



Economic Costs to Small Businesses Due to Senate Amendment 2198 to the National Defense Authorization Act of 2021

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Introduction

Federal legislators recently introduced an amendment to the National Defense Authorization Act (NDAA) of 2021 in a bid to secure more extensive information on the beneficial ownership of legal entities registered in the United States. The amendment, Senate Amendment 2198 to S. 4049 authored by Senators Crapo and Brown, would require small corporations, limited liability companies, and other similar entities to complete and submit beneficial ownership information paperwork to the Treasury Department's Financial Crimes Enforcement Network (FinCEN). Businesses required to report beneficial ownership information include entities formed before the effective date of the proposed regulation as well as all new entities formed after the effective date.

All such businesses would be required to file the requested paperwork with FinCEN at least once, either before a deadline established when the regulation takes effect or at the time an entity is newly formed. In future years, changes in beneficial ownership information for certain owners will also trigger a requirement to submit updated paperwork with FinCEN to account for these information changes. Supporters of the bill hope that more centralized beneficial ownership information will increase the ability of financial institutions, law enforcement, and the intelligence community to identify the assets and accounts of terrorist organizations, corrupt actors, money launderers, drug kingpins, proliferators of illegal weapons, and other national security threats.

While well-intentioned, Senate Amendment 2198 would create material risks and burdens for small businesses. An obvious concern is the increased risk that personally identifiable information of business owners may be abused or hacked by actors with malicious intent.¹ Another consequence of a new information reporting requirement mandated by the federal government is additional paperwork burdens imposed on covered entities. Assuming the bill becomes law in 2020 and the regulation takes effect in 2021, we estimate that covered small businesses would be required to complete an average of approximately 8.9 million additional paperwork hours per year from 2023 to 2032, equivalent to an annual average of \$385 million in monetized regulatory costs. Over this ten-year period, covered small businesses would face a cumulative 88.5 million new paperwork hours or, equivalently, a cumulative \$3.9 billion in new regulatory costs due to the proposed regulation.

Background, Covered Entities, and Reporting Requirements

Senate Amendment 2198 to S. 4049, the NDAA of 2021, would require small corporations, limited liability companies, and other similar entities to complete and submit beneficial ownership information paperwork to the FinCEN. For this analysis sole proprietorships, and partnerships will be included as other “similar entities,” as the Treasury Secretary would have the discretion to include these groups of businesses as a covered entity.² Authored by Senators Crapo and Brown, the amendment was drafted with the intent of preventing individuals with malintent from exploiting certain business structures allowed in the United States for criminal gain or engaging in terrorism, money

¹ While this report focuses on the paperwork burdens associated with Senate Amendment 2198 to S. 4049, the risks to small business privacy posed by this regulation are also a major concern. Privacy and cybersecurity threats posed by information requirements like the one proposed in Senate Amendment 2198, the potential economic costs of such risks, and the prospect of those risks becoming reality as evidenced by prior breaches in government information systems should all be considered by policymakers. A discussion of these privacy-related risks and costs may be found in “Economic Costs to Small Businesses Due to the Corporate Transparency Act,” NFIB Research Center, September 2019.

² Under this amendment, businesses that must file are defined as “a corporation, limited liability company, or other similar entity that is (i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in a State by the filing of a document with a secretary of state or a similar office under the law of the State.” The term “similar entity” is undefined within this definition. Sole proprietorships and partnerships with fictitious or trade names are required to file with a Secretary of State’s office or similar office in most states. All sole proprietorships are required to file with the Utah Department of Commerce. This amendment would provide the Treasury Secretary the discretion to apply this regulation to sole proprietorships and partnerships.

laundering, or other misconduct. The amendment would require certain business entities in the United States to disclose and, on occasion, update the beneficial owners of those businesses. Lawmakers supporting the bill believe such mandatory disclosures and updates would assist law enforcement investigative efforts of businesses suspected of committing crimes, efforts which are supposedly hampered by a lack of available beneficial ownership information.

Currently, financial institutions are required by law to identify the beneficial owners of legal entity customers and to maintain and update this information as part of their customer due diligence requirements. The Customer Due Diligence (CDD) Requirement for Financial Institutions Rule of 2016 requires banks, brokers and dealers in securities, mutual funds, and futures commission merchants and introducing brokers in commodities to identify and verify the identity of beneficial owners of legal entity customers, subject to certain exclusions and exemptions.³ The rule requires financial institutions to furnish this beneficial ownership information to the FinCEN, upon receipt of a subpoena. By strengthening financial institutions' know-your-customer and anti-money laundering (KYC and AML) practices through this rule, the federal government hoped that improved customer identification, development of customer risk profiles, and ongoing monitoring for reporting suspicious transactions would increase the ability of financial institutions, law enforcement, and the intelligence community to identify the assets and accounts of money launderers.⁴

However, rather than focusing on improving the efficacy of existing regulations on financial institutions with existing compliance staff and allocated resources, some lawmakers and financial institutions themselves want to shift this regulatory burden to businesses that lack the resources and ability to comply with regulatory information requests that financial institutions have. By drafting Senate Amendment 2198, lawmakers hope to require existing businesses as well as each applicant(s) to form a new business under the laws of any of the 50 States or an Indian Tribe to file a report with FinCEN containing a list of the beneficial owners of the business along with personally identifiable information (PII) that includes each beneficial owner's full legal name, date of birth,

³ Although the CDD rule was finalized in 2016, it did not become applicable until May 11, 2018.

