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***Payments Pros – The Payments Law Podcast: Navigating the Corporate Transparency Act***

**Host: Carlin McCrory**

**Guest: Nick St. John**

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**Carlin McCrory:**

Welcome to another episode of *Payments Pros*, a Troutman Pepper podcast, focusing on the highly regulated and ever evolving payment processing industry. This podcast features insights from members of our fintech and payments practice, as well as guest commentary from business leaders and regulatory experts in the payments industry. I'm Carlin McCrory, one of the hosts of the podcast.

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Today, I'm joined by Nick St. John, Director of Regulatory Compliance at America's Credit Unions to discuss the Corporate Transparency Act and other related developments from FinCEN. Nick was named the Director of Regulatory Compliance in August of 2022. In his new role, Nick helps credit unions with a variety of compliance issues. Prior to joining America's Credit Unions, Nick managed banking and finance content for Bloomberg Law, where he analyzed legal developments relating to FinTech, CFPB regulatory, and enforcement actions, and state legislation. Nick, thanks so much for joining us, and I'm looking forward to today's conversation.

**Nick St. John:**

Thank you for having me, Carlin. I'm a longtime listener of several of the Troutman Pepper podcasts, and I'm excited to be a guest. So excited to talk to you today.

**Carlin McCrory:**

Great. We'll just go ahead and dive right in. My first question for you kind of to set the landscape is, what is the Corporate Transparency Act and why was it passed?

**Nick St. John:**

The Corporate Transparency Act is a federal law that was passed by Congress on January 1<sup>st</sup>, 2021. It's been around for a little over three years, and it's currently being implemented. The purpose of the law is to combat the use of anonymous legal entities, what you might think of as shell companies in the United States. In the introduction to the law, Congress talks about how every year there are many corporations and limited liability companies that are created. These legal entities are formed under state law, and many states do not actually require these

companies to report on their beneficial owners, who actually owns and controls these legal entities.

As you can imagine, creating these essentially anonymous legal entities is a bit of a boon to criminals, because if they have illicit proceeds for criminal activity, and they want to launder those proceeds, being able to put those funds into an anonymous legal entity where it's not clear who owns it, or where the funds are coming from will allow them to purchase real estate and engage in other transactions that can help them walk, or those ill-gotten gains. In order to combat that, Congress passed the Corporate Transparency Act.

The way they plan to combat that is by requiring legal entities to report their beneficial ownership information directly to the federal government, specifically FinCEN, which is the Financial Crimes Enforcement Network. That's a sub agency of the Treasury Department. Basically, what this law does is it requires legal entities to record information on who owns and controls them directly to the Treasury Department via FinCEN. Then, FinCEN will keep a database of that information, which can be useful to law enforcement, financial institutions, and other interested parties.

**Carlin McCrory:**

Which entities are required to report their information to FinCEN, and what are the deadlines for reporting?

**Nick St. John:**

Great question. There's a few different things to think about when it comes to reporting. FinCEN has been implementing this law over the past few years, and one of the first pieces of it that they implemented is what's referred to as the beneficial ownership information reporting rule. The final rule on that came out in September of 2022. It's been around for a little over a year, and it just took effect on January 1<sup>st</sup> of 2024. Under that rule, certain legal entities are required to report their information to FinCEN if they meet the definition of a reporting company. The rule defines reporting company as any corporation, limited liability company, or other entity formed by filing documents, or registering with a Secretary of State or similar office under a state or Indian tribe. Basically, corporations, LLCs, and similar legal entities.

As you can imagine, that covers a large number of legal entities in the United States. But then, there are a number of exceptions that also apply that will carve out certain entities will not have to report their information to FinCEN. So for example, number of financial institutions are excluded, banks, credit unions in particular, which is important to my job since I work at a credit union trade association, money services businesses, as well as wholly-owned subsidiaries of excluded entities. It also excludes insurance companies, accounting firms, and a number of other entities that you might otherwise think of as a reporting company.

Once an entity has determined if it is a reporting company, and if an exclusion does not apply, then they would have to report their information to FinCEN. There's actually quite a lot of information that would have to be reported. First of all, they're going to have to report certain information on the company itself, namely the name, and any trade names used by the reporting company, the address, the jurisdiction in which the company was formed, a taxpayer

identification number. Then, they're also going to have to record information on their beneficial owners.

