



Federal government might take corporate transparency up a notch

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New disclosure of ownership obligations is on deck for many new and existing corporations and limited liability companies if the Corporate Transparency Act of 2019 (H.R. 2513) is passed by the U.S. Senate. It was passed by the U.S. House of Representatives on Oct. 22, 2019.

If the bill with its current provisions becomes law, a new, annual federal reporting burden would be placed on thousands of existing and future corporations and limited liability companies throughout the United States—in addition to those companies submitting their annual U.S. federal corporate income tax returns. The likely effect of this is that the annual reporting obligation for nonexempt companies will disproportionately affect entrepreneurs and small businesses.

If enacted into law, the bill would require all who create a corporation or limited liability company in the United States to report, on an ongoing basis, to the U.S. Department of the Treasury, Financial Crimes Enforcement Network the identities of “beneficial owners” of the U.S. company. The bill defines a beneficial owner as one who (1) exercises substantial control over a corporation or limited liability company, (2) owns 25 percent or more of the interest in a corporation or limited liability company, or (3) receives substantial economic benefits from the assets of a corporation or limited liability company.

Under the bill, existing U.S. companies will have two years after the issuance of FinCEN final regulations implementing the Corporate Transparency Act to comply with the beneficial ownership disclosure requirements unless the existing U.S. company submits to FinCEN a written certification: (1) identifying the specific provision under which the U.S. Company would be exempt; (2) stating that the U.S. company meets the requirements for the exemption; and (3) providing identification information for the officer, director, or similar agent making the certification in the same manner as a beneficial owner of a nonexempt entity would disclose.

For violations, there are civil and criminal penalties—a fine, a prison term for up to three years, or both—for providing false or fraudulent beneficial ownership information or for willfully failing

to provide complete or updated beneficial ownership information.

The bill’s requirements represent a substantial change for U.S. business entities. Currently, in the United States, anyone can incorporate or form a U.S. company in any state jurisdiction in the United States without having to disclose beneficial ownership data to the state incorporation or formation authority. Every year, thousands of such companies are incorporated or formed quickly all over the United States by entrepreneurs, family businesses and larger businesses, the latter group often in connection with merger and acquisition opportunities or corporate reorganizations.

Some entities are exempt from beneficial ownership disclosure requirements, including those that employ more than 20 employees on a full-time basis in the United States; those which file income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales; and those which have an operating presence at a physical office within the United States. The bill also provides the Secretary of the Treasury and U.S. Attorney General with discretion to exempt additional entities.

There are provisions to protect the privacy of the beneficial ownership information provided to FinCEN per the bill as well, specifying that FinCEN may only disclose beneficial ownership information to certain government agencies.

Although the bill has been touted as a bipartisan effort, its passage is far from certain. Undoubtedly, many businesses of all sizes will be watching its progress carefully. ♦

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