⁴ See 31 C.F.R. Parts 1010, 1020, 1023, 1024, and 1026.

current residential or business street address, and a unique identifying number from a non-expired passport issued by the United States or a non-expired personal identification document issued by a State, local government, or Indian Tribe.

According to the amendment language, a “beneficial owner” is generally defined as “an individual who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—exercises substantial control over a corporation or limited liability company; or owns not less than 25 percent of the equity interests of the entity.” The amendment language generally defines a “reporting company” as “a corporation, limited liability company, or other similar entity that is—created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or formed under the law of a foreign country and registered to do business in a State by the filing of a document with a secretary of state or a similar office under the law of the State.” This definition contingent upon filings with Secretaries of State means that businesses such as partnerships and nonemployers may also be considered businesses required to report beneficial ownership to FinCEN under the proposed regulation.

Any business formed before the effective date of the regulation would be required to submit the requisite beneficial ownership information to FinCEN not later than two years after the effective date of the regulation. Any reporting company formed after the effective date of the regulation would be required to submit the requisite information to FinCEN at the time of formation. These requirements mean that covered business entities must submit a report containing the required beneficial ownership information to FinCEN at least once during their lifetime. On occasion, covered business entities would be required to submit updated reports to FinCEN not later than one year after the date on which there is a change with respect to any of the required PII of beneficial owners.

Certain entities would be technically exempt from complying with the information requirements under the proposed regulation based on the type of commerce or activities in which they engage. These entities include businesses that issue securities; entities established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States and that exercise governmental authority on behalf of the United States or any such Indian

Tribe, State, or political subdivision; depository institutions; credit unions; bank holding companies; brokers or dealers; exchanges or clearing agencies; investment companies; insurance companies; futures commissions merchants, introducing brokers, swap dealers and participants, commodity pool operators, or commodity trading advisors; retail foreign exchange dealers; public accounting firms; financial market utilities; pooled investment vehicles; and public utilities providing telecommunications services, electrical power, natural gas, or water and sewer services. Business entities formed and owned by exempt entities would also be exempt.

Additional businesses would be exempt under the proposed law based on other criteria. Specifically, any business that (1) employs more than 20 employees on a full-time basis, (2) files income tax returns with more than \$5 million in reported gross receipts or sales, *and* (3) has an operating presence at a physical office in the U.S. would be excluded.⁵ These stipulations in effect render larger businesses exempt from the proposed law. The net effect of these exemptions essentially attempts to absolve financial institutions of KYC and AML information reporting requirements as outlined in the CDD rule, excludes big businesses from new information requirements under the proposed law, and places the burden of beneficial ownership information reporting requirements to FinCEN squarely on small businesses.

⁵ The overwhelming majority of S corporations, and possibly other pass-through businesses, would not be exempt. Approximately 90 percent of S corporations have fewer than 20 employees. The average total receipts reported to the IRS per S corporation in 2014 was \$1.7 million. Total receipts tend to increase with the number of shareholders. The average total receipts for S corporations with three shareholders in 2014 was \$3.8 million. S corporations with one or two shareholders reported lower averages. S corporations with three or fewer shareholders make up 95 percent of all S corporations. See IRS Statistics of Income Division Table 9 for S corporations for tax year 2014.

Meanwhile, up to 237,974 employer firms in the financial industry, which report average gross receipts per firm of \$15,286 and gross receipts per employee of \$600, could be made exempt from their existing reporting requirements under the CDD rule. These figures compare to gross receipts per firm of \$784 and gross receipts per employee of \$195 for employer firms with fewer than 20 employees excluding financial firms and utilities. All else equal, a larger amount of gross receipts allows businesses to cover costs associated with paperwork burdens like the proposed beneficial ownership information requirement in the Corporate Transparency Act and mitigates the impact such burdens have on net income. See the Census Bureau's Statistics of U.S. Businesses datasets for 2016.

