



## The Corporate Transparency Act Has Far-Reaching Implications for Small Family Farmers and Businesses



The CTA requires all state or tribal registered entities, including those with under 20 employees, such as limited liability companies (LLCs), to report private, sensitive information on “beneficiary owners” to the federal government, which will be stored in a database. CTA creates a large compliance burden on 11 million businesses with 20 or fewer employees (large corporations are exempt) and does little to aid law enforcement with money laundering.

The Heritage Foundation had this to say: The Corporate Transparency Act (CTA) would create a new beneficial ownership reporting requirement imposing a large compliance burden on approximately 11 million businesses with 20 or fewer employees (the only non-exempt category and would create as many as 1 million inadvertent felons. Under the CTA, religious organizations and charities would be subject to fines and imprisonment unless they file a written certification with the Financial Crimes Enforcement Network (FinCEN). Compliance with the bill is easily and lawfully avoided by more sophisticated businesses, and would do virtually nothing to achieve their stated aim of protecting society from illicit finance.

Moreover, both reporting regimes would be easily and lawfully avoided by criminal elements with even a rudimentary knowledge of business. Better, more comprehensive information is available from tax forms already provided to government. Ranchers Cattlemen Association Legal Fund (R-CALF), based in Billings, MT, filed suit noting that the CTA’s reporting obligations mainly apply to small business owners while many large corporations are exempt from reporting. The groups also outlined the harsh penalties for noncompliance, financial and legal burdens on small business owners, the federal overreach into states’ rights and regulations of business ownership and formation, and several constitutional violations.

R-CALF USA CEO Bill Bullard said that his group is seeking an injunction on behalf of its members for protection from what they consider an unconstitutional imposition on private information. “This law was intended to identify those who already don’t follow the law when it comes to money laundering, terrorism funding, and other illicit financial activities,” said Bullard. “Rather than put money or time into law enforcement or detective work to find these alleged criminals, the government chose instead to place a significant burden on law-abiding small business owners.”

“The CTA is an egregious overuse of federal power that seeks to invade personal and private data of small business owners and their associates across America,” said R-CALF

USA Property Rights Committee Chair Shad Sullivan. “Another blow to hard-working Americans who are the backbone of small communities across this nation.”

The CTA would require each “applicant” to form a corporation or limited liability company to file a report with FinCEN containing a list of the beneficial owners of the corporation or limited liability company (LLC).

Partnerships, trusts and some other legal entities would be exempt, but the applicant and each beneficial owner of a corporation or LLC would be required to provide his or her name, address, date of birth, and either a passport or driver’s license number and a copy of the passport or driver’s license showing a photograph of the beneficial owner (identity theft anyone). These reports would need to be filed every time there was an ownership change and minimally, every year until the LLC or corporation is dissolved.

To make matters worse, the term applicant isn’t well defined so it isn’t clear who the applicant is that needs to submit these filings. Many corporations and LLCs were created decades ago and the “applicant” may no longer have anything whatsoever to do with the business. CTA also prohibits bearer shares.

The definition of beneficial ownership is not consistent with an ordinary understanding of ownership or the concept of ownership under state corporate or LLC laws. The term “beneficial owner” is defined as: a natural person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

- (i) exercises substantial control over a corporation or limited liability company;
- (ii) owns 25 percent or more of the equity interests of a corporation or limited liability company; or
- (iii) receives substantial economic benefits from the assets of a corporation or limited liability company.

The Heritage Foundation adds, “Thus, non-owners with an unspecified “understanding” or “relationship” who are deemed to “exercise substantial control” or “receive substantial economic benefits” will be potential beneficial owners. Providing false beneficial ownership information, willfully failing to provide complete or updated beneficial ownership information, or knowingly disclosing the existence of a subpoena or other request for beneficial ownership information can result in fines of up to \$10,000 and imprisonment for up to three years. But businesses would not really know what weasel words like “understanding,”

“relationship,” “substantial control,” or “substantial economic benefits” actually mean until years of litigation and the associated court rulings have provided guideposts to their legal advisors.”

Substantial and potentially ruinous expenses will be incurred by small businesses trying to comply. As explained below, large firms are exempt. Certain applicants are exempt from the beneficial ownership reporting requirements, but only if they file a written certification with FinCEN and provide identifying information regarding the applicant. Small LLCs created for farming and ranching and other mom and pop businesses, do not have the time, money or expertise to figure this out.

Exempt entities include public companies, government-owned enterprises, banks and credit unions, broker-dealers, exchanges and clearing agencies, investment companies, insurance companies, commodities traders, public accounting firms registered with the Public Company Accounting Oversight Board, public utilities, churches, charities, political organizations and other not-for-profit organizations, and any business with more than 20 employees and gross receipts of more than \$5 million. Thus, the only non-exempt category is small businesses that are not in finance or allied lines of business.

Beneficial ownership information would be retained by FinCEN until five years after the corporation or LLC terminates. Because corporations and LLCs may exist indefinitely, this means FinCEN would often retain the information for very long periods of time. Beneficial ownership information would be shared by FinCEN with local, tribal, state, or federal law enforcement agencies, the law enforcement agencies of foreign countries or with financial institutions, with customer consent, as part of the institution’s compliance with due diligence requirements.

Even though CTA states the information provided to local, tribal, state, or federal law enforcement agencies may only be used for law enforcement, national security, or intelligence purposes, who trusts the government, or even the private sector to not turn that information over to other companies such as insurance companies or debt collectors. Furthermore, there is no comparable statutory limitation on information provided to foreign governments.

How much of your hard earned tax dollars will the new government program take to implement when roughly 11 million businesses will be making reports, and roughly two million more businesses and not-for-profits will need to seek exemption from the regime?

The proposal contains poorly drafted “look through” rules and the application of these rules is not clear. In the absence of such rules, however, the entire reporting regime maybe could be easily avoided through having a corporation or LLC own a corporation or LLC.

Regardless, a new breed of lawyer/accountant will need to be on your small business payroll to understand how to comply to avoid heavy penalties and jail time. Just what America needs—more paperwork and regulations that weigh down mom and pop but are easily navigated by the criminal enterprises the bill claims it was trying to identify. 🚩