

NDA Conference Report Language on Beneficial Ownership Information

Treasury Regulations Requiring Beneficial Ownership Reports to FinCEN

Treasury must develop regulations no later than 1 year after enactment requiring any reporting company to submit a report to FinCEN at the time of formation that identifies each applicant and each beneficial owner of the entity.

In developing regulations, Treasury must, to the extent practicable, work to:

- establish partnerships with state, local, and tribal government agencies
- collect the required information through existing federal, state, and local procedures
- collect the information in way that is highly useful in facilitating national security, intelligence, and law enforcement activities
- collect the information in way that is highly useful in confirming beneficial ownership information provided to financial institutions
- minimize burdens on reporting companies associated with the collection of the information, including by identify any steps taken to mitigate the costs relation to compliance with collection of the information.

To simplify compliance for reporting companies and financial institutions, Treasury must ensure that the regulations are added to the Code of Federal Regulations.

Treasury must also establish procedures and standards for reports required to be submitted to FinCEN and FinCEN identifiers, and in doing so, to the extent practicable, minimize burdens on reporting companies associated with the collection of the information, including eliminating duplicative requirements, and ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

No later than 1 year after requirement take effect, and annually thereafter for 2 years, Treasury must submit a report to Congress describing the effectiveness of the procedures and standard in minimizing reporting burdens.

Treasury must also reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the requirements of the bill.

Definitions

An applicant is the individual who files the application to form a reporting company in a state, or registers or files an application to register a foreign reporting company in a state.

The term beneficial owner means an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, exercises substantial control over the entity, or owns or controls 25 percent or more of the ownership interests of the entity or receives substantial economic benefits from the assets of the entity.

The term beneficial owner does not include 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 and whose control over or economic benefit from the entity derives solely from the person's employment status; a person whose only interest in the entity is through a right of inheritance; or a creditor of a corporation or limited liability company, unless the creditor also meets the definition of a beneficial owner

A reporting company is any corporation, LLC, or other similar entity created by filing a document with the Secretary of State (or similar office) or Indian tribe, or a foreign entity registered to do business in the United States by filing with the Secretary of State or similar office under the laws of a state or Indian tribe.

A reporting company does not include any of the following:

- an issuer of securities registered under the Securities and Exchange Act
- an entity that exercise governmental authority on behalf of the U.S. or any Indian Tribe, state, or political subdivision
- a depository institution
- a credit union
- a bank holding company
- a money transmitting business registered with the Treasury Department
- a broker dealer registered under the Securities and Exchange Act
- an exchange or clearing agency registered under the Securities and Exchange Act
- any entity not described above that is registered with the SEC
- an investment company that is registered with the SEC
- an investment advisor that has filed the required records with the SEC
- an insurance company
- an insurance producer
- a registered entity under the Commodity Exchange Act or an entity described under the Commodity Exchange Act that registered with the Commodity Futures Trading Commission
- a public accounting firm registered in accordance with the Sarbanes-Oxley Act
- a public utility
- a financial market utility designated by the Financial Stability Oversight Council
- a pooled investment vehicle operated or advised by persons described in the bill
- a 501(c) organization exempt under section 501(a) of the IRS; a political organization exempt under section 527(a); or a trust described in section 4947(a) of the IRC.
- any corporation, LLC, or similar (subsidiary) entity that: operates exclusively to provide financial assistance to the above tax exempt organization and trusts; is a U.S. person; is beneficially owned or controlled exclusively by 1 or more US citizens or lawful residents; and derives at least a majority of revenue from 1 or more U.S. citizens or lawful residents
- any entity that has 20 or more full time employee in the U.S.; files income tax returns in the previous year with more than \$5 million in gross receipts or sales; and has an operating presence or physical office within the U.S
- any corporation, LLC, or similar entity owned or controlled by one or more of the above entities
- any corporation, LLC, or similar (grandfathered) entity in existence over 1 year; that is not engaged in active business; that is not owned by a foreign person; has not experienced an ownership change or sent or receive over \$1,000 in the previous 12 months; and does not otherwise hold any assets

- any entity or class of entities that the Secretary of the Treasury has determined by regulation should be exempt from the reporting requirements because requiring beneficial ownership information from the business would not serve the public interest and would not be highly useful to law enforcement.