Paperwork and Recordkeeping Costs

The regulation proposed in Senate Amendment 2198 would create significant new paperwork and recordkeeping requirements that arise from business owners' efforts to comply with the mandate. With no suggested beneficial ownership information paperwork out in draft form yet, the Office of Management and Budget (OMB) has not had an opportunity to produce an estimate as to how long it would take to complete the paperwork requirements and file the requested information with FinCEN. However, certain comments submitted by interested observers to the existing CDD rule provide some guidance as to the possible cost of this potential new paperwork requirement. Specifically, estimates of the paperwork burdens associated with filing IRS Form SS-4 may serve as a good proxy for the paperwork burdens associated with any new information requirement imposed on covered businesses by the proposed regulation.

During the rulemaking process for the CDD rule, multiple comments were submitted during the open comments period in 2014 suggesting that the appropriate government authority to collect beneficial ownership information of business financial accounts lies with the IRS and not FinCEN.⁶ The proposed mechanism by which the IRS would obtain this information is Form SS-4, which must be filed by businesses when seeking an Employer Identification Number (EIN). Commenters suggested that new EIN applicants could submit initial beneficial ownership information when filing Form SS-4 and could update beneficial ownership annually when filing income taxes.

According to the IRS's own estimates calculated to comply with the Paperwork Reduction Act of 1980, the time needed to complete and file Form SS-4 exceeds ten hours. Most of the required time is due to recordkeeping, estimated to take 8 hours 36 minutes. An additional 42 minutes is required for "learning about the law or the form." Finally, 52 minutes is required for "preparing, copying, assembling, and sending the form to the IRS."⁷ Assuming additional fields of required beneficial ownership information are

⁶ For example, see the following comments:

<https://www.regulations.gov/document?D=FINCEN-2014-0001-0131>;
<https://www.regulations.gov/document?D=FINCEN-2014-0001-0076>;
<https://www.regulations.gov/document?D=FINCEN-2014-0001-0013>;
<https://www.regulations.gov/document?D=FINCEN-2014-0001-0015>.

⁷ See "Instructions for Form SS-4," Internal Revenue Service, Department of the Treasury, p. 6.

added to this form as per the proposed law, the estimated amount of time for a business applying for an EIN would increase. The question is how much.

While ten-plus hours might seem a reasonable paperwork burden estimate for a business owner seeking to obtain an EIN and filing Form SS-4 for the first time, this estimate may be excessive for the average covered business to update beneficial ownership information on occasion beyond the first filing. This judgment is based on the noticeable difference between what information is asked for on Form SS-4 when applying for an EIN and the more abbreviated set of information requested by the proposed regulation when updating beneficial ownership information.⁸

Existing estimates of the time required to file statements of changes in beneficial ownership by insiders of public companies with the Security and Exchange Commission (SEC) provide some guidance as to what the incremental time burden might be for small business owners called to comply with the new information requirements mandated by the proposed regulation. According to the OMB, the estimated average paperwork burden hours associated with filing SEC Form 4, the commission's required statement of changes in beneficial ownership, is 0.5 hours per response.⁹ While SEC Form 4 asks for considerably more complex and detailed information than the beneficial ownership information asked for in the proposed regulation, company insiders required to supply the SEC with Form 4 are also likely to have at their disposal savvy and trained professionals who can efficiently file the paperwork on their behalf.

In contrast, at a business with 20 or fewer employees, it will frequently be the owner themselves who fills out and files the paperwork.¹⁰ Since small business owners' time is consumed with operating their businesses and not focusing on record keeping, staying

⁸ Form SS-4 asks for some similar information, such as the name of the business's responsible party and street address, that is also requested by the Corporate Transparency Act when updates to beneficial ownership information would be required. However, Form SS-4 also asks for certain information that would typically require a business owner to sort through their records or make an estimation to complete the form, e.g., the date the business was started or acquired, the highest number of employees expected in the next 12 months, the first date wages or annuities were paid.

⁹ See SEC Form 4, "Statement of Changes in Beneficial Ownership," OMB Number 3235-0287.

¹⁰ According to a nationally representative survey on small businesses, 34 percent of business owners or managers at firms with one to nine employees indicated that they personally did their business's paperwork and record-keeping for government information requests. Nineteen percent of owners or managers at firms with ten to 19 employees indicated they did the same. See Dennis, Jr., William J., series ed., "Paperwork and Record-keeping," NFIB National Small Business Poll 3 (5) 2003.

on top of filing deadlines, and fulfilling government information requests, the efficiency with which they complete paperwork related to changes in beneficial ownership ought to lag the efficiency of larger firms with trained specialists who may have such activities as part of their official job duties. So while the beneficial ownership information requested by the proposed regulation is simpler than what is asked for in SEC Form 4, any savings in time from the relative simplicity of the information request is offset by the relatively inefficient manner in which small businesses would file the paperwork (compared to large public enterprises).

