

Newly Enacted Requirements for Disclosure of Beneficial Ownership of US Business Entities

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Congress has passed legislation over the veto of former President Trump to require the disclosure of the direct or indirect beneficial ownership of US business entities at the time of formation. This legislation was included as part of the annual National Defense Appropriations Act, which took effect on January 1, 2021.

Under this Act, upon the issuance by the Department of Treasury of regulations providing more detail on the specific requirements of the Act, all corporations, limited liability companies and other types of business entities will be required to disclose the details of their direct and indirect beneficial owners at the time the business is formed unless the business falls within a group of exempt industries. These exempt industries include banking, insurance, and other financial institutions, where the disclosure of beneficial ownership of such businesses is generally already required. In addition, within 2 years of the issuance of the regulations, the same disclosure requirements will apply to all existing non-exempt industry business entities, except those which are publicly traded or have more than 20 full-time employees, have annual revenues of more than \$5 million, and have an operating presence at a physical office within the United States. The Treasury regulations must be published within one year of the effective date of the Act or by January 1, 2022, but are expected to be published sooner.

The Act requires such reporting companies to submit the disclosure information to the Department of Treasury, which is required to create a beneficial ownership registry within its Financial Crimes Enforcement Network (FinCEN). The purpose of the registry is to “crack down on anonymous shell companies, which have long been the vehicle of choice for money launderers, terrorists and criminals.” The information will not be made available to the public in general but will be available to US federal law enforcement agencies and, with the consent of the reporting company, financial institutions in order to meet their customer due diligence requirements.

The Act defines a beneficial owner as an individual who owns a 25% equity interest in or exercises “substantial control” over the reporting company. The definition of substantial control is not stated in the Act, and there are many other questions regarding the scope of the disclosure requirements, including how to measure a 25% equity stake in a tiered group of entities or in an entity which has shifting percentage interests of its members. Presumably, these and other issues arising under the Act will be clarified in the regulations.

The information that must be reported to the registry includes the following with respect to any beneficial owner, as well as any “applicant” for the entity (which includes incorporators and other formation agents): (i) full legal name, (ii) date of birth, (iii) residential or business street address, and (iv) a unique identifying number from an acceptable identification document, including a driver’s license, US passport, or other US state-issued identification document.

Further, any changes to the beneficial ownership of a business entity or any change to any of the foregoing information must be reported to the registry within one year of the change.

The Act imposes penalties on companies that fail to report the required information or submit a report containing false or fraudulent beneficial ownership information of \$500 per day up to a maximum of \$10,000 and imprisonment of up to 2 years.

The Act represents a sea change in the US requirements for beneficial ownership disclosure of business entities. Similar or even more restrictive ownership disclosure requirements have been in place for several years in Europe and other developed nations throughout the world.

We will be monitoring the issuance of the Treasury regulations and other developments in this area. Please feel free to contact us with any questions.

Final regulations under the Corporate Transparency Act were issued on September 30, 2022, which provide for the implementation of the Act commencing January 1, 2024. See separate blog post – “FinCEN Issues Final Rule for Beneficial Ownership Reporting under the Corporate Transparency Act.”