Information Required to be Submitted to FinCEN

The reports submitted by a reporting company to FinCEN must identify each beneficial owner and each applicant with the following information:

- full legal name
- date of birth
- current residential or business street address
- unique identifying number from an acceptable identification document, or FinCEN identifier

An acceptable identification document is:

- a non-expired U.S. passport
- a non-expired identification document issued by a state, local government, or Indian Tribe
- a non-expired driver's license issued by a state
- if an individual does not have one of the above documents, a non-expired foreign passport

If any entities that are exempt from the definition of a reporting company have a direct or indirect ownership interest in a reporting company, the reporting company must report to FinCEN only the name of the exempt entity.

If any pooled investment vehicle that is exempt under the bill is formed in a foreign country, the entity must provide a written certification to FinCEN with identification information for any individual that exercises substantial control over the pooled investment vehicle.

FinCEN Identifier

Any individual that has provided the required information to FinCEN pertaining to the individual, or any entity that has reported beneficial ownership information to FinCEN, may request a FinCEN identifier (unique identifying number).

Any person required to report information to FinCEN with respect to an individual may report the FinCEN identifier of the individual instead.

FinCEN must not issue more than 1 FinCEN identifier to the same individual or entity.

If an individual is or may be a beneficial owner of a reporting company through an interest held in an entity that directly or indirectly holds an interest in the reporting company, the reporting company may report the FinCEN identifier to FinCEN instead of the required information.

Timeframe for Reporting Companies to Submit/Update Reports to FinCEN

A reporting company formed or registered prior to the effective date of the regulations must submit the report to FinCEN no later than two years after the effective date. A reporting company formed or registered after the effective date of the regulations must submit the report to FinCEN at the time of formation.

A reporting company must submit an updated report to FinCEN no later than 1 year after any changes to the information in the report submitted to FinCEN.

In accordance with the regulation prescribed by Treasury, any exempt subsidiary entity or grandfathered entity must submit a report to FinCEN at the time it ceases to meet the criteria for exemption under the bill.

Treasury must conduct a review to evaluate whether to require updating of beneficial ownership related to a change of ownership within a shorter period of time than required under the bill. Any changes to the reporting timeframe must be implemented no later than 2 years after enactment.

Retention and Disclosure of Beneficial Ownership Information by FinCEN

FinCEN must maintain beneficial ownership information for at least 5 years after the reporting company terminates. Beneficial ownership information reported to FinCEN must be confidential and may not be disclosed by a local, state, tribal, or federal employee, or an officer or employee of a financial institution or regulatory agency.

FinCEN may disclose beneficial ownership information only upon receipt of:

- a request through appropriate protocols from a federal agency engaged in national security, intelligence, or law enforcement activity
- a local, state, or tribal law enforcement agency, if authorized by a court to seek the information in an investigation
- a request from a federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country issued in repose to a request for assistance from the foreign country
- a confirmation request made by a financial institution subject to due diligence requirements with the consent of the reporting company
- an authorized request made by a federal functional regulator or other regulatory agency

Treasury must develop regulations prescribing the form and manner for providing the information to a financial institution and an authorized federal function regulator or other regulatory agency.

