



NASS Summary of the Corporate Transparency Act (House and Senate) **As of 06/28/19**

- Note: bolded areas below reflect language only in House Financial Services mark-up version of bill

S.1978 Corporate Transparency Act introduced on 6/26/19 by Sen. Wyden (D-OR), Sen. Rubio (R-FL) and Sen. Whitehouse (D-RI)

HR 2513 Corporate Transparency Act introduced on 05/16/19 Rep. Maloney (D-NY) and Rep. King (R-NY)

Beneficial Ownership Information Provided to FinCEN

Each applicant to form a corporations or LLC under the laws of a state or Indian tribe that do not meet the definition of “exempt entities” must file a report with FinCEN with a list of beneficial owners during the formation process. The list must include each beneficial owner’s full name, date of birth, residential or business address, and unique identifying number from a non-expired passport, non-expired personal identification card, or non-expired driver’s license. If the applicant to form the entity is not also a beneficial owner, the applicant must provide the identification information. The current beneficial ownership information must be included in an annual filing with FinCEN, along with any changes in the beneficial ownership information during the previous year.

The beneficial ownership information must be updated within the timeframe prescribed by any rule issued by Treasury. No later than 9 months after completion of the study required by the Act on updating of beneficial ownership information, Treasury must consider the findings of the study and if the Secretary determines it to be necessary or appropriate, issue a rule requiring corporations and limited liability companies to update the list of the beneficial owners of the corporation or limited liability company within a specified amount of time after the date of any change in the list of beneficial owners or the information required to be provided relating to each beneficial owner.

Each state must notify each corporation and limited liability corporation of the requirement to file beneficial ownership information with FinCEN.

Foreign Beneficial Owners

If an applicant to form a corporation or LLC or a beneficial owner of a corporation or LLC does not have a non-expired passport, non-expired personal ID card, or a non expired driver’s license, each such person must provide FinCEN with the full name, residential or business address, unique identifying number from a non-expired passport issued by a foreign government, and a copy of the foreign passport pages that includes a photograph and identification information. The information filed with FinCEN must also include a certification from a person in the state or Indian country under the jurisdiction of the Indian tribe forming the entity that the applicant, corporation, or LLC has obtained and verified the identification information for each foreign beneficial owner, will provide the information to FinCEN upon request, and will retain the information until 5 years after the entity terminates.

Bearer Shares

No corporations or LLCs can issue certificates in bearer form in whole or in part.

Maintenance of Beneficial Ownership Information

Retention of Information

FinCEN must retain the beneficial ownership information for 5 years following the date that a corporation or LLC terminates, or such time as Treasury determines by rule.

FinCEN ID Numbers

FinCEN must issue a FinCEN ID number to any individual who requests a number and provides FinCEN with the beneficial ownership information required to be reported under the Act. An individual with a FinCEN ID number must submit an annual filing with FinCEN updating any of the beneficial ownership information. An individual with a FinCEN ID number required to file beneficial ownership information reports with FinCEN may use the FinCEN ID number instead.

Release of Beneficial Ownership Information

FinCEN must disclose beneficial ownership information in response to a request through appropriate protocols by a local, tribal, state, or federal agency; a request from a federal agency on behalf of another country; or a request made by a financial institution, with customer consent, as part of their Customer Due Diligence (CDD) requirements.

The protocols for disclosing beneficial ownership information must protect the privacy of the beneficial ownership information provided by FinCEN to a local, tribal, state, or federal law enforcement agency.

- **protect the privacy of any beneficial ownership information provided by FinCEN to a local, tribal, state, or federal law enforcement agency;**
- **ensure that a local, tribal, state, or federal law enforcement agency requesting beneficial ownership information has an existing investigatory basis for requesting the information;**
- **ensure that access to beneficial ownership information is limited to authorized users at a local, tribal, state, or federal law enforcement agency who have undergone appropriate training, and that the identity of authorized users is verified through appropriate mechanisms, such as two-factor authentication;**
- **include an audit trail of requests for beneficial ownership information by a local, tribal, state, or federal law enforcement agency, including, as necessary, information concerning queries made by authorized users at a local, tribal, state, or federal law enforcement agency;**
- **require that every local, tribal, state, or federal law enforcement agency that receives beneficial ownership information from FinCEN conducts an annual audit to verify that the beneficial ownership information received from FinCEN has been accessed and used appropriately; and**
- **require FinCEN to conduct an annual audit of every local, tribal, state, or federal law enforcement agency that has received beneficial ownership information to ensure that such agency has requested beneficial ownership information, and has used any beneficial ownership information received from FinCEN, appropriately.**

Beneficial ownership information provided by FinCEN to a local, tribal, state, or federal law enforcement agency may only be used for law enforcement, national security, or intelligence purposes.