For this analysis, we assume that these two considerations perfectly offset from a baseline hourly paperwork burden as estimated for SEC Form 4 the OMB, and we adopt 0.5 hours as the estimated average amount of time it will take to respond to a single beneficial ownership information request as mandated by the proposed regulation.¹¹ This assumption assumes that the beneficial owners of covered businesses are readily identifiable. We also assume that the corporate governance structure of small corporations, partnerships, and LLCs is relatively simple compared to their larger peers, with executive leadership consisting of no more than three key officers (president, secretary, and treasurer) and boards consisting of an average of 2.1 directors.¹² The key

¹¹ Supporting this hourly paperwork burden assumption is an estimate from the Regulatory Flexibility Analysis for the CDD rule which states: “We consider a range of 20 to 40 minutes of additional time on average to open an account under the CDD rule, based on a series of telephone calls with covered institutions, and on public comments received in response to both the NPRM and the preliminary version of the RIA published in December 2015.” The final regulation (OMB Control Number 1506-0070) provides an identical estimate: “Customer identification, verification, and review and recordkeeping of the beneficial ownership information: A range of 20 to 40 minutes per legal entity customer.”

¹² The beneficial ownership structure of corporations, partnerships, and LLCs can theoretically become quite complex even if all beneficial owners are individuals “inside” the organization. For example, corporations are generally required to have at least three officers: a president, a treasurer or chief financial officer, and a secretary. Corporations may have additional officers that also play a leadership role in the organization. Both C corporations and S corporations are required to have a board of directors. Exact rules and regulations for the size of boards may vary according to differences in state laws and corporate bylaws which stipulate different required minimum and maximum numbers of directors. For corporations, the paperwork burden associated with the Corporate Transparency Act will vary depending on the number of executives with leadership roles and the size of boards.

Illustrating the variance in the required minimum number of directors a corporation must have contingent upon state law are the Delaware Code, which stipulates that a the board of a corporation registered in Delaware must have at least one director, and the corporate governance laws of California, which require corporations registered in California to have not less than three directors unless there are only one or two shareholders of record, in which case the number of directors may be less than three but not less than the number of shareholders. According to 2003 data from the Corporate Library which captured corporate governance dynamics at 1,700 of the largest U.S. public companies, the average board size was 9.2 members with the smallest board having three members and the largest board having 31

officer positions for corporations, partnerships, and LLCs are assumed to be filled by different individuals, and board members are assumed to be non-executive, external members, totaling to 5.1 beneficial owners per covered small corporation, partnership, or LLC. For simplicity, we assume that all persons who may exercise substantial control over such a business or own 25 percent or more of the equity interests of such a business are limited to individuals who are also key officers or board members. Nonemployers that are not corporations are assumed to have one beneficial owner. Based on the above assumptions, the estimated annual hourly paperwork burden for filing beneficial ownership information with FinCEN pursuant to the regulation proposed in Senate Amendment 2198 is approximately 0.9 paperwork hours per business entity.¹³

There are opportunity costs associated with government paperwork requirements. For individuals and households, such costs can take the form of reduced leisure and quality family time, decreasing their standard of living. For businesses, the opportunity cost is pecuniary: time spent filling out government information requests is time that could be spent acquiring more customers, reviewing existing and launching new marketing efforts, interviewing and hiring additional employees, or finalizing decisions on the next capital expenditure, all of which can lead to higher profits.

members. A more recent analysis of 400 companies in 2014 by GMI found the average size of boards was 11.2 members. Spencer Stuart found the average board size of S&P 500 companies in 2017 to be 10.8 members.

Less information is known about the corporate governance structure of private enterprises than public companies, but a pattern that probably holds true for both private and public companies is that the size of boards is likely directly proportionate to firm size. Since the Corporate Transparency Act information requirement targets small businesses, it is likely that most boards of covered entities are small. To be conservative in our cost estimates, we assume that the number of board members for the smallest S corporations (those with three or fewer shareholders) equals the number of shareholders for each entity. This subset constitutes approximately 95.1 percent of all S corporations filing returns with the IRS and averages 1.37 board members per entity. For larger S corporations as well as all C corporations and partnerships that are covered entities under the proposed law, we assume an average of three directors per board. Such an assumption is in keeping with state laws like those of California. This assumption also allows for the good practice of having multiple views and voices when issues need to be taken up by the board. As well, a board with three members allows for no deadlocked votes assuming all directors vote and there are no abstentions. Under these assumptions, we estimate there are approximately 2.08 board members per covered corporation or partnership under the regulation proposed by Senate Amendment 2198.

Sources: Corporate Library; Delaware Code; DLA Piper; Harbor Compliance; Spencer Stuart; Stimmel, Stimmel & Smith; *Wall Street Journal*.

