



IAACA

Don't Lose Control – Defensive
Driving Course for the CTA

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Today's Panel

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- Allison DeSantis, Office of the Ohio Secretary of State



- Pia Angelikis, Cogency Global Inc.

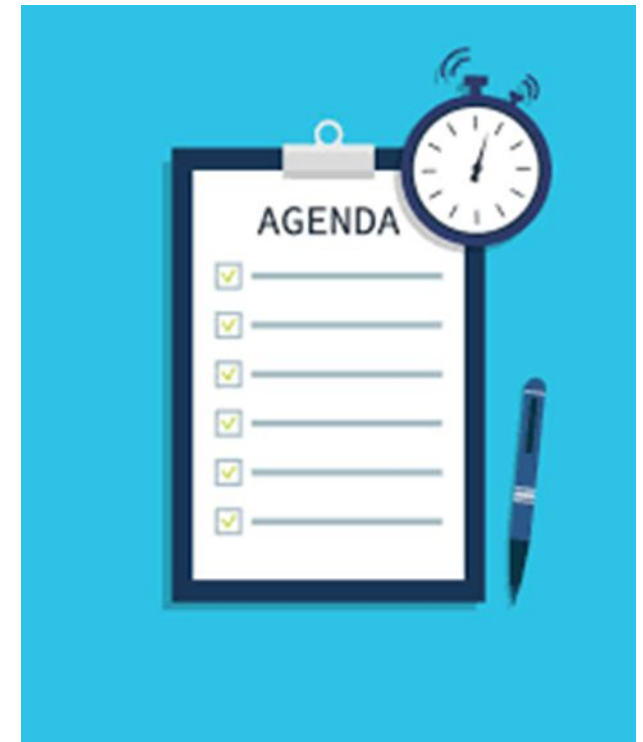


- Alan Stachura, CT Corporation



Agenda

- The Corporate Transparency Act (CTA)
 - Overview – brief summary of terms and requirements
 - Recent Activity
 - ACCESS NPRM - commentary
 - Sample form and Sample FinCEN ID application
 - Open Issues and FAQs
- State Agency Duties and Considerations
 - How to Prepare for Implementation
- Registered Agent and System Vendor Duties and Considerations
- Penalties
- Q&A Session – Open discussion



The Corporate Transparency Act (CTA)

Overview

- H.R. 6395, The National Defense Authorization Act FY 2021, enacted January 1st, 2021 (NDAA) Includes the **Corporation Transparency Act (CTA)**
 - Effective January 1, 2024
 - First federal beneficial ownership reporting requirement in the US
 - Targets shell companies used for illicit activities (many exemptions)
 - Secure database not available to the public
 - FinCEN in charge of rulemaking, implementation and database
 - FinCEN – 3 sets of rulemaking

The Corporation Transparency Act

- “Reporting Company”
 - Corps, LLCs and “other similar entities”
 - “created by the filing of a document...”
 - 23 exemptions
- “Beneficial Owner”
 - Exceptions
- “Company Applicant”
 - 2 types:
 - The individual who directly files the document to create or register the “reporting company”, and
 - The individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing
 - 2 at most



The Corporation Transparency Act (con'd)



- Beneficial Ownership Information Report
 - Due dates for Reporting Companies to File:
 - Existing vs. Newly Formed on or after January 1, 2024
 - Existing: within one year of the CTA's effective date
 - Newly formed: within 30 days of either actual or constructive notice of formation
 - Updates and corrections: within 30 days
 - Required information:
 - Reporting Company: home state, TIN, DBAs
 - Beneficial Owners and Company Applicants: full legal name, DOB, current address, unique identifying number (and scanned copy of document) or a "FinCEN identifier"
 - Existing: no company applicant information
 - Newly formed: include company applicant information

FinCEN's Rulemaking

- 1st of 3 sets of Rulemaking:
 - Beneficial Ownership Information (BOI) Reporting Rules
 - Final rule issued on September 30, 2022
 - Sets forth CTA effective date as January 1, 2024
 - Further defines “Company Applicant”
 - Requires scanned copy of identifying document
 - Shortens deadlines for reporting
 - Eliminates requirement that existing reporting companies report Company Applicant Information
 - Does not require reporting companies to update their Company Applicant information
 - But individuals with FinCEN IDs are required to keep their PII up-to-date with FinCEN indefinitely

FinCEN's Rulemaking (con'd)

- 2nd of 3 sets of Rulemaking
 - Rules for ACCESS to Beneficial Ownership Secure System (BOSS) Database
 - Notice of Proposed Rulemaking issued in December 2022
 - Comment period closed in February 2023
 - Sets forth proposed rules for homeland security, law enforcement, and financial institutions to access the BOSS
 - Different tiers of access
 - Criticized by group of Senators
 - Raises many questions and concerns for financial institutions
 - Unclear when FinCEN will finalize, but before January 1, 2024



