

Beneficial Ownership

Problem:

The Corporate Transparency Act (Beneficial Ownership) was passed and signed into law as part of the National Defense Authorization Act in Dec. 2020. The new law requires certain LLCs and small companies to inform the Department of Treasury's Financial Crimes Enforcement Network (FinCEN) of their beneficial owners and establishes a database of those names. It requires businesses to submit annual paperwork, which includes personally identifiable information of each business owner, upon the creation of the business and periodically throughout its life. Failure to comply would be a federal crime with civil penalties of \$500 per day up to \$10,000 and criminal penalties of up to three years in prison. Furthermore, the legislation grants broad access to the information to federal, state, local, or tribal law enforcement agencies without having to obtain a subpoena.

- Large companies are mostly exempt from the Corporate Transparency Act—only those with 20 or fewer employees and \$5 million or less in annual sales need to report ownership information to FinCEN.
- As a result of this law, millions of small-business owners will be faced with an additional \$5.7 billion in regulatory paperwork. It imposes burdensome, duplicative reporting on the smallest businesses in the U.S. and it threatens the privacy of law-abiding, legitimate small-business owners.
- More than 4.9 million businesses would be required to provide personal ownership information to FinCEN on an annual basis. The Treasury Department would be required to retain the information for the life of the business plus five years.
- Recently, Sec. Yellen told the Senate Finance Committee that anonymous shell companies present an “important problem,” and that creating a beneficial ownership database at FinCEN is a “very high priority.” It seems that new rules are not too far off.

Solution:

Efforts to stem money laundering are important, but this is the wrong way to do it, especially since the information is already being collected. Treasury has a one-year window to craft corresponding rules—it should use this opportunity to address the concerns of small-business owners regarding the Corporate Transparency Act.

- Congress and regulators should require information sharing between FinCEN and the IRS, which is already permitted for certain law enforcement purposes.
- Policymakers must seek an exemption for small businesses that already disclose this type of information.
- Treasury should use existing forms and databases for collecting ownership information.