¹³ $(0.5 \text{ hours} / \text{SS-4 form}) \times (\text{Avg. \# SS-4 forms} / \text{Covered small business}) = (0.5 \text{ hours} / \text{SS-4 form}) = (0.5 \text{ hours per form}) \times (1.702 \text{ forms per business}) = 0.851 \text{ paperwork hours per business.}$

The monetized cost of businesses complying with paperwork requirements can also include explicit costs which vary depending on the type of information requested, given that different information requests entail varying levels of reliance on outside experts to fulfill the requests. For example, completing tax paperwork may require paying for the assistance of an accountant or tax preparer. The same may be said for completing information requests related to financial records. Business owners have reported a premium to the per hour costs associated with completing these two categories of information requests relative to the per hour cost associated with fulfilling government information requests. Small business owners have estimated that the average per hour cost of paperwork and record-keeping for tax-related paperwork is \$74.24 per hour. For financial paperwork, the estimated average per hour cost is \$62.16 per hour. And for government information requests, it is \$43.50 per hour.¹⁴

To estimate the total annual monetized cost of the new paperwork burden imposed on small businesses by the proposed regulation, we multiply the estimated hourly per firm cost it takes to fulfill the beneficial ownership information requirement by the number of covered firms that must file a report with FinCEN during a particular time period and, subsequently, multiply this product by the reported dollar value of an hour spent fulfilling government information requests. The number of covered firms will be a subset of the universe of C corporations, S corporations, partnerships, LLCs and non-corporate nonemployers in the U.S. According to the Census Bureau, there were 4,034,856 incorporated employer firms in the U.S in 2017. Of this group of firms, 943,354 were C corporations and 3,091,502 were S corporations.¹⁵ Since the paperwork burden only applies to firms with 20 or fewer employees, we look only at this subset of firms. The Census Bureau estimates the number of C corporations with fewer than 20 employees at 798,402, while the corresponding number of S corporations is estimated at 2,777,913. In total, there were 3,576,315 U.S. employer corporations with fewer than 20 employees in 2017.¹⁶ Additionally, the Census Bureau estimates that in 2017 there were 590,197 U.S. partnerships with fewer than 20 employees.

¹⁴ Dennis, Jr.

¹⁵ Statistics of U.S. Businesses Annual Dataset, U.S. Census Bureau, 2017.

¹⁶ While the Corporate Transparency Act applies to businesses with 20 or fewer employees, data from the Census Bureau's Statistics of U.S. Businesses (SUSB) dataset segments business data into different size-

Non-corporate nonemployers are also considered covered entities under the regulation proposed in Senate Amendment 2198. According to the U.S. Small Business Administration (SBA), in 2017 there were approximately 31.7 million small businesses in the country, approximately 25.7 million of which were nonemployer firms.¹⁷ Some 4.7 percent of these nonemployer firms were organized as S-corporations.¹⁸ Approximately 1.6 percent were classified as C corporations. In total, some 1,398,719 nonemployer firms were organized as corporations, while 20,803,182 businesses were organized as non-corporate nonemployers. Combining all covered employers and nonemployers, 26,368,414 existing small businesses would be required to supply beneficial ownership information to FinCEN.

We exclude LLCs from our calculation of the monetized costs imposed on covered entities due to data constraints. Specifically, the unavailability of data on the number of LLCs with an operating presence in the U.S. differentiated by size of firm, with firm size measured by the number of employees working at a firm, prevents us from estimating a paperwork burden for covered LLCs. The exclusion of LLCs from the analysis may contribute to an underestimation of the total paperwork burden faced by covered business entities.¹⁹

Lacking more recent data, for this cost analysis we adopt the 2017 Census figures for employer firms and the 2017 SBA figures for nonemployer firms as the baseline number of covered small businesses that are already registered in the first year that existing covered businesses would need to provide beneficial ownership information to the FinCEN under the proposed regulation.²⁰ The proposed regulation mandates that

of-firm categories (as measured by number of employees) using different employee threshold figures. Relevant to the current discussion is that the SUSB dataset publishes data for firms with fewer than 20 employees, but not for firms with 20 or fewer employees (as the proposed law requires). This nuance explains the different phrasing in consecutive sentences in the exposition. Readers will also observe that due to this characteristic of the data, we are also examining the subset of firms with fewer than 20 employees, not the subset of firms with 20 or fewer employees, and are therefore omitting from our cost estimate firms with exactly 20 employees.

¹⁷ “United States Small Business Profile,” U.S. Small Business Administration Office of Advocacy, 2020.

¹⁸ “Frequently Asked Questions,” U.S. Small Business Administration Office of Advocacy, June 2016.

¹⁹ In most if not all states, an LLC may have an unlimited number of members. LLC members are shareholders in the company that have voting power and receive profits from the firm based on their ownership stakes. Although not required, an LLC may also elect to have a board of directors.

