employees) but demand significant financial resources and time. According to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN), about 32.6 million existing businesses and 5 million more annually will be affected. Reporting for the CTA will be costly, projected at a hefty \$22 billion in year one and \$6 billion in year two for initial and ongoing requirements. "This is not going to be cheap for companies," said Brooke Hopkins, a partner and managing director at AlixPartners.



What are the CTA + Environmental, Social and Governance (ESG) implications?

In 2021, Congress enacted the CTA to address the lack of transparency pertaining to smaller companies and their beneficial owners. The CTA requires certain types of U.S. and foreign entities to report information about their beneficial owners to FinCEN. Global fines for money laundering and other financial crimes surged more than 50% in 2022, Hopkins said. "During the last several years, money laundering has been exacerbated by COVID, as well as the global markets and digital opening up," she said. "Bad actors launder illicit funds through the U.S. using shell and front companies. It is those "bad actors" that FinCen hopes to catch in the act under the CTA. The proliferation of illicit acts (e.g., human trafficking, modern slavery, forced labor) have dispropor-

tionately hurt vulnerable populations, children and marginalized groups, resulting in significant ESG implications.

Who will be affected?

Existing and future U.S. nonpublic and foreign "reporting companies" with \$5 million or less in gross receipts or sales and 20 or fewer employees will be required to report Beneficial Ownership Information (BOI).

- "Reporting company" Definition: A reporting company is a domestic or foreign corporation, LLC or similar entity that was formed or registered to do business and filed with a secretary of state or other similar office and which does not fall within one of the 23 types of exempt entity types.
- FinCEN's List of 23 exempt entity types: Most exempt entities are already subject

to federal reporting requirements (i.e., public companies, banks, broker-dealers, large operating companies).

What is a beneficial owner?

A beneficial owner is any individual who exercises substantial control over a company or who owns or controls at least 25% of a company, as defined by FinCEN. This could include senior officers (e.g., CEO, COO, CFO, CLO/GC) with substantial influence over important decisions, Hopkins said.

How does CTA reporting work?

For companies registered after Jan. 1, 2024, CTA reporting must be done within 30 days of formation. For existing companies, CTA reporting needs to be completed by Jan. 1, 2025. Any changes in beneficial-ownership information must be reported within 30 days.

What are reporting companies required to report?

- Name (DBA)
- Physical address
- Jurisdiction of formation/registration
- Taxpayer Identification Number (TIN) or Foreign TIN for foreign entities without an Employer Identification Number (EIN)

What are beneficial owners required to report?

- Full legal name
- Date of birth
- Residential address
- Unique identification number

What are company applicants required to report?

- Full legal name
- Date of birth
- Business address

FinCEN's identified and targeted carve-out for CTA

"FinCEN has targeted a portion of the market that has grown over the years," Hopkins said. "Anything you can put the dollars in to get that integration, which is the third phase of money laundering." Key areas to watch include art, real estate, special pur-

pose vehicles (SPVs) — "anywhere where there are layers upon layers of entities."

Using technology and third parties to support compliance and operational excellence

"Family offices are not just about people and not just about technology. It's the combination thereof," said Tomas Hurcik, co-founder and CEO of Orca AG, a legal, tax and compliance software-as-a-service (SaaS) platform. "You can have the perfect people in place, but if they don't have access to the right information when they need it and how they need it, they will be unable to support you."

FinCEN reporting "has to be done accurately and consistently ... it's not just a one-and-done," Hopkins said. "One thing FinCEN has identified is that if you have third-party providers such as AlixPartners, technology like Orca, outside counsel, etc. assisting your company, those third parties become part of the applicant process and can act on your behalf, monitor the data, keep up with changes and also legally make sure any changes that FinCEN makes can be kept up with and these changes be incorporated."

Recommendations for compliance and ongoing maintenance

Hopkins recommends the following:

- Gather your family office's internal and external teams from operations, legal, compliance, audit, governance and technology to review your current technology stack to evaluate if it (1) supports current compliance requirements, risk exposure and operational demands and (2) the risk and cost to the overall family office by not enhancing its technology capabilities.
- Have procedures and controls for reporting, including interim for changes.
- Establish a policy and procedures for how to address, who is accountable and monitoring.
- Include controls for how to monitor beneficial ownership and ownership/influence control.
- For M&A, as part of compliance due diligence, ensure that the target compa-

nies have fulfilled their reporting obligations as well as their own compliance structure.

- Reassess AML procedures and controls, as CTA will provide an opportunity for data mining by regulators and law enforcement to identify potential wrongdoing

To comply with CTA requirements, processes will need to be in place to gather, store and report beneficial ownership information (e.g., documents such as operating agreements, subscription agreements, identification such as passports).

Final thoughts

The CTA has significant implications for family offices as well as domestic and foreign small businesses and entities. In addition, the act helps minimize risk related to crimes against humanity and related financial exploitation, helping to burgeon global ethics and ESG initiatives. Technology will be a key foundational pillar in the years to come. When it comes to family offices, it is about finding the optimal balance between technology and people to enable you to move quickly and effectively. If family offices do not evaluate tech and people, this may lead them to being reactive, exposed and unable to move forward effectively. Similar risks exist for other small businesses under the CTA.

Let's be transparent. There is no safety in what you don't know, especially when it comes to U.S. government enforcement. Now is the time to prepare for the CTA and understand your risks and opportunities for tracking, monitoring, and reporting relevant beneficial ownership information.

This article includes insights from Brooke Hopkins, partner and managing director at AlixPartners LLP, an expert in corporate operational compliance, ESG, risk and investigations. (Note: This article is not intended to provide legal advice but to provide general information and discussion on current events and possible solutions. You should seek your own legal advice and other professional counsel regarding your specific needs, situation and circumstances). Refer to www.fincen.gov/boi for details.