FinCEN Collection of Identification Information from Exempt Entities

Exempt Entity Certification

Any corporation or LLC defined as exempt (e.g. publicly traded corporations) is not required to disclose beneficial ownership information, but the entity must provide FinCEN with a certification that identifies the provision in the bill making the entity exempt and a statement that the entity meets those requirements. The certification must also include the identification information for the applicant or a prospective officer, director, or other agent of the exempt entity, in the same manner as what is required for a beneficial owner (i.e. full name, date of birth, residential or business address, and unique identifying number from a non-expired passport, non-expired personal identification card, or non-expired driver's license). If the person identified in the exempt entity certification is a foreign individual, the exempt entity must provide the identification information for that individual in the same manner as for a foreign beneficial owner.

Exempt Entities with an Ownership Interest

An exempt entity is not required to file beneficial ownership information for any corporation or LLC in which the exempt entity has an ownership interest.

Filing Requirement for Exempt Entities Created Prior to the Effective Date

Exempt entities have two years from the date that Treasury issues final regulations to file the required exempt entity certification with FinCEN.

Penalties

Prohibits anyone providing or attempting to provide false or fraudulent beneficial ownership information FinCEN; willfully failing to provide complete or updated beneficial ownership information to FinCEN or knowingly disclosing the existence of a valid request for beneficial ownership information except to the extent necessary to fulfill the request or as authorized by the entity that issues the request

In addition to any state civil or criminal penalties, anyone in violation of the relevant provisions is liable for up to \$10,000, and may face additional fines and/or imprisonment of up to 3 years. A person who negligently violates the Act is not subject to civil or criminal penalties. Treasury may waive the penalty for violations if it determines that the violation was due to reasonable cause and was not due to willful neglect.

Criminal penalties apply to the misuse or unauthorized disclosure of beneficial ownership information.

Treasury Regulations

No later than one year after enactment, the Secretary of the Treasury must issue regulations to carry out the Act, including to the extent necessary, to clarify the definitions in the Act.

No later than 1 year after enactment the Secretary of the Treasury must revise the final rule titled “Customer Due Diligence Requirements for Financial Institutions” to bring the rule into conformance with the Act; account for financial institutions’ access to comprehensive beneficial ownership information filed by corporations and limited liability companies under threat of civil and criminal penalties; and reduce any burdens on financial institutions that are, in light of the enactment of the Act, unnecessary or duplicative.

Reports

Report on Updating of Beneficial Ownership Information

The Secretary of the Treasury, in consultation with the Attorney General, must conduct a study to evaluate the necessity of a requirement for corporations and limited liability companies to update the list of their beneficial owners within a specified amount of time after the date of any change in the list of beneficial owners or the information required to be provided relating to each beneficial owner, taking into account the annual filings required and the information contained in such annual filings; and the burden that a requirement to update the list of beneficial owners within a specified period of time after a change in such list of beneficial owners would impose on corporations and limited liability companies.

No later than 1 year after enactment the Secretary of the Treasury must submit a report on the appropriate Congressional committees. The Secretary of the Treasury shall seek and consider public input, comments, and data in order to conduct the study.

Report on Other Legal Entities

No later than 2 years after the bill is enacted, the Comptroller General must submit a report to Congress that identifies whether the lack of beneficial ownership information from partnerships, trusts, and other legal entities raises concerns about the involvement of the entities in illicit conduct, has impeded investigations, **increases the costs to financial institutions of complying with due diligence requirements**, or has drawn international criticism.

Report on the Bill’s Effectiveness

No later than 5 years after the bill is enacted, the Comptroller General must conduct and submit to Congress a study assessing the effectiveness of incorporation practices implemented under the bill in providing law enforcement agencies with prompt access to reliable, useful, and complete beneficial ownership information; and strengthening the capability of law enforcement agencies to combat incorporation abuses and detect, prevent, or punish terrorism, money laundering, tax evasion, or other misconduct.

