



Congress Passes Corporate Transparency Act Requiring Small Businesses to Report Beneficial Ownership Information

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On December 11, 2020, as part of the National Defense Authorization Act for Fiscal Year 2021 (NDAA), the U.S. Senate passed the Corporate Transparency Act (CTA). As we reported earlier this year, the House of Representatives passed its version of the Corporate Transparency Act in October 2019, and it was later included in the NDAA.

Prior to this legislation, although U.S.-based financial institutions were required to collect beneficial owner information for legal entity customers, companies did not otherwise have an obligation to report the true owners who benefitted from their operations.^[1] The debate over how and whether to track beneficial ownership of privately held entities operating in the United States dates back to at least 2006 where the issue was the topic of hearings and investigations spearheaded by the Senate Permanent Sub Committee on Investigations. The debate focused on providing law enforcement with access to natural persons behind private entities – while balancing costs to the states (who are responsible for corporate formation) and addressing privacy concerns. Law enforcement posed that anonymity allowed bad actors to use shell companies to engage in certain illicit activity including money laundering, terrorist financing, and other financial crimes. The need for the identity of a natural person responsible for running an entity was all the more important for law enforcement in working with foreign counterparts on cross-border investigations, where layered entities very easily could lead to a dead end. The current legislation, if enacted, moves away from mandating that the states collect the beneficial ownership, and instead requires certain corporations and limited liability companies to file a report with the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) that identifies each beneficial owner of an applicant forming a reporting company.

The information received pursuant to the Act will be kept in private databases not available to the public. However, addressing law enforcement's desire for access to natural persons behind private entities, FinCEN is permitted to disclose beneficial ownership information to federal agencies engaged in national security, intelligence, or law enforcement; state, local, or tribal law enforcement agencies seeking information in criminal or civil investigations; federal agencies seeking information on behalf of the law enforcement agency of another country; banks for Customer Due Diligence confirmation requests; and other federal regulatory agencies.

The Act has been met with strong opposition from groups, including the American Bar Association, that believe that the CTA imposes burdensome and intrusive regulations on small businesses and raises privacy concerns for both small businesses and potential beneficial owners. On the other hand, proponents believe that the Act will close "one

of the biggest holes in U.S. anti-money laundering rules.” Among other benefits, the legislation will allow financial institutions to request the information that they need to meet their Bank Secrecy Act (BSA) customer due diligence requirements.

Which Companies are Required to Comply?

According to the CTA, companies that are required to comply, *i.e.* “reporting companies,” include any “corporation, limited liability company, or other similar entity that is – (i) created by the filing of a document with a U.S. state or Indian Tribe or (ii) formed under the law of a foreign country and registered to do business in the United States.” However, the Act exempts certain categories of companies from these reporting requirements, including:

- Companies that are already subject to supervision or otherwise closely regulated by the federal government (*e.g.*, banks, commodity brokers, registered investment advisors)
- Other publicly traded companies
- Dormant companies
- Companies that employ more than 20 people, filed a tax return reporting gross receipts in excess of \$5 million, and have a physical presence in the United States
- Any entity owned by an entity otherwise exempt

Next Steps

While the bill passed in both the House and Senate by veto-proof majorities, President Trump has threatened to veto the bill over unrelated matters. An actual veto from Trump would force a second vote in each chamber.

Takeaways

- Existing qualifying businesses must report beneficial ownership information within two years after the enactment of the legislation. Newly formed qualifying entities must report this information at the time of formation.
- The Act does not require disclosure of the beneficial owners of a foreign entity if the entity does not register to do business in the United States.
- Reporting companies are required to update beneficial ownership information with FinCEN within one year of any change in the reported information.
- The knowing failure to provide complete and/or updated information, or willfully provide false or fraudulent information, can carry civil penalties of up to \$10,000 (\$500/day) and criminal penalties of up to two years in prison.
- The unauthorized disclosure of information collected under the Act carries the same civil penalty but a higher criminal penalty of up to \$250,000 and a higher maximum term of imprisonment of five years.

^[1] A beneficial owner is a person who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over an entity or owns or controls 25% or more equity in an entity.

4 Min Read

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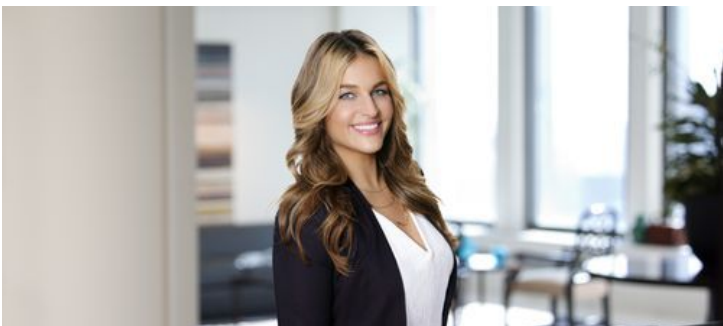
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