²⁰ Given the prolonged and continuous economic expansion since 2017 to the very recent past when the novel coronavirus caused great harm to the economy starting earlier this year, as well as the consistently positive net firm creation during that period, it is possible that these figures underestimate the current

existing corporations or LLCs would need to file a report with FinCEN “not later than 2 years after the effective date of the regulations” prescribed in the amendment. For this analysis, we assume that the amendment becomes law in 2020 and that the regulation takes effect in 2021. Consequently, mandatory compliance with the information requirements by existing firms is assumed to begin in 2023. Using a ten-year forecast window, our cost analysis spans 2023 to 2032.

Given the above assumptions, the proposed regulation would cause covered small businesses to face a new annual paperwork burden totaling more than 22.4 million paperwork hours in the first year of compliance (assuming that all existing firms file in the first year of our ten-year forecast window).²¹ Under the above assumptions, we calculate that each covered small business will be required to file information for approximately 1.7 beneficial owners each time it must file a report with the FinCEN.²² The monetized cost of this new paperwork burden for existing firms is approximately \$976 million in the first year.²³

Calculating the costs to covered entities formed after the proposed regulation takes effect is somewhat more involved. In a healthy economic environment, this cost can be expected to grow over time given trend growth in the number of corporations in the United States. According to IRS data, an average of 96,849 new corporations filed tax returns each year between 1980 and 2015, a period that includes multiple business cycles (**Figure 1**). Omitting economic downturns and looking at what may be considered a recent extended period with a generally healthy economy—the period spanning 1995 to 2006—the average number of new corporate tax filers increases to 124,455 per year.

number of small businesses currently registered in the United States. For details on net firm creation in the U.S., please refer to the Bureau of Labor Statistics’s Business Employment Dynamics dataset.

²¹ (# of paperwork hours per business) x (# of covered small businesses required to file beneficial ownership information) = (1.701927 paperwork hours per covered business) x (26,368,414 covered businesses) = 22,438,552 paperwork hours per year.

²² The estimated 1.7 beneficial owners per covered business is derived from calculating the weighted average of (1) the number of beneficial owners for corporations, partnerships, and LLCs, which in total number 24,073,922 beneficial owners across 4,166,512 such covered businesses, and (2) the number of beneficial owners for non-corporate employers across 20,803,182 such covered businesses.

²³ (# of paperwork hours per year) x (\$43.50 cost per paperwork hour) = (22,438,552 hours) x (\$43.50 per hour) = \$976,077,022 in paperwork costs per year.

