Creating transparency

New rule requires a business's beneficial ownership information to be reported

INTERVIEWED BY SUE OSTROWSKI

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WEBSITE: For more about the rule and how an attorney can help ensure you are in compliance, contact Susanna or visit www.babstcalland.com.

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A number of countries require businesses to identify individuals who have a beneficial ownership interest in a company, making it more difficult for illicit actors to hide behind a corporate entity and use it for potentially illegal purposes. Until now, the United States has not been one of them. That is changing thanks to the "Beneficial Ownership Information Reporting Requirements" final rule issued by the Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). The information, says Susanna Bagdasarova, an associate at Babst Calland, will be filed with FinCEN to create a national, non-public database for limited law enforcement and regulatory use.

"The intent is to curtail the deliberate misuse of business entities as shell companies for illegal purposes — to deter fraud, protect national security and prevent oligarchs or criminal actors from using entities to launder money or provide a cover for drug or human trafficking," Bagdasarova says.

Smart Business spoke with Bagdasarova about which of the 32 million businesses estimated to be subject to the rule fall under that umbrella, when they need to file, and what it means for your business.

WHAT DOES FILING ENTAIL AND WHO MUST DO SO?

'Reporting companies' (domestic and foreign business entities, including corporations, LLCs, and other entities formed or registered to do business in a state) will be required to file reports that identify themselves and provide identifying information regarding each beneficial owner and certain 'company applicants.' A 'beneficial owner' is an individual who directly or indirectly exercises substantial control over the reporting company, or holds at least 25 percent of the ownership interests of a reporting company. Both 'substantial control' and 'ownership interests' are defined broadly to prevent loopholes allowing corporate structures to obscure owners or decision-makers.

The filing must include the company's full legal name and trade names, principal business address, jurisdiction of formation or initial registration, and taxpayer ID number. The company must also include detailed personal identifying information for each individual beneficial owner.

The rule requires an initial filing, then additional filings within 30 days of any change regarding any of the reported information. Businesses will need to monitor changes in ownership and management throughout the year for compliance purposes. Many companies will be subject to this requirement, although the rule provides for 23 exceptions, including banks, wholly-owned subsidiaries, SEC reporting companies, and 'large operating companies.'

HOW WILL THE RULE BE ENFORCED?

The reported information will be aggregated by FinCEN into a central database for national security, intelligence and law enforcement purposes. Information will be tightly controlled and will not be publicly available. There are potential civil and criminal consequences for failing to comply. Willful violations can result in civil penalties of up to $500 per day a violation has not been remedied and criminal penalties can reach $10,000 and/or up to two years in prison.

HOW CAN AN ATTORNEY HELP BUSINESSES NAVIGATE THROUGH THE REQUIREMENTS?

The first step is to determine whether your company is exempt from reporting requirements. If not, a company should review its management and ownership structure to understand its reporting obligations. Companies with very simple management and ownership structures may be able to navigate the filing on their own. However, if there is some complexity in a company's management or ownership structure or uncertainty about determinations of beneficial ownership or substantial control, an attorney can help you avoid missteps.

The rule becomes effective Jan. 1, 2024, with a one-year filing grace period for existing companies.

Given the goal of transparency to combat financial crimes, the government is casting a rather wide net, so companies need to review their structures to determine which individuals have a sufficient ownership interest and substantial control to trigger reporting requirements. ●