

Corporate Transparency Act and Beneficial Ownership Reporting: Here's What We Know

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Summary: Corporate Transparency Act and the Federal Entity Beneficial Ownership Reporting Requirement

The National Defense Authorization Act that was enacted on January 1, 2021, overriding a presidential veto, includes the Corporate Transparency Act, which imposes new beneficial ownership reporting requirements on entities formed, existing or qualified to do business in the United States. The text of the new legislation appears in Title LXIV, section 6401 et. Seq. of H.R. 6395.

Important to note:

- The legislation requires reporting entities to file a report with FinCEN, a division of the Treasury Department, disclosing the name, date of birth, address and a unique identifying number from an "Acceptable Identification Document" such as a passport or other government issued ID, for each "beneficial owner" of the entity.
- A beneficial owner is defined as an individual who either exercises substantial control over an entity or owns a 25% or greater interest in the entity.
- The reporting requirement will take effect once implementing regulations are issued by the Treasury Department which is required to occur within one year from the date of enactment.
- Reporting for newly formed entities will be required at the time of formation.
- Reporting for entities formed before the effective date will be required "in a timely manner" and no later than two years after the effective date.
- Changes in beneficial ownership will have to be reported with one year of the change unless Treasury decides that a shorter period is necessary for the benefit of law enforcement.
- The reports are non-public but will be available to various federal and state law enforcement agencies including specifically the Treasury Department for federal tax administration purposes.
- Penalties for willful failure to file the disclosure form are onerous: \$500 for every day the failure continues plus a fine of \$10,000 or up to two years imprisonment.
- The legislation prohibits any state from allowing for the issuance of bearer shares by entities.