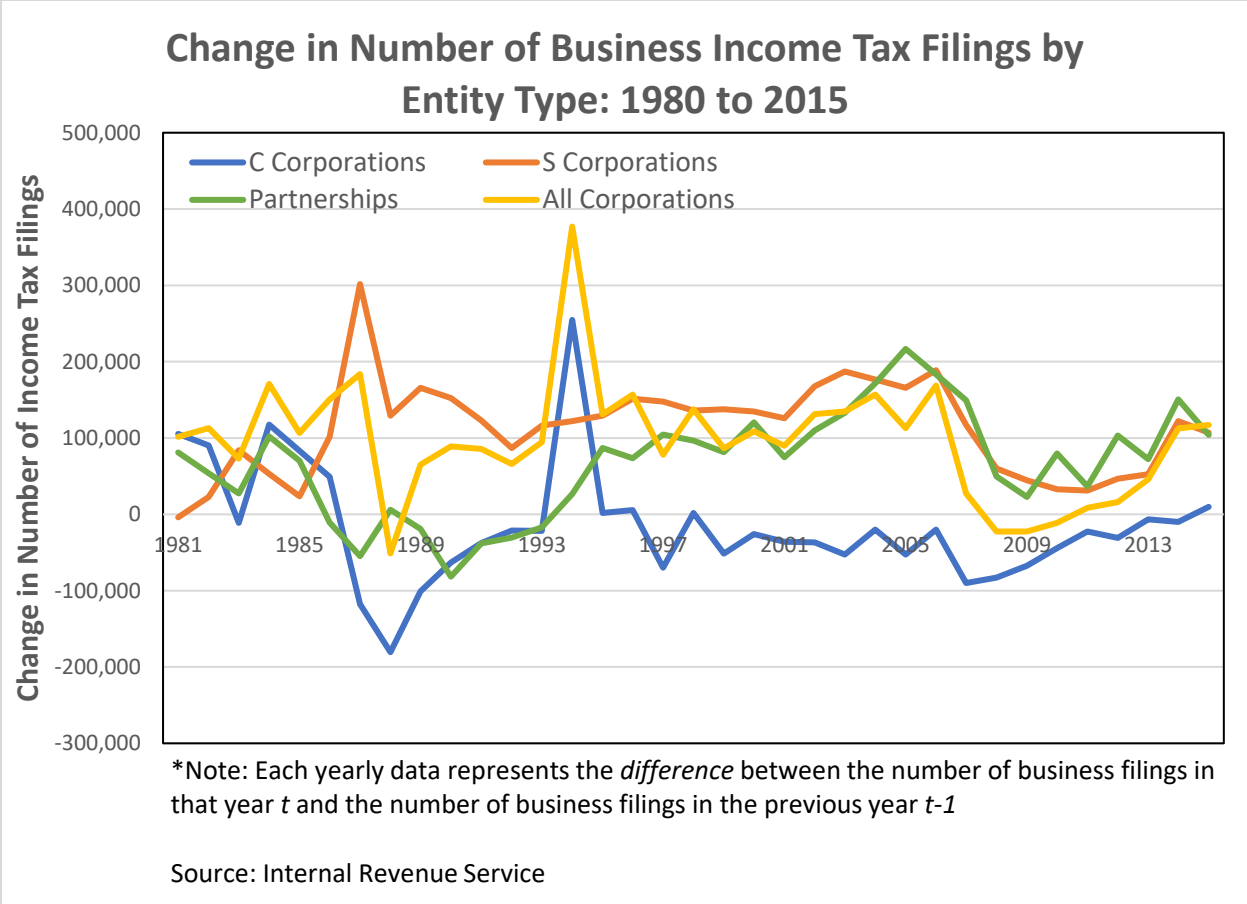


Figure 1

The negative economic shock of COVID-19 renders assumptions of trend growth during a healthy economy moot. While it is difficult to predict exactly how deep and prolonged the pandemic-induced recession will be in the U.S., numerous experts have compared the severity of the current recession to the Great Recession and even the Great Depression. These comparisons emerge from statistics on the unemployment rate, unemployment insurance claims, labor force participation, and knowledge that government mandated shutdowns of nonessential businesses and curtailed activities of essential businesses have greatly reduced personal income for millions of Americans. While some experts hoped for a swift return to pre-outbreak economic conditions following a series of state-level shutdowns (not uniformly applied across all states) earlier this year, the recent surge in COVID-19 cases and associated hospitalizations in certain parts of the country, mainly in the south and the west, the rollback of reopening measures

in multiple states, and new or renewed shutdown measures in these areas cast doubt on the prospects of a V-shaped recovery.

Substantial uncertainty envelops the future path of the economy, but we believe it is not unreasonable to think that the severity of the present downturn will be dissimilar or less acute than the Great Recession. For this analysis, we assume that the economy will behave as it did during the Great Recession. This assumption includes the behavior of business dynamism. Given the historic and violent nature of the recent behavior of labor market indicators, the fact that increasing numbers of temporary layoffs are becoming permanent, and projections of a pending wave of bankruptcies and loan defaults,²⁴ the assumption of a post-Great Recession recovery path may even be conservative.

The 2007/8 financial crisis and the ensuing Great Recession reduced the number of both employers and nonemployers in the U.S. The decrease in the number of employers as a percentage of existing employers was much more pronounced than the same measure for nonemployers. As well, the number of employer firms in the U.S. decreased for four consecutive years before net business creation returned to positive territory, whereas the number of nonemployers decreased for just one year in 2008 before starting to grow again. Growth patterns in the number of employer and nonemployer businesses in the U.S. during and after the 2007/8 financial crisis are given in **Table 1**.

To mimic the post-financial crisis economic trajectory and adapt that trajectory to the present situation, we apply the year-over-year percentage changes to the number of employers and nonemployers we assume already exist in 2023. Such an approach is equivalent to applying a negative shock to the economy on the order of the 2007/8 financial crisis and assumes a sluggish return to pre-recessionary trends in business dynamics for employer firms. The projected number of employers and nonemployers under this assumption is given in **Table 2**.

²⁴ Three of the nation's largest banks, JPMorgan, Citigroup, and Wells Fargo, recently set aside \$28 billion to cover potential loan defaults by consumers and businesses caused by COVID-19. See "This Is Not a Normal Recession': Banks Ready for Wave of Coronavirus Defaults," Wall Street Journal, July 14, 2020.

