

DISCLAIMER: This alert is intended to provide a general overview of the CTA and some potential professional liability ramifications for accounting firms. This alert does not provide any legal advice.



## **\*\*CLIENT ALERT\*\***

# Corporate Transparency Act and Beneficial Ownership Reporting for CPAs and Accounting Firms

### **CTA Overview**

- Takes effect January 1, 2024
- Requires reporting of identifying information about individuals who directly or indirectly control a company (those with beneficial ownership)
- Enforced through the Financial Crimes Enforcement Network (FinCEN)
- Significant criminal and civil penalties exist for violation of the CTA

***Because the Corporate Transparency Act is new and there is currently little authoritative guidance as to whether providing professional services to clients regarding the CTA constitutes the practice of law, we recommend that CPAs and Accounting Firms observe the following best practices (at least until this issue is clarified).***

### **Best Practices**

- Advising clients regarding the CTA or assisting clients with reporting under the CTA *could* be construed as the unauthorized practice of law
- Avoid handling filings or directly or casually providing advice to clients regarding the CTA
  - Refer clients seeking CTA advice to independent legal counsel (in writing)
  - Always use clear engagement letter language regarding the CTA (example below)
- Send a written notice (email blast) to all clients regarding the CTA prior to the end of 2023
  - This puts all clients on notice of your firm's position on the CTA (example below)

### **CPAGold Policy**

- Is silent as to work performed related to the CTA
- Contains a broad definition of **Professional Services**
- Is not intended to cover the practice of law unless specifically endorsed for said coverage
- Excludes violations of law (i.e., the unauthorized practice of law)
- Coverage for any CTA-related claims will be determined on the individual facts/merits of any asserted claim and the specific terms and conditions of each individual CPAGold policy



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### **Example Firm Email Blast Language**

"In 2021, Congress passed the Corporate Transparency Act (the Act) on a bipartisan basis. This law creates a new beneficial ownership information reporting requirement as part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures. If you are required to report your company's beneficial ownership information to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN), you will do so electronically through a secure filing system available via FinCEN's website. FinCEN will begin accepting beneficial ownership information reports on January 1, 2024. Failure to submit a required report may result in civil and criminal penalties. Because advising clients regarding compliance with the Act may be considered the unauthorized practice of law, we will not engage in any advice regarding compliance with the Act, and we strongly urge you to consult legal counsel for that purpose. In that event and with your consent, we will, however, endeavor to provide your legal counsel with requested information."

### **Example Engagement Letter Language**

"In 2021, Congress passed the Corporate Transparency Act (the Act) on a bipartisan basis. This law creates a new beneficial ownership information reporting requirement as part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures. If you are required to report your company's beneficial ownership information to the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN), you will do so electronically through a secure filing system available via FinCEN's website. FinCEN will begin accepting beneficial ownership information reports on January 1, 2024. Failure to submit a required report may result in civil and criminal penalties. Because advising clients regarding compliance with the Act may be considered the unauthorized practice of law, we strongly urge you to consult legal counsel for that purpose. In that event and with your consent, we will endeavor to provide counsel with requested information. Given the limitation on our role relative to your compliance with the Act, you agree to hold us harmless for any adverse consequences you may experience should you not fully comply with the Act. Further, you agree to indemnify and defend us as against any obligation to pay a third party any cost, settlement, judgment, fine, penalty, or similar award or sanction arising from a failure on your part to fully comply with the Act."

### **Resources**

- Beneficial Ownership Information Reporting FAQs: <https://www.fincen.gov/boi-faqs>
- Small Entity Compliance Guide: [https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf)

### **Contact**

- David W. Collins – SVP – Amwins Program Underwriters ([david.collins@amwins.com](mailto:david.collins@amwins.com))

 / We help you **win.**

