

Niles Elber Speaks to Law360 on FinCEN Reporting Rules for Small Businesses

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The U.S. Treasury Department's financial crimes unit will start applying new reporting requirements for small businesses in about five months, but many of the roughly 32 million companies affected by the disclosure rules may not yet be aware of them.

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Small businesses would likely be concerned about how to interpret terms such as "beneficial owner," according to Niles Elber, a member at Caplin & Drysdale. But most of them probably don't even know about FinCEN's reporting rules, he said.

"They're trying to get the word out and provide some guidance," Elber said, noting for example the FAQ posting in March. "But who in God's green earth is going to the FinCEN website?"

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According to Elber, it would be helpful if Congress assisted FinCEN with outreach about the rules by providing sufficient resources.

"FinCEN is a relatively small organization and needs help here," he said. "They've got a lot to do to get CTA up and running and without assistance they will be challenged to both fully implement the CTA and effectively communicate to the world about its existence."

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In a similar vein, Caplin & Drysdale's Elber said while the rules have been criticized as overreaching, their approach shouldn't be completely dismissed.

"If there's a need to stop what would seem to be clearly illegal behavior and this is the best means you can come up with, give it a shot," he said. "It's giving the government a better opportunity than it's had before."

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