

Investigations, Compliance and Defense

FinCEN Seeks Public Comment on the Corporate Transparency Act's Beneficial Owner Reporting Requirements

By: [E.K. McWilliams](#), [Alexander E. Cottingham](#), [Sarah F. Weiss](#), and [Andrew Weissmann](#)

On April 5, 2021, the Financial Crime Enforcement Network (FinCEN), the enforcement arm of the United States Treasury, issued an Advance Notice of Proposed Rulemaking (Notice) seeking comment on the implementation of the Corporate Transparency Act (Act). FinCEN posed 48 questions to the public regarding the Act, a bill that Congress enacted in January 2021. The Act requires certain organizations that are incorporated or doing business in the United States to disclose to FinCEN specified information on their beneficial owners. The Act also directs FinCEN to establish a national database of that beneficial ownership information. Responses to the Notice are requested on or by May 5, 2021. FinCEN must promulgate its final rules by January 1, 2022.

FinCEN's 48 questions serve as a possible guide to FinCEN's goals, which appear to be an accurate and detailed national database of beneficial ownership information that could clarify complex ownership structures and reveal important associations between corporate entities and beneficial owners. FinCEN's 48 questions suggest that FinCEN is interested in strengthening the Act's ability to detect and cut through complex ownership structures.

The Corporate Transparency Act

The Act tasks FinCEN with establishing a non-public national database of reported beneficial ownership information. The Act authorizes FinCEN to disclose collected beneficial ownership information to federal law enforcement agencies, as well as to state, local, and tribal law enforcement agencies upon court order. FinCEN may also share a reporting entity's beneficial ownership information with banks that are required by the Bank Secrecy Act to conduct due diligence on their customers, but only with the reporting entity's consent.

The Act is a notable step towards closing loopholes that allow for the concealment of illicit activity by anonymously held shell entities, but the legislation does have limitations. For example, large, public companies with a physical office within the United States are exempt from reporting requirements. In addition, the Act does not capture the upstream owners of subsidiaries owned by foreign parent companies. Moreover, the Act allows only banks, but not other institutions that offer financial services such as casinos, money services businesses, or broker dealers, to request a customer's permission to access beneficial ownership information in the national database.^[1]

FinCEN's Notice

FinCEN, in the Notice, recognizes that "in some cases multiple companies can be layered on top of one another in complex ownership structures" that shield ultimate ownership. In the interests of creating a "highly useful" beneficial ownership database, several of the FinCEN questions focus on the scope of reporting entities' required disclosures to FinCEN. FinCEN thus seeks comment on whether organizations should be required to report their "corporate affiliates, parents, and subsidiaries" and whether such reporting should be mandatory only when it would have a "bearing on" an entity's ultimate

beneficial owner. FinCEN also asks what information it should require a reporting entity to provide about the nature of the reporting entity's relationship to its beneficial owners.

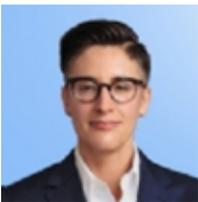
In addition, FinCEN appears to be interested in strengthening the Act's reporting requirements. FinCEN seeks comment on the definition of the "timely manner" within which reporting entities must update the information they submit to FinCEN and requests input about whether this definition should differ based on the type of reporting entity. Moreover, FinCEN's questions indicate that FinCEN could limit the availability of the "safe harbor" provision. For instance, FinCEN suggests the "safe harbor" provision could be limited to entities that have made disclosures regarding beneficial owners that are technically but not substantively inaccurate—such as spelling errors as opposed to a complete omission of ownership information. Finally, FinCEN asks whether reporting companies should be required to "affirmatively confirm," on a periodic basis, the continued accuracy of submitted beneficial ownership information.

Implications

Should FinCEN choose to broadly interpret the Act's reporting requirements, as FinCEN's 48 questions indicate FinCEN may do, it could tighten further the reporting obligations on covered institutions. But there also could be marginal benefits to banks that may gain access to a reporting entity's associations, parent and subsidiary entities, and relationship with its beneficial owners. In order to receive such information, however, banks still need the reporting entity's consent, and must make a formal request to FinCEN. Once a bank receives beneficial ownership information from FinCEN, it must maintain the confidentiality of that information. In fact, the text of the Act appears to foreclose beneficial ownership information sharing between financial institutions, such as pursuant to Section 314(b) of the USA PATRIOT Act. FinCEN's Notice emphasizes the importance of data privacy controls to protect the beneficial ownership database itself and the beneficial ownership information shared with financial institutions by FinCEN. Therefore, financial institutions must maintain strong internal controls, and be mindful of constraints on sharing, to safeguard the beneficial ownership information shared with them by FinCEN.

[1] See [Client Alert: Congress Passes Anti-Money Laundering Legislation Banning Anonymous Shell Companies](#) (Jan. 4, 2021).

Contact Us



E.K. McWilliams

emcwilliams@jenner.com | [Download V-Card](#)



Alexander E. Cottingham

acottingham@jenner.com | [Download V-Card](#)



Sarah F. Weiss

sweiss@jenner.com | [Download V-Card](#)



Andrew Weissmann

aweissmann@jenner.com | [Download V-Card](#)

Meet Our Team

Practice Leaders

Anthony S. Barkow

Co-Chair
abarkow@jenner.com
[Download V-Card](#)

David Bitkower

Co-Chair
dbitkower@jenner.com
[Download V-Card](#)

Christine Braamskamp

Co-Chair
cbraamskamp@jenner.com
[Download V-Card](#)

Erin R. Schrantz

Co-Chair
eschrantz@jenner.com
[Download V-Card](#)

Andrew Weissmann

Co-Chair
aweissmann@jenner.com
[Download V-Card](#)

© 2021 Jenner & Block LLP. **Attorney Advertising.** Jenner & Block is an Illinois Limited Liability Partnership including professional corporations. This publication is not intended to provide legal advice but to provide information on legal matters and firm news of interest to our clients and colleagues. Readers should seek specific legal advice before taking any action with respect to matters mentioned in this publication. The attorney responsible for this publication is Brent E. Kidwell, Jenner & Block LLP, 353 N. Clark Street, Chicago, IL 60654-3456. Prior results do not guarantee a similar outcome.