

# Locke Lord QuickStudy: Anti-Money Laundering Act of 2020 Requires Beneficial Ownership Filings by Businesses

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The House of Representatives and the Senate voted to override President Trump's veto of the National Defense Authorization Act for Fiscal Year 2021 ("NDAA")<sup>1</sup>. The NDAA includes the Anti-Money Laundering Act of 2020 ("AMLA") which includes the Corporate Transparency Act ("CTA"). The AMLA expands the Bank Secrecy Act ("BSA") and modernizes and strengthens the United States' financial crime monitoring systems. Among the significant provisions in the AMLA is the creation of a non-public, secure central registry to be administered by the Financial Crimes Enforcement Network ("FinCEN") to track the beneficial ownership of business entities formed in or registered in the United States. Information filed under the AMLA/CTA will be available to state law enforcement authorities and to "a Federal agency engaged in national security, intelligence, or law enforcement activity". In addition, a reporting company may authorize FinCEN to provide information to a bank or other financial institution to satisfy the bank's or institution's "know your customer" or other "diligence" requirements.

Under the AMLA/CTA a "reporting company" must disclose and update the names and identifying information of all "beneficial owners" (newly defined terms for such purposes) or be subject to substantial financial and criminal penalties.

The reporting obligation applies to existing entities as well as newly formed entities. Once FinCEN adopts regulations under AMLA/CTA, newly formed entities must file promptly following formation.<sup>2</sup> Existing entities have up to two years to file beneficial ownership reports after FinCEN adopts AMLA/CTA regulations<sup>3</sup>. If the beneficial ownership of a reporting company changes, the reporting company will be required to provide FinCEN with updated information within one year following the change.<sup>4</sup>

Not all entities formed or registered in the U.S. are "reporting companies" for this purpose. Among the statutory exceptions to the definition of "reporting company" are not-for-profit entities, registered public accounting firms, money transmitting businesses, publicly traded entities and other entities filing reports with the Securities and Exchange Commission, entities already filing reports with other governmental agencies, entities having a US physical location and employing more than 20 full time employees in the US, and entities operating from a US physical location who have filed income tax returns in the US demonstrating more than \$5 million in gross receipts or sales.<sup>5</sup>

The definition of "beneficial ownership" is broadly written<sup>6</sup>, and includes "an individual, who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise (i) exercises substantial control over

the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.” While “substantial control” is not a defined term, it can be anticipated that this will be remedied in the regulations to be adopted by FinCEN and will likely include both executive officers and others exercising similar functions as well as members of the entities’ governing authority.

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1. <https://www.congress.gov/bill/116th-congress/house-bill/6395>
2. 31 USC § 5336(b)(1)(C) as added by NDAA/AML A § 6403
3. 31 USC § 5336(b)(1)(B) as added by NDAA/AML A § 6403
4. 31 USC § 5336(b)(1)(D) as added by NDAA/AML A § 6403
5. This is not an exhaustive list. A careful review of 31 USC § 5336(a)(11)(B) and the implementing regulations to be promulgated by FinCEN or the Department of the Treasury in the future should be made before determining whether an entity is required to file under the CTA.
6. 31 USC § 5336 as added by NDAA/AML A § 6403.

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