Treasury must develop protocols through regulation that:

- protect the security and confidentiality of beneficial ownership information provided by the Treasury
- require the head of any requesting agency to approve the standards and procedures utilized by the requesting agency and certify the compliance of the standards.
- require the requesting agency to establish and maintain a secure system to store beneficial ownership information
- require the requesting agency to report to Treasury the procedures established by the agency to ensure the confidentiality of beneficial ownership information
- require each requesting agency to provide a written certification for each authorized investigation or other activity stating that the applicable requirements have been met
- require the requesting agency to limit the scope of information sought
- restrict access to beneficial ownership information only to authorized users at the requesting agency
- require the requesting agency to maintain an auditable trail of each request for beneficial ownership information submitted to Treasury

- require the requesting agency receiving beneficial ownership information from Treasury to conduct an annual audit to verify that the information has been accessed and used appropriately
- require Treasury to conduct an annual audit of the adherence of the agencies to the protocols
- provides other safeguards which Treasury determines necessary to protect the confidentiality of beneficial ownership information.

An employee or officer of a requesting agency that violates the protocols is subject to civil and criminal penalties.

Treasury must reject any request that not meet the applicable requirements. Treasury may prohibit a requesting agency from accessing the information for repeated violations of applicable requirements.

Beneficial ownership information must be accessible for inspection and disclosure to Treasury officers and employees where it is required by their official duties.

Treasury officers and employees may obtain access to beneficial ownership information for tax administration purposes.

Treasury must maintain information security protections, including encryption, for information reported to FinCEN.

Treasury must submit a report to Congress with information on each request to access beneficial ownership information.

GAO must conduct an audit of the procedures and safeguards established by Treasury under the bill and submit the findings to Congress.

The FinCEN Director must be made available to testify to Congress regarding FinCEN issues, including implementation of the provisions of the bill.

Agency Coordination

To the extent practicable, Treasury must update the reported information by working collaboratively with other relevant federal, state, and tribal agencies.

Relevant federal, state, and tribal agencies must, to the extent practicable and consistent with applicable legal protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.

Treasury may promulgate regulations as necessary to carry out those provisions.

Notification of Reporting Obligations

Treasury must take reasonable steps to notify persons of their obligation to report beneficial ownership information, including through informational materials in 1 or more forms or other materials regularly distribute by the IRS and FinCEN.

As a condition of receiving funds under the bill, each state and Indian Tribe must, no later than 2 years after the effective date of Treasury regulations, take the following actions:

No later than 2 years after the effective date of Treasury regulations, and as a condition for receiving funds under the bill, the Secretary of State or similar office, or Indian Tribe, responsible for the formation of entities must take the following actions:

- periodically, including at the time of formation, assessment of an annual fee, or renewal of any license to do business, and in connection with corporate tax renewals, notify filers of their requirements as reporting companies and provide them with a copy of the reporting company form created by Treasury or an internet link to the form
- update the websites, forms relating to incorporation, and physical premises of the office to notify filers of their requirements as reporting companies, including providing an internet link to the reporting company form created by Treasury.

A notification by a state or Indian Tribe must explicitly state that it is on behalf of the Treasury for the purpose of preventing money laundering, the financing of terrorism, proliferation financing, and other financial crimes by requiring nonpublic registration of business entities formed or registered to do business in the U.S.

Funding Authorization

Authorizes such sums as may be necessary to be appropriated to FinCEN to carry out the bill, including allocating funds to states to pay reasonable costs with compliance with the requirements of the bill.

Prohibition on Bearer Shares

A corporation, LLC, or similar entity is prohibited from issuing a certificate in bearer form evidencing a whole or fractional interest in the entity.

Penalties

Prohibits providing false or fraudulent beneficial ownership information to FinCEN or willfully failing to provide complete or updated beneficial ownership information. Prohibits knowingly disclosing or using beneficial information obtained through a report submitted to FinCEN or a disclosure made by FinCEN, except as authorized by the bill.

Provides civil and criminal penalties for violations. Includes safe harbor provisions for individuals who submit inaccurate information, but are not evading requirements and correct the information within 90 days.

