



House Passes Beneficial Ownership Disclosure Legislation Aimed at Increasing Transparency of Small Businesses in the U.S.

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On October 22, 2019, the U.S. House of Representatives passed [H.R. 2513](#) – the Corporate Transparency Act of 2019, (the CTA); the legislation currently sits with the Senate Banking Committee – as does a similar [Senate Bill S 2563](#), the ILLICIT CASH Act. While there has not been any recent action on either piece of legislation, there is apparent constant and consistent domestic and international pressure toward creating beneficial owner transparency for legal entities formed both domestically and abroad.

The CTA, if passed by the U.S. Senate and enacted into law, would require certain U.S. corporations and limited liability companies to report identifying information regarding their beneficial owners to the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN). Supporters of the new regulation say it will help government and law enforcement officials unearth shell companies being used for money laundering and other criminal activities in the United States. Those opposed to the CTA, including House Financial Services Committee Ranking Member Patrick McHenry (R-N.C) and the National Federation of Independent Business, fear it will burden small businesses with billions of dollars in regulatory costs.

The CTA’s annual disclosure requirements include providing the beneficial owners’ name, date of birth, current address, and driver’s license or non-expired passport number to FinCEN, which will house the information in an internal database. Under the Act, a beneficial owner is defined as a “natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:

- i. exercises substantial control over a corporation or limited liability company;
- ii. owns 25 percent or more of the equity interests of a corporation or limited liability company; or
- iii. receives substantial economic benefits from the assets of a corporation or limited liability company.”

The CTA exempts certain entities from the disclosure requirement, most notably companies with more than 20 full-time employees in the U.S. that make at least \$5 million in annual revenue. Also exempt are entities that have to make such disclosures to other regulatory agencies such as broker-dealers and insurance companies, and certain tax-exempt organizations like churches, charities, and nonprofits.

Also folded into the CTA is a second section entitled the “COUNTER Act of 2019” (H.R. 2514). This legislation authorizes the Treasury Department to conduct studies to bolster their AML regulations and compliance efforts,

among other things.

Arguments for and against legislation requiring beneficial owner transparency date back to the contentious hearings Senator Levin hosted at the Permanent Subcommittee on Investigations, Senate Intelligence Committee in the mid-2000s and the arguments have not evolved that much. Specifically, tensions between assisting law enforcement in internal investigations – and in responding to Mutual Legal Assistance Treaties – and managing data privacy and costs on infrastructure and smaller businesses remain prevalent. Over the years, proponents of both sides of the argument have proposed various solutions, including the Uniform Law Commission’s concept of identifying and disclosing a natural person who is the “record owner” of an entity formed in the United States. These tensions also played their way through, on the domestic side, FinCEN’s Customer Due Diligence Final Rule; and on the international scene, through the Financial Action Task Force’s (FATF) 40 Recommendations, which promote beneficial ownership data collection and corporate transparency. Similarly, these concepts are now playing out between “tax havens” in the Caribbean that are implementing laws to meet the European Union’s Economic Substance criteria.

Prominent amongst those opposed to certain provisions of this form of legislation is the American Bar Association. The specific objections are enumerated within the ABA’s statement on the Gatekeeper’s Taskforce [website](#).

The White House issued a statement in support of the Bill ahead of the House vote, noting that the CTA would substantially update the Bank Secrecy Act (BSA) for the first time since 2001. The White House did note that certain steps must be taken to improve the CTA, such as aligning the definition of “beneficial owner” to FinCEN’s Customer Due Diligence Final Rule, protecting small businesses from unduly burdensome disclosure requirements, and more. As noted above, the Senate is also currently considering a similar bill called the ILLICIT CASH Act (S. 2563). The last action on S 2563 was in August when it was referred to the Senate Banking Committee. As of November 18, 2019, there are no definitive plans for a committee vote on either the ILLICIT CASH Act or the CTA.

Takeaways

- If the CTA is enacted into law, existing U.S. companies, including all small businesses with less than 20 employees and \$5 million in revenue, will have two years after the issuance of FinCEN final regulations to comply with the beneficial ownership requirements.
- Even if a U.S. company falls under one of the exemptions, if the CTA is enacted, they must still submit to FinCEN a written certification (i) identifying the specific provision under which it would be exempt; (ii) stating that it meets the requirements for the exemption, and (iii) providing identification information for the officer, director, or similar agent making the certification in the same manner as a beneficial owner of a non-exempt entity would disclose.
- As the CTA is currently written, those companies who knowingly fail to provide complete or updated information, or willfully submit to false or fraudulent information, can be liable for civil penalties of up to \$10,000 and criminal penalties of up to three years in prison.
- The CTA comes at a time when territories worldwide are increasing requirements for business transparency, such territories in the Caribbean who have begun implementing economic substance laws. Even if the CTA does not become law under this Administration, we will likely see legislation passed calling for increased transparency in the near future. Given that the proposals have been reintroduced consistently since 2006, it appears more likely that a form of this legislation will come into effect.

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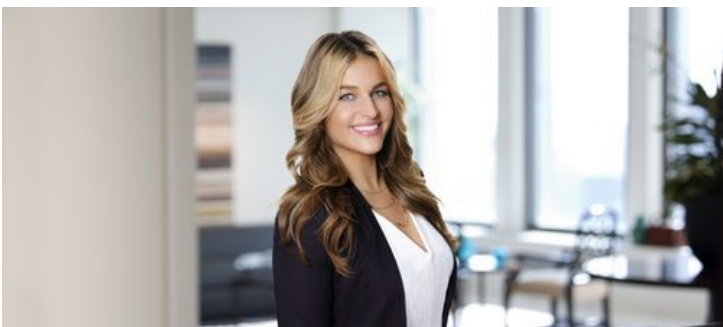
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