



*Week of 10-23-23
Volume 23 | Issue 30*

Congressional Overview

This week, House Republicans continued their search for a new speaker, and Senate leadership vowed to swiftly move on the White House's \$106 billion national security supplemental request which includes aid to Israel, Ukraine, the Indo-Pacific and the southern U.S. border. The funding package faces an uncertain path due to the situation in the House. The Senate considered funding for FY 24 Military Construction-VA, Agriculture and Transportation-HUD appropriations bills this week.

Rep. Mike Johnson Elected as Speaker of the House

The House elected Rep. Mike Johnson (R-LA) as the new speaker by a vote of 220-209. There were no Republican votes in opposition. Rep. Johnson is a former House Deputy Whip and a constitutional attorney by training. He was elected to Congress in 2017 and has quickly risen through the ranks. He was the former Chairman of the House Republican Study Committee, and he currently serves on the House Judiciary and Armed Services Committees. Now that the House has a speaker again, legislative business can resume.

Senate Committee Approves FY 24 Military Construction-VA Appropriations Bill

The measure, which was advanced by a bipartisan vote of 28-0, provides \$154.352 billion in discretionary funding—an increase of \$184 million above the FY-23-enacted level—including \$19.07 billion in defense funding and \$135.282 billion in non-defense funding.

"The significant investments this legislation makes in America's military are critical to our national security, helping to ensure our military's readiness and safety while reducing maintenance costs. The bill also supports much-needed funding to improve medical care and housing for our nation's veterans," said Sen. Susan Collins (R-ME). "As the Vice Chairman of the Appropriations Committee, I will continue to champion this funding as the appropriations process moves forward."

"This bill bolsters our military infrastructure through critical investments that will enhance our capabilities to defend our nation's interests against global security threats, including by funding the future pilot training center in Fort Smith, Arkansas," said Sen. John Boozman (R-AR), Ranking Member of the MilCon-VA Appropriations Subcommittee.

"It also helps ensure our country lives up to the promises we made to our veterans, honoring their service and sacrifice with improvements to telehealth measures, health services for women and suicide-prevention initiatives. This bipartisan measure reflects our strong commitment to the men and women who wear America's uniform – past, present and future."

Corporate Transparency Act (CTA) Takes Effect January 1, 2024, Without Further Congressional Action

The Corporate Transparency Act (CTA) is currently slated to go into effect at the start of the new year. The CTA was passed by Congress in 2020 as part of the National Defense Authorization Act (NDAA). Per the Financial Crimes Enforcement Network (FinCEN), the purpose of the CTA is to "better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity" by creating a federal framework for reporting, storing, and

disclosing beneficial ownership information of “reporting companies.” While the CTA was ostensibly targeted to foreign-owned companies, domestic companies – particularly small businesses – who meet the broad definition of reporting company will be affected by the CTA’s disclosure provision.

Compliance with the reporting requirements depends on the formation date of each reporting company. For entities formed prior to January 1, 2024, reports must be filed no later January 1, 2025. If there is a change to the information previously submitted to FinCEN, an entity must file an updated report within 30 calendar days of the change occurring. The same applies for any situations where a reporting company becomes aware of an inaccuracy in a report.

For entities formed on or after January 1, 2024, reports must be filed within 30 calendar days of when it receives actual notice that its creation has become effective or when the secretary of state or similar office provides public notice of its formation, whichever occurs first.

What is a “Reporting Company?”

Under the CTA, a reporting company is defined as a corporation, a limited liability company, or other entity that is 1) formed by filing documents with a secretary of state or similar office of a state or Indian tribe or 2) formed under the law of a foreign country and registered to do business in the United States. FinCEN has provided an extensive list of entities exempted to the term “reporting company.” Three such exempt entities include publicly traded companies, public utility companies, and entities that employ more than 20 employees, operate at a physical office in the United States, and filed federal tax returns demonstrating more than \$5 million in gross receipts or sales.

Even with the exemptions, tens of millions of entities will be required to file beneficial ownership reports with FinCEN. The filing requirements will affect a broad range of entities, including but not limited to smaller private companies and joint ventures that are not exempt.

What is Required to Be Reported and When?

Starting in 2024, reporting companies will deliver a report containing the following information about the reporting company to FinCEN:

- Entity’s full legal name
- Trade names
- A complete current address
- The jurisdiction it was formed in or jurisdiction in which a foreign company first registers
- Internal Revenue Service Taxpayer Identification Number and Employer Identification Number

More notably, reporting companies must also furnish the following information to FinCEN about each beneficial owner and company applicant of the reporting company:

- Full legal name
- Date of birth
- Current business or residential address
- A unique identifying number from an acceptable identification document (i.e., passport, driver’s license, etc.) or FinCEN identifier

The CTA defines “beneficial owner” as an individual who, directly or indirectly, exercises substantial control over the reporting company or owns or controls at least 25 percent of the ownership interests of the reporting company. An individual exercises “substantial control” over an entity if the individual 1) serves as a senior officer, 2) has authority over the appointment or removal of a senior officer or a

majority of the board of directors, or 3) directs, determines, or has substantial influence over important business decisions.

The CTA also excludes certain individuals and entities from the term “beneficial owner,” including minor children, individuals acting as agents, employees, individuals with a future inherited interest and creditors. However, the parents of minor children – who would meet the beneficial owner standard but for the exception noted – must have their information reported, according to the CTA.

A “company applicant” is an individual who directly files the formation documents for the reporting company.

Violations and Penalties

A false, fraudulent or incomplete beneficial ownership report constitutes a reporting violation only if it is the willful act of an individual. Failure to comply with the CTA reporting requirements can lead to significant civil and criminal penalties, including a maximum civil penalty of \$500 per day (up to \$10,000) and imprisonment for up to two years.

Who Can Access the Reports?

FinCEN must maintain the information in these reports in a confidential, secure, and non-public database. Under the CTA, beneficial ownership information is neither publicly accessible nor subject to requests under the Freedom of Information Act. However, the CTA authorizes FinCEN to disclose beneficial ownership information to a) federal agencies engaged in national security, intelligence, or law enforcement, b) state, local, or tribal law enforcement for purposes of criminal or civil investigations, c) federal agency issued in response to a request for assistance to a foreign investigation or prosecution, d) financial institutions requesting this information, with the consent of the reporting company, to facilitate compliance with customer due diligence regulations, and e) federal functional regulators or other appropriate regulatory agencies. FinCEN is currently engaged in the rulemaking process for rules on protection and confidentiality regarding these reports.

The Protecting Small Business Information Act of 2023 (H.R. 4035), filed by House Financial Services Chairman Patrick McHenry (R-NC) earlier this year, delays the CTA’s reporting requirements from taking effect until the Treasury Department finalizes its rulemaking process. Many trade and professional association groups have lobbied in support of H.R. 4035.