Disclosure by Federal Contractors

The Administrator for Federal Procurement Policy must revise the Federal Acquisition Regulation to require any contractor who is subject to the requirement to disclose beneficial ownership information under this Act to provide the information required to be disclosed to the Federal Government as part of any bid or proposal for a contract with the value threshold in excess of the simplified acquisition threshold.

Funding

During the three years after the bill is enacted, funds are authorized to be made available to FinCEN to pay reasonable costs relating to compliance with the bill. Funds must be provided from Treasury Department asset forfeiture funds and/or Department of Justice asset forfeiture funds.

Upon application by FinCEN, and without further appropriation, the Secretary of the Treasury must make unobligated balances in the Department of Treasury Forfeiture Funds available to FinCEN. The amount may not exceed a total of \$30 million.

Upon application by FinCEN, and without further appropriation, the Attorney General must make excess unobligated balances in the Department of Justice Asset Forfeiture Fund available to FinCEN. This amount may not exceed a total of \$10,000,000.

Definitions

- **Applicant**
The term applicant means any natural person who files an application to form a corporation or limited liability company under the laws of a State.

- **Beneficial Owner**
The term beneficial owner means a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over a corporation or limited liability company; owns 25 percent or more of the equity interests of a corporation or LLC; receives substantial economic benefits from the assets of a corporation or limited liability company.

A natural person receives substantial economic benefits from the assets of a corporation or limited liability company if the person has an entitlement to more than a specified percentage of the funds or assets of the corporation or LLC, which Treasury shall establish by rule. In establishing the percentage by rule, Treasury must seek to provide clarity to corporations and limited liability companies with respect to the identification and disclosure of a natural person who receives substantial economic benefits from the assets of a corporation or limited liability company; identify those natural persons who, as a result of the substantial economic benefits they receive from the assets of a corporation or limited liability company, exercise a dominant influence over such corporation or limited liability company.

The term “beneficial owner” does not include any of the following:

- a minor child
- a person acting as a nominee, intermediary, custodian, or agent on behalf of another person
- a person acting solely as an employee of a corporation or limited liability company and whose control over or economic benefit from the company derives solely from employment status of the person
- a person whose only interest in the corporation or limited liability company is through a right of inheritance
- a creditor of a corporation or limited liability company, unless the creditor also meets the definition of a beneficial owner
- a person whose ownership interest is below a de minimis threshold that Treasury shall establish by rule

- Corporation; Limited Liability Company (LLC)

The terms “corporation” and “LLC” have the meanings as defined by the laws of a state or Indian tribe and include any non-US entity eligible for registration or registered to do business as a corporation or LLC in the state.

The terms “corporation” and “LLC” do not include any of the following:

- a business that issues securities registered or required to file reports under the Securities and Exchange Act
- a business concern constituted, sponsored, or chartered by a state or Indian tribe, political subdivision of a state or Indian tribe, an interstate compact by two or more states, or a federal department or agency
- a depository institution
- a credit union
- a bank holding company **or a savings and loan holding**
- a broker dealer registered under the Securities and Exchange Act
- an exchange or clearing agency registered under the Securities and Exchange Act
- an investment company or investment advisor (under Section 202(11) of the Investment Advisors Act) registered with the SEC or who has filed an application which has not been denied under the Investment Company Act or the Investment Advisor Act, **or an investment advisor under Section 203(1) of the Investment Advisors Act**
- an insurance company
- a registered entity, futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor registered with the Commodity Futures Trading Commission
- a public accounting firm registered in accordance with the Sarbanes-Oxley Act or an entity controlling, controlled by, or under common control of such a firm
- a public utility
- a church, charity or nonprofit entity
- **a financial market utility**
- **an insurance producer**
- any business that has 20 or more full time employee in the US; files income tax returns with more than \$5 million in gross receipts or sales; and has an operating presence or physical office within the U.S
- any corporation or LLC formed and owned by any of the above entities
- any individual business or class of business concerns which the Secretary of the Treasury and Attorney General have jointly determined by rule or otherwise to be exempt, if the Secretary and Attorney General jointly determine that requiring beneficial ownership information from the business would not serve the public interest and would not assist law enforcement efforts to detect, prevent, or prosecute terrorism, money laundering, or tax evasion.