User Complaint Process

Requires Treasury to provide public contact information to receive external comments or complaints regarding the beneficial ownership information notification and collection process or regarding the accuracy, completeness, or timelines of the information

Report to Congress

Requires Treasury to submit a periodic report to Congress summarizing external comments or complaints and related investigations, and including recommendations to improve the form and manner of the notification, collection, and updating processes of the beneficial ownership information reporting requirements.

Cybersecurity Breach Investigation

In the event of a cybersecurity breach that results in substantial unauthorized access and disclosure of sensitive beneficial ownership information, the Inspector General of Treasury must conduct an investigation into FinCEN cybersecurity practices that determines any vulnerabilities and provides recommendations for fixing the deficiencies. Upon receiving a report from the Inspector General, the Secretary of the Treasury must determine whether the Director of FinCEN had any responsibility for the breach and submit a report to Congress outlining the findings, including whether to retain or dismiss the Director.

Continuous Review of Exempt Entities

After the effective date of the regulations, if Treasury makes a determination that any entity exempt from the definition of a reporting company has been subject to significant abuse related to money laundering, terrorist financing, serious tax fraud, proliferation finance, or other illicit activity, Treasury must submit a report to Congress within 90 days explaining the reasons for the determination and any recommendations to prevent the abuse.

Federal contractors

No later than 2 year after enactment, 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 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.

Revised Due Diligence Rulemaking

No later than 1 year after enactment Treasury must revise the final rule titled “Due Diligence Requirements for Financial Institutions” to:

- bring the rule into conformance with the bill
- account for the access of financial institutions beneficial ownership information filed by reporting companies to confirm the beneficial ownership information provided to financial institutions
- reduce any burdens on financial institutions that are unnecessary or duplicative

Report on Effectiveness of the Act

No later than 2 years after the effective date of Treasury regulations, the Comptroller General must submit a report to Congress assessing the effectiveness of the bill in:

- providing national security, intelligence, and law enforcement agencies with prompt access to reliable, useful, and complete beneficial ownership information
- strengthening the capability of national security, intelligence, and law enforcement agencies to combat incorporation abuses and detect, prevent, or prosecute money laundering, terrorism financing, proliferation finance, serious tax fraud, or other crimes

Report on Using Technology to Avoid Duplicative Reporting

Treasury must conduct a study to evaluate:

- the effectiveness of using FinCEN identifiers or other simplified reporting methods in order to facilitate a simplified beneficial ownership regime for reporting companies
- whether a reporting regime whereby only company shareholders are reported within the ownership chain of a reporting company could effectively track beneficial ownership information and increase information to law enforcement
- the costs associated with imposing any new verification requirements on FinCEN; and
- the resources necessary to implement the changes

The Secretary must present the findings to the relevant committees of jurisdiction and provide recommendations for carrying out the findings.

Report on Exempt Entities

No later than 2 years after the effective date of Treasury regulations, Treasury must submit a report to Congress that:

- reviews the regulated status, reporting requirements, quantity, and structure of entities that have been excluded from the definition of a reporting company and the requirement to report beneficial ownership information
- assesses the extent to which any excluded entity poses significant risks of money laundering, terrorism financing, proliferation finance, serious tax fraud, or other illicit activity
- identifies other policy areas related to the risks of exempt entities for Congress to consider in conducting oversight of the new beneficial ownership reporting requirements

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 each state that has procedures that enable a person to form or register partnerships, trusts, or other legal entities
- identifies each state that requires persons seeking to form or register partnerships, trusts, or other legal entities to provide beneficial owners or beneficiaries of the entities, and the nature of the required information
- evaluates whether the lack of available beneficial ownership information for partnerships, trusts, or other legal entities raises concerns about the involvement of such entities in terrorism, money laundering, tax evasion, securities fraud, or other misconduct and has impeded investigations into entities suspected of the misconduct
- evaluates whether the failure of the U.S. to require beneficial ownership information for partnerships and trusts formed or registered in the U.S. has elicited international criticism and what steps, if any, the U.S. has taken or is planning to take in response.