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Explaining the Corporate Transparency Act as Amended in the National Defense Authorization Act of 2021

A TI-US FACTSHEET

The Problem:

When Pablo Escobar ran the Medellin drug cartel in the 1980s, he had a money problem: bales of \$100 bills that the organization kept in warehouses were being [chewed through by rats](#). But today, even narco-traffickers hoard and move their money as electronic signals. What makes that possible? Corporate secrecy.

Forming a company in most U.S. states typically takes “[less information](#)...than is required to obtain a bank account,” as the Corporate Transparency Act (CTA) puts it. More often than not, even the owner or beneficiary’s name is absent. Escobar could have set up a company, and that company could have opened a bank account—and his cash would have been safe. In other words, terrorists, tax evaders, traffickers in humans or drugs, fraudsters, and other hostile actors can exploit America’s own laws to endanger Americans and American institutions.

In a few hours and for [a few hundred dollars](#), a person can erect a maze of linked anonymous corporations that are subject to different state laws. The result is an impenetrable obstacle course that stymies law enforcement and intelligence agencies as they try to identify threats to the United States or to track down the perpetrators of some of the most heinous crimes—including [international kleptocracy](#). U.S. laws in this regard are among the most [lax in the world](#).

What the CTA Does to Address the Problem:

- The CTA requires anyone forming a company in the United States to provide the name, date of birth, current address, and unique identification number (from a passport or driver’s license, for example) of the company’s **beneficial owner(s)** to the Financial Crimes Enforcement Network (**FinCEN**), a bureau of the U.S. Treasury Department. If changed, this information must be updated every year.
- A **beneficial owner** is defined as a human being who:
 - Exercises substantial control over the entity, or

- Owns or controls 25% or more of its ownership interests.
- **FinCEN is:**
 - An intelligence and regulatory enforcement body that reports to the Under-Secretary of Treasury for Terrorism and Financial Intelligence,
 - Whose role is to “promote national security through the collection, analysis and dissemination of financial intelligence.”
- The reporting requirement applies to existing corporations, LLCs, and other similar entities, as well as to new such entities when they are formed.
- Under the CTA, this information may only be released to:
 - A federal agency engaged in law enforcement, intelligence, or national security;
 - A state, local, or tribal law enforcement agency conducting an active investigation;
 - A federal agency making the request on behalf of a foreign law enforcement agency under mutual legal assistance protocols or other agreement; and
 - A financial institution conducting due diligence per U.S. law—with customer consent.
- The information may only be used for law enforcement, national security, or intelligence purposes.
- Detailed data-security protections are clearly spelled out including that users must be trained and certified and must undergo a background check. All searches must be done as part of an ongoing investigation and every file that is reviewed is logged so that there is a record of who accessed what information. Misuse of the information is a criminal act.
- The information will be kept for 5 years after dissolution of the entity.
- Deliberate false statements or willful evasion of its requirements will constitute a federal crime subject to a prison sentence of up to 2 years and/or a fine. Negligence is not punishable.

What the CTA Does Not Do:

- The Corporate Transparency Act does **not** make beneficial ownership information open to the public at large, or allow it to be queried under the Freedom of Information Act.
- Large companies, heavily regulated companies, and companies that already provide to a relevant government agency are exempt. The Act explicitly exempts such entities as:

- Companies that employ more than 20 people, report revenues of more than \$5 million on tax returns, and have a physical presence in the United States;
- Most financial services institutions, including investment and accounting firms, securities trading firms, banks, and credit unions that report to and are regulated by government agencies such as the Securities and Exchange Commission, the Office of the Comptroller of the Currency or the FDIC;
- Churches, charities, and other non-profit organizations.

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