

What the Corporate Transparency Act Means for Financial Institutions

Banking Brief: Financial Services Insights

By Michael Cortina on October 25, 2023

With the advent of the federal Corporate Transparency Act (“CTA”) that begins on January 1, 2024, financial institutions will need to re-think their information and certification requirements for account and loan customers.

When corporations seek to engage in a banking relationship with an institution, they are normally required to provide, at a minimum, copies of the incorporating document filed with the state, as that will show that the entity actually exists, as well as its Federal Employer Identification Number, or FEIN. More information is usually required so that KYC compliance occurs, and that information is generally found with a corporate incumbency certificate that generally provides the names of all officers, directors, and key shareholders, as well as each person’s ability to bind the corporation. Now, however, more information is going to be needed.

With the CTA, many companies will need to file information with the Financial Crimes Enforcement Network, or FINCEN. The purpose of the CTA is to enhance FINCEN’s ability to protect the national security of the United States, as well as our financial system. Under the CTA, this is accomplished by requiring many corporations to identify to FINCEN information about the company, including but not limited to, its beneficial owners (which includes senior officers, important decision makers, and anyone who owns or controls 25% or more of the company). In addition to the initially required disclosures, the information must be updated when it changes (e.g. adopts a new d/b/a, a new CEO is hired, or the beneficial owner moves to a new address). While financial institutions generally require disclosure of this information from their customers, customers did not have to provide all of this information to the federal government in the past.

Failure of a qualifying company to properly report and update to FINCEN by willfully providing or attempting to provide false or fraudulent information is a crime punishable by large fines and possibly imprisonment of those responsible.

Financial institutions should review their account and loan policies and consider updating them to require that customers certify their compliance with CTA, as well as continuing certification when updated filings are required. Because a customer could face serious penalties by not complying with the CTA, institutions should do what they can to ensure that they are not affected by their customer’s

actions.

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