FinCEN's Rulemaking (con'd)

- 3rd of 3 sets of Rulemaking
 - Amendments to the CDD Portion of the Bank Secrecy Act
 - FinCEN has 1 year from the CTA's effective date to issue



FinCEN's Rulemaking (con'd)

- In January of 2023, FinCEN issued two Sample “Forms” for comments:
 - one with form fields for the Application for a FinCEN ID, and
 - one with form fields for BOI reports
 - boxes for “unknown” and “unable to obtain information”
 - no check-box for certifying the report is accurate and complete

Open Issues and FAQs

- Open Issues :
 - NSBA lawsuit challenging constitutionality of the CTA
 - Defendants' motion to dismiss filed in late March 2023
 - How FinCEN will build out its FAQs, training materials
- FAQs:
 - Can service companies make these filings for customers?
 - Will a disregarded entity have to obtain an EIN?
 - What if a member of the entity won't cooperate in providing their PII?
 - Will there be a wizard?
 - Is a beneficial owner a natural person? What about a Company Applicant?

State Agency Duties and Considerations

What are the Duties of the State Filing Offices?

- States will be required to inform “applicants” for incorporation/organization of their obligations under this act and provide copies of the forms or links
 - Notify filers of BO Reporting Duties at the time of formation, annual fees, and license renewals as well as on websites. §5336(e)(2)
 - What does this actually mean?
 - Notice on receipts? Evidence?
 - Large mailing? Is email sufficient?
 - New filings vs existing database



What are the Duties of the State Filing Offices? (con'd)

- States must also cooperate with and provide the information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information. §5336(d)(2)
 - Conflicting proposals and ideas
 - Exempt reporting becomes a big factor
 - Will any Federal Funding be provided?



Assisting Constituents

- Who will handle all the questions?
- Consider:
 - Volume
 - Complexity
 - Legal Advice
 - Profile of those asking
- More information may mean more questions
- Budgets – call center impact



Sharing State Best Practices

- No reason to recreate the wheel
- Involve Communications & PR Team
- IACA Base “In Process”
- Registered Agent Base “In Process”



Thoughts on Existing SOS Systems

- Will any database information ultimately be required?
 - Delivering database information is ALWAYS challenging
 - Consider:
 - Format
 - Frequency
 - Specific Data Fields/Data Elements
 - System downtime/bandwidth to run reports
 - How far should States bend for the Feds to produce data requested?
 - Would partnerships with Agents & Data Aggregators be beneficial?
 - Will any Federal Money be provided for expenses?



Known Obstacles

- FinCEN's Budget and Limited Headcount
- State Budgets and Limited/Decreasing Headcount
- Historic Exploration Exercises
- What do we do with Questions??
- Political Fallout
- Cybersecurity Concerns



Jurisdictional Movement

- Washington, DC
 - Beneficial Ownership Requirements (DCRA Bill 22-317)
 - Effective January 1st, 2020
- Proposed Legislation in
 - New York
 - Massachusetts
 - South Dakota
 - California



Moving Forward Together

- FinCEN Responses and Discussions
 - IACA Group
 - Individual Jurisdiction
- Education and Seminars
 - Proactive
 - Are you ready??
- System Readiness
 - Security, Security, Security



Registered Agent and System Vendor Duties and Considerations

What About the Registered Agents?

- Registered Agents should continue to discuss and plan for best and worst-case scenarios
- Track how this will impact Agents, including:
 - Will we be considered Applicants?
 - Will we be required to report?
 - What does this truly mean for us/our clients?
 - Will we have to obtain or report additional data?
 - What part of the notification process do we own?
 - Will this impact other products we provide?
 - Will we need any internal system modifications?
 - How can we help the States?
 - What is our communications plan?
- Stay involved individually but also with industry groups like NPRRA



What About the System Vendors?

- Will any existing system modifications be required?
 - If so, when?
- Will modifications be required going forward?
 - If so, what?
- Are there ways the vendors can proactively assist the states with any new requirements?



Violations and Penalties

Violations and Penalties

- Criminal and Civil Penalties
 - Reporting violations: up to \$500 for each day, not more than \$10,000 or 2 years in prison, or both
 - Unauthorized disclosure or use violations: up to \$500 for each day, not more than *\$250,000 or 5 years in prison, or both* or
 - While violating another law (pattern) of any illegal activity involving more than \$100,000 in 12 months, not more than \$500,000, 10 years in prison, or both

Open Discussion

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Contact Information

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