Now, there are two types of beneficial owners under the rule, and these are all individuals. But the first type is what's known as a – it's what's referred to as the ownership prong. This is any person who has a 25%, or more ownership interest in the legal entity. That can be direct or indirect. Direct, as you can imagine is pretty easy to think about. It's just someone owns, let's say, 50% of a company, they directly have 25%, or more ownership interest in that company. Indirect can get a bit more complicated, because you might have someone who owns a company that owns half of another company, that owns a third company, and can get a bit tricky to figure out exactly what percentage they own as you get further down the corporate ownership ladder. But once that person has been determined to have 25% or more of the reporting company, they would be considered a beneficial owner, and their information would have to be reported.

Additionally, the second prong is the control prong. Reporting companies would also have to report on any person who exercises substantial control of the reporting company. That's basically someone you would think of in the C suite, like the CEO, the CFO, is basically any person who can direct the scope of the activities, the nature of the business, make large decisions regarding who they'll be hiring as officers, and who's on the board of directors, the ability to fire someone from the board of directors, for example. As well as any decisions relating to obligating the reporting company through binding legal contracts. Any person who meets that description would be considered to have substantial control and would also be a beneficial owner, who would have to be reported under the rule.

Once the reporting company has determined who its beneficial owners are, you would have to report certain information relating to those beneficial owners, particularly their name, address, date of birth, and an identification number links to a document. For example, a driver's license number, or a passport number, as well as a copy of that document. That's the information that has to be reported.

Now, you also asked about the deadlines. The deadlines are interesting, because they're actually based on when the company was created. Legal entities that were created prior to 2024 have the entire 2024 calendar year to report. They have until January 1<sup>st</sup>, 2025 to report their beneficial ownership information to FinCEN. Any company or legal entity that's created in 2024, has 90 days to report their beneficial ownership information to FinCEN. That's 90 days from when they receive notice of the formation or registration of the legal entity. Similarly, any legal entity formed in 2025, or beyond, they have 30 days from receiving notice that the legal entity was formed or registered to report that information to FinCEN.

**Carlin McCrory:**

Nick, I think there has also been some confusion about beneficial ownership reporting to financial institutions versus this new beneficial ownership reporting. It's my understanding that one of the differences here is not only – is this not reporting to your own financial institution when you open a bank account. But that definition of a control person, it's only one person, I think is required to be listed when you report to your financial institution. Whereas with FinCEN, you have to report any control person. Is that right?

**Nick St. John:**

That's absolutely right, Carlin, yes. Prior to the Corporate Transparency Act being passed, and even still today, there are requirements for financial institutions. When a legal entity opens an account, they have to obtain information about the beneficial owners of that legal entity and verify it. Under those preexisting rules, a beneficial owner, it still has the ownership and control prongs, just like we mentioned. But the control prong, under those rules, there's only one control person, only one individual who would qualify under that prong as a beneficial owner. Under these new rules for the Corporate Transparency Act, you're absolutely right.

The legal entities, first of all, are reporting to FinCEN, instead of directly to their financial institutions, so that's true. Then, additionally, the control prong of the definition of beneficial owner under these new rules does not have a numerical limit. In theory, you could have 10 or more people that are considered a control person. That is absolutely correct.

**Carlin McCrory:**

Great. Thanks for that clarification. Once the information is reported to FinCEN, you briefly mentioned earlier, but who will have access to this information?

**Nick St. John:**

Once FinCEN collects this information, they've got to create a database of it, and then they're going to allow access to that information to certain parties. They've actually said in the final rule, discussing access to this information that they're going to basically roll it out in phases. The first groups that will receive access to this information are the ones that you might think of as having the most urgent need, which is federal agencies, the law enforcement, intelligence, and national security. So they're going to receive access first.

Additionally, state law enforcement agencies will also have access to this information, although they may be required to get authorization from a court order, or from a judge. Then finally, financial institutions will have access to this information as well. They can request a reporting company's beneficial ownership information from FinCEN under these rules. Now, as to why they might do that, as we just discussed, there are existing requirements that still remain in place today that require financial institutions to have the beneficial ownership information of the legal entities that are their customers. Previously, they were requesting that information from these legal entity customers, when they would open an account. Under the new rules, they could potentially go to FinCEN and request that information, instead of getting it from their customers.

