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## Law & Accounting

# Beneficial owner disclosure requirements impact CRE

As part of the National Defense Authorization Act for fiscal year 2021, Congress inserted section 6403 entitled the Corporation Transparency Act in order to combat money laundering and terrorism by creating a federal registry of the beneficial owners of limited liability companies, corporations and other similar entities. The Financial Crimes Enforcement Network of the Department of Treasury will keep the registry confidential, but is authorized to share the information with governmental, law enforcement and foreign authorities.

The CTA will greatly impact real estate ownership entities given the wide use of limited liability companies and similar entities in the ownership of real property.

Upon formation, the entity (with certain exceptions) will be required to report to FinCEN all of its indirect and direct beneficial owners, defined as an individual or entity owning or controlling not less than 25% of the ownership interests of the reporting entity or exercising substantial control over the reporting entity. The information to be reported to FinCEN is for the natural persons who are the beneficial owners or control the entities that are the beneficial owners of the reporting



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entities. Entities formed prior to the promulgation of the regulations for the CTA will be required to provide that information within two years after the regulations are issued and any changes to the reported information are required within one year of such change.

The statute requires covered entities to report the following information on those beneficial owners who are subject to the disclosure requirement: full legal name, date of birth, residential or business street address, and the person's unique identifying number from an acceptable document such as a passport or driver's license.

Certain entities are excluded from the reporting requirements, including banks, credit unions, registered investment companies and broker-dealers, larger private companies, public companies and other entities listed in the statute. Larger private companies are those that filed in the previous year federal income tax returns in the U.S. demonstrating



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gross receipts or sales in the aggregate greater than \$5 million dollars, have more than 20 full-time employees in the U.S., and have a physical operating office in the U.S. Also excluded are entities that have been in existence for over one year and have not engaged in active business, are not owned, directly or indirectly, by a foreign person, have not experienced a change in ownership or sent or received funds in an amount greater than \$1,000 in the previous 12-month period, and do not have any kind or type of assets.

The secretary of the Treasury, in consultation with the attorney general and secretary of Homeland Security, has the authority to exempt other entities or classes of entities if disclosure would not serve the public interest or would not serve the purpose of detecting, preventing or prosecuting money laundering, financing of terrorism, tax fraud and other crimes.

The willful providing of false information and the willful fail-

ure to timely provide the required reports or any changes to information previously submitted subject the person who provides the false information or fails to provide the reporting to fines of not more than \$10,000 and/or imprisonment for not more than two years.

The secretary of the Treasury is required to promulgate regulations regarding the CTA by Jan. 2, 2022. Upon the effective date of the regulations, the CTA reporting requirements for new entities must be met and entities in existence prior to the date of the regulations have two years thereafter to comply.

### Key Takeaways

- Consider adding provisions to operating agreements, bylaws, articles of incorporation, partnership agreements and similar documents to require beneficial owners to provide the information required by the CTA to the person who registers such entity or who is responsible for updating such information. Also, consider adding indemnity provisions in such governing documents to protect the person providing the information pursuant to the statute from penalties in the event that inaccurate or incomplete information was provided by a beneficial owner or a beneficial

owner refuses to provide the required information.

- Prior to passage of the regulations, entities that fall under the CTA will need to inform its beneficial owners of the requirements of the CTA and start gathering the required data on the beneficial owners. The requirement can be added to subscription agreements and other communications soliciting or offering investment opportunities to potential investors in a new entity. The need to start gathering the information also applies to companies formed prior to passage of the statute. We recommend that clients who organized or manage entities or are forming new entities begin the compliance process now to avoid delays in compliance when the regulations requiring disclosure are effective.

- Upon passage of the regulations, any person who registers an entity that falls under the reporting requirements of the CTA also will need to simultaneously file the required report with FinCEN. Therefore, such registration may need to be delayed until all of the required information is obtained by that person. ▲

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