THE NATIONAL LAW REVIEW

Proposed Corporate Transparency Act of 2019 Would Require Corporations and Limited Liability Companies to Report Controlling Persons to Federal Government

JONES WALKER
Article By
James C. Stewart
Jones Walker LLP
Banking & Financial Services Newsletter at Jones Walker

- Financial Institutions & Banking
- Corporate & Business Organizations
- Tribal Law / Indigenous Peoples

- All Federal

Thursday, June 13, 2019

To address long-standing law enforcement concerns over the misuse of US corporate entities to conceal the ownership of assets, bipartisan legislation was introduced in the House of Representatives on May 3, 2019. The legislation would require persons forming corporations and limited liability companies to disclose the identities of the persons controlling the proposed entity to the federal government. By creating a federal database of persons controlling business entities, the proposed Corporate Transparency Act of 2019 (the Act) would greatly aid financial institutions in conducting due diligence on customers but would impose an unfamiliar burden and potential liabilities on persons forming new corporations and LLCs.

The Corporate Transparency Act of 2019 would amend the Bank Secrecy Act to require any person applying to form a corporation or limited liability company under state or Native American tribal law to file a list of the beneficial owners of the corporation or LLC with the US Department of Treasury's Financial Crimes Enforcement Network (FinCEN). Non-US entities registering to do business as a corporation or LLC under state or tribal law would be required to file similar reports. Beneficial ownership information collected by FinCEN would be retained for five years and made available to federal, state, tribal, and local law enforcement agencies, and with their customer's consent, to financial institutions to assist such institutions in their compliance with the customer due diligence requirements of the Bank Secrecy Act. The Act would prohibit corporations and LLCs from issuing share certificates in bearer form.

For purposes of the Act, a beneficial owner would be any natural person who directly or indirectly through contract, arrangement, understanding, relationship, or otherwise:

- Exercises substantial control over the entity;
- Owns 25 percent or more of the equity interests of the entity; or
- Receives substantial economic benefits from the entity's assets.

A person would be deemed to have substantial economic benefits from a corporation or LLC if the person is entitled to more than a specified percentage of its funds or assets, which would be determined by rules adopted by the Secretary of Treasury.

The FinCEN report would include the full legal name, date of birth, current residential or business address, and a unique identifying number from a current US passport, driver's license, or personal identification card. If a beneficial owner does not have a US passport or other identification, a unique identifying number from a current foreign passport number may be used provided that a legible copy of the passport is provided with the report. If the person forming the corporation or LLC is not a beneficial owner, the same information would have to be provided about that person as well. Thereafter, corporations and LLCs would be required to file annual reports of beneficial ownership and changes in beneficial ownership. The Secretary of the Treasury, in consultation with the Attorney General, would be authorized to require additional updates on beneficial ownership after completion of a study on the subject.

The Act would exempt certain entities from the beneficial ownership reporting requirement, including SEC-reporting companies, depository institutions, credit unions, bank holding companies, SEC-registered broker-dealers, investment companies and investment advisors, churches, charities and other tax-exempt organizations, as well as businesses with more than 20 full-time US employees reporting over $5 million in gross receipts or sales on a US income tax return and having an operating presence of a physical office in the US. The Secretary of the Treasury and the Attorney General could jointly exempt individual business concerns or classes of business concerns. If an exempt entity has or will have a beneficial ownership interest in a corporation or LLC, information will need to be filed about the exempt entity but not about natural persons with a beneficial interest in the exempt entity.

The Secretary of the Treasury is required to issue regulations implementing the Act not later than one year after the date of its enactment. By the same date, the Secretary of the Treasury is required to revise its Customer Due Diligence regulations to conform to the Act. On or after two years from the date on which implementing regulations are adopted, corporations and LLCs formed prior to that date will become subject to the beneficial ownership reporting requirements unless the entity certifies that it is exempt.

An earlier version of the Act introduced in the previous Congress would have required the states or licensed formation agents to collect beneficial ownership information. States and tribal governments would only be required to notify persons forming corporations or LLCs under their laws of the duty to report beneficial ownership to FinCEN.

The Act provides for civil and criminal penalties for persons who knowingly provide false or fraudulent beneficial ownership information or willfully fail to provide complete beneficial ownership information, or for the misuse or unauthorized disclosure of beneficial ownership information, including civil penalties of up to $10,000 and criminal fines and imprisonment for up to three years or both.