**Carlin McCrory:**

Are there any other reasons that financial institutions should potentially request the information from FinCEN?

**Nick St. John:**

Sure, yes. Under the new rules, they talk about how a financial institution can request this information. One of the things they have to certify three things. One of those things is that they

need this information for what's known as a customer due diligence compliance requirement. That's actually a fairly broad definition. It's basically any compliance requirement relating to anti-money laundering or countering the financing of terrorism. Basically, what we think of as traditional Bank Secrecy Act or BSA compliance requirements.

The final rule also gives examples in addition to that. So customer due diligence requirements, like those beneficial ownership requirements we mentioned, but also suspicious activity, monitoring, and reporting. So filing SARS, as well as screening for sanctions, what we typically think of as OFAC screening. A financial institution may have a number of different compliance requirements that this information will be useful for, and they can request the information for those compliance requirements, and will have to certify that those are the reasons that they are requesting it.

**Carlin McCrory:**

That's interesting. Dovetailing with that, what process does a financial institution need to follow to request the beneficial ownership information from FinCEN.

**Nick St. John:**

They haven't quite laid out exactly how it will work yet, because they're rolling out the access and phases. It's not clear exactly when financial institutions will get access to this information. But when they do, they will be required to certify three things with FinCEN. The first one, which I just mentioned, is that they need this information for a customer due diligence compliance requirements.

The second thing I have to certify is that they have the consent of the reporting company. If say, corporation comes into a financial institution and wants to open an account, that financial institution might work into their account opening process procedure by which they obtained the consent of that company to request its beneficial ownership information from FinCEN. Because they're going to need that consent when they go to FinCEN to request that information. They'll have to certify that they have that consent.

Then finally, they also have to certify that they've put in place certain safeguards, technical, administrative, and physical safeguards to safeguard the information that they obtained from FinCEN. For institutions that are subject to the Gramm-Leach-Bliley Act. The safeguards that they use to protect their customers information, their personal financial information will be the same types of safeguards that they'll have to put in place for this information that they obtained from FinCEN. For any institution that is not subject to the GLBA, they would have to have similar safeguards that at least meet or exceed the standards of the GLBA. When requesting the information, they have to certify those three things, the compliance requirements, the consent, and the safeguards to protect the information once they've obtained it.

**Carlin McCrory:**

Nick, unless there's anything else that you want to tell our audience about the CTA, I'd love to hear a little bit about what other developments from FinCEN that you are expecting or anticipating in the future.

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**Nick St. John:**

Sure. There's a few things to watch in this area. First of all is, when will they make this information available to financial institutions. Because they mentioned in the final rule, it will happen at some point, but they don't really give a timeline for exactly when. We'll be keeping an eye on that. Secondly, there's going to be a development at some point in the future, regarding the existing requirements. FinCEN has said, they're implementing this rule in phases. The first phase was those reporting rules. The second phase is the access rule, so how to access that information.

The third phase should be a change to the existing rules because the Corporate Transparency Act requires FinCEN to amend the rules that apply to financial institutions currently. As we talked about earlier, financial institutions are required to obtain beneficial ownership information at account opening and to verify it. But the Corporate Transparency Act directs FinCEN to change those existing rules, to harmonize it with the Corporate Transparency Act. It'll be interesting to see exactly how they make those changes. Currently, the rules say that requesting the information from FinCEN is voluntary. So if they don't request it from FinCEN, you would imagine they might still have to request it then from their customers. So it'll be interesting to see exactly how those rules are going to be changed if they're going to be major changes or just minimal changes of the margins. We'll be keeping an eye on that too to see what is going to be changing there, especially for financial institutions.

**Carlin McCrory:**

Great. Well, Nick, thank you so much for joining us today and thanks to our audience for listening to today's episode. Don't forget to visit our blog, [TroutmanPepperFinancialServices.com](https://www.troutmanpepper.com/financial-services), and subscribe so you can get the latest updates. Please make sure to also subscribe to this podcast via Apple podcasts, Google Play, Stitcher, or whatever platform you may use. We're looking forward to next time.

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