



NASS Summary of the Corporate Transparency Act

- Passed the House as a stand-alone bill on October 22nd, 2019
- Passed the House as an amendment to NDAA on July 20th, 2020

Treasury Regulations Requiring Beneficial Ownership Reports to FinCEN

No later than 1 year after enactment, Treasury must develop regulations requiring any corporation or LLC that is not exempt under the Act to submit a report to FinCEN that identifies each applicant and each beneficial owner of the corporation or LLC.

Beneficial Ownership Information Reported to FinCEN

Each applicant to form a corporation or LLC must file a report with FinCEN that includes the following information for the applicant and each beneficial owner:

- full legal name
- date of birth
- current residential or business street address
- unique identifying number from a non-expired U.S. passport, a non-expired personal identification card, or a non-expired driver's license

If an applicant or beneficial owner of a corporation or LLC does not have one of the above identification documents (foreign beneficial owner) the individual(s) must provide FinCEN with the following information:

- full legal name
- current residential or business street address
- unique identifying number from a non-expired passport issued by a foreign government
- copy of the photo page (with identifying information) from a foreign passport
- a certification from a person residing in the state of formation stating 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.

Annual Filings; Updating of Information

Each corporation or LLC must submit an annual filing to FinCEN with the beneficial ownership information, along with any changes in the owners during the previous year.

Treasury must conduct a study on whether to issue a rule requiring corporations and limited liability companies to update the list of the beneficial owners within a specified amount of time after the date of any change to the information.

State Notification to Businesses

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

FinCEN ID Number

An individual who provides the required beneficial ownership information to FinCEN may request a FinCEN ID number. The FinCEN ID number may be used when filing reports with FinCEN (instead of reporting the beneficial ownership information).

Information Required to be Submitted to FinCEN by Exempt Entities

Any corporation or LLC defined as exempt 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.

If any exempt entity has a direct or indirect ownership interest in a corporation or LLC, the corporation or LLC in which the exempt entity has an ownership interest must provide the required information to FinCEN, but the entity is not required to provide beneficial ownership information.

Exempt entities have 2 years from the date that Treasury issues final regulations to file the required exempt entity certification with FinCEN.

Maintenance of Beneficial Ownership 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 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.

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.

The protocols for disclosing beneficial ownership information to a local, tribal, state, or federal law enforcement agency must:

- protect the privacy of beneficial ownership provided by FinCEN;
- ensure that the 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 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, including, as necessary, information concerning queries made by authorized users at the agency;

- require that every 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 agency that has received beneficial ownership information to ensure that the agency has requested beneficial ownership information, and has used any beneficial ownership information received from FinCEN appropriately.

FinCEN must establish stringent procedures for the protection and proper use of beneficial ownership information that is disclosed.

FinCEN must submit an annual report to Congress on the frequency of beneficial ownership information disclosure under the Act.

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.

Bearer Shares

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

Penalties

Provides criminal and civil penalties for knowingly 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 as authorized. A person who negligently violates these provisions 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.

Provides criminal penalties for the misuse or unauthorized disclosure of beneficial ownership information.

Revised Due Diligence Regulations

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

No later than 1 year after enactment, Treasury must submit a report to Congress evaluating 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 information, taking into account the annual filings required and the information contained in such annual filings, and the burden that requirement would impose on corporations and limited liability companies.

No later than 2 years after enactment, 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.

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.

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.

Exempt Entities

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

- a business that issues securities
- a business 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 bank
- a credit union
- a bank holding company or a savings and loan holding
- a broker dealer
- an exchange or clearing agency
- an investment company or investment advisor
- an insurance company
- entities registered with the Commodity Futures Trading Commission
- a public accounting 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.