

Beneficial Ownership Reporting Under the Corporate Transparency Act

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1

Today's Panel

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2

2

The Corporate Transparency Act, adopted as Title LXIV (64) of the 2021 National Defense Authorization Act, mandates the creation of a national database for the “beneficial ownership” of many businesses.

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Timeline

- 2006 June. Delaware passes increased regulation of RA and requires maintaining the business entity to provide a contact person to RA
- 2008 May. Senators Levin and Obama introduce S 2956 “Incorporation Transparency and Law Enforcement Assistance Act.” It would have:
 - Placed business formation agents (attorneys) of beneficial owners of business entities and make info available to law enforcement under BSA
 - Required Secretary of State Offices to maintain beneficial ownership (BO) list
- 2010 August, HR 6098 “Incorporation Transparency and Law Enforcement Assistance Act” introduced. Sponsored by Representatives Maloney and Frank
- DE HB 404
 - Requires Registered Agents to conduct customer CDD before filing documents for a new customer
 - Identification and SDN Check
 - Must periodically review clients against SDN list

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Timeline (cont.)

- 2016 et seq. Geographic Targeting Orders
- 2019 DC Ordinance requires the disclosure of BO with 10% interest or more D.C. Code § 29-102.01
- Arizona LLC Act – if member-managed, identify each member. Ariz. § 29-3201(b)(4)(a)-(b)
- 2019 H.R. 2513: (S 2513) Corporate Transparency Act of 2019, Maloney (Passed the House of Representatives)
- Nov. 2020: The Corporate Transparency Act added to HR 6395, the National Defense Authorization Act (NDAA)
- December 2020: NDAA Passes House and Senate with veto proof margins. Vetoed Dec. 23, 2020
- Veto overridden January 1, 2021

5

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Beneficial Ownership Reporting - Highlights

- Requires “reporting companies” (corporations and LLCs) to register the “personally identifiable information” of their “beneficial owners” with the Financial Crimes Enforcement Network (FinCEN) and update that information regularly over the life of the business
 - “Beneficial owners: individuals who, directly or indirectly, (i) exercise substantial control over an entity or (ii) own 25% or more of an entity
- Willful noncompliance could result in jail time of up to 2 years and up to \$10,000 in fines (\$500/day)
- “Reporting companies” excludes corporations and LLCs with over 20 employees and more than \$5 million in gross receipts or sales and who have a US physical presence are exempt from this reporting obligation, as well as publicly traded companies and certain business engaged in financial services

6

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