Table 1: Post-Financial Crisis Trajectories of U.S. Employers and Nonemployers

Year	# Businesses (Employers + Nonemployers)	# Employers	Yr-over-Yr % Change (Employers)	# Nonemployers	Yr-over-Yr % Change (Nonemployers)
2007	27,757,676	6,049,655		21,708,021	
2008	27,281,452	5,930,132	-1.98%	21,351,320	-1.64%
2009	27,463,134	5,767,306	-2.75%	21,695,828	1.61%
2010	27,845,166	5,734,538	-0.57%	22,110,628	1.91%
2011	28,175,504	5,684,424	-0.87%	22,491,080	1.72%
2012	28,462,075	5,726,160	0.73%	22,735,915	1.09%
2013	28,780,675	5,775,055	0.85%	23,005,620	1.19%
2014	29,662,395	5,825,458	0.87%	23,836,937	3.61%
2015	30,232,134	5,900,731	1.29%	24,331,403	2.07%
2016	30,767,732	5,954,684	0.91%	24,813,048	1.98%
2017	31,698,571	5,996,900	0.71%	25,701,671	3.58%

Table 2: Assumed Trajectories of U.S. Employers and Nonemployers, 2023 to 2032

Year	# Covered Businesses (Employers + Nonemployers)	# Covered Employers	Yr-over-Yr % Change (Employers)	# Covered Nonemployers	Yr-over-Yr % Change (Nonemployers)
2023	26,368,414	4,166,512		22,201,902	
2024	25,921,280	4,084,194	-1.98%	21,837,086	-1.64%
2025	26,161,484	3,972,053	-2.75%	22,189,432	1.61%
2026	26,563,154	3,949,485	-0.57%	22,613,669	1.91%
2027	26,917,747	3,914,970	-0.87%	23,002,776	1.72%
2028	27,196,897	3,943,715	0.73%	23,253,182	1.09%
2029	27,506,413	3,977,390	0.85%	23,529,023	1.19%
2030	28,391,356	4,012,103	0.87%	24,379,253	3.61%
2031	28,948,914	4,063,945	1.29%	24,884,969	2.07%
2032	29,478,675	4,101,104	0.91%	25,377,572	1.98%

In years beyond 2023, covered business entities will need to file reports with the FinCEN if the businesses are either newly formed entities, if certain PII of beneficial owners change, or if legal information of the business itself changes. Examples of the latter two cases include a change in a beneficial owner's residency address, a change in the street address of the business, or a material change in the ownership structure of the business. Under the assumption that the recovery path of the economy mimics the post-financial recovery path, net business creation returns to positive territory in 2025, and we count the filing costs attributed to *net* new businesses formed in our tabulation of regulatory costs. The reader should note that we do not count the filing costs attributed to the gross number of new businesses formed. Such an approach likely means that our estimates of regulatory costs associated with new covered entities filing reports with the FinCEN are conservative.^{25,26}

Not all newly formed business entities will meet the qualifying requirements to be considered a covered entity under the proposed law, but a vast majority likely will. According to SBA data from 2014, 95 percent of new firms begin with fewer than 20 employees.²⁷ This percentage decreases very little during the initial years of the firm's life. Ninety-one percent of firms that have been in business for five years have fewer than 20 employees. Vast majorities of even older firms would be covered entities under the proposed regulation.²⁸ Recent research by economists at the Bureau of Labor Statistics has also found that new firms are starting smaller than they have in the past (as measured by number of employees) and are staying smaller.²⁹ For this analysis, we assume that

²⁵ The number of net new businesses created during any time period t equal the gross number of businesses created during time t less the number of businesses that closed during time t .

²⁶ As mentioned above, LLCs are omitted from this analysis due to data constraints. This estimate uses IRS and SBA data for corporations, S corporations, partnerships, and non-corporate nonemployers because there is no information for total number of limited liability corporations. Each corporation, S corporation, or partnership may have multiple LLCs. Other estimates, such as the findings section of this amendment and similar bills—which says more than 2 million LLCs are formed annually—suggest that more reports would have to be filed than we assume here.

²⁷ See the Small Business Administration's Business Dynamics Statistics (BDS) dataset by firm age.

²⁸ According to the SBA's BDS dataset, 90.6 percent of firms between 6 and 10 years of age in 2014 had fewer than 20 employees. Corresponding percentages for firms between 11 to 15 years of age, 16 to 20 years of age, and 21 to 25 years of age were 88.7 percent, 87.9 percent, and 86.6 percent, respectively.

²⁹ See Choi, Eleanor J. and James R. Spletzer, "The declining average size of establishments: evidence and explanations," Monthly Labor Review, Bureau of Labor Statistics, March 2012.

90.6 percent³⁰ of net new businesses created between 2022 and 2031 will be covered entities during the entire forecast period.

As for changes to beneficial owners' PII or businesses' legal information, we calculate the associated costs using probabilities associated with the three aforementioned events that would trigger the requirement to file an updated report: (1) a change in a beneficial owner's residency address, (2) a change in a business's street address, and (3) a material change in the ownership structure of a business. Other events may also trigger the necessity of an updated filing—for example, a legal name change for a beneficial owner due to marriage or some other reason—but we limit ourselves to these three events for simplicity. Ultimately, we are interested in the probability that any *one* of these three events occurs in a particular year. The formula for this probability is:

$$P(X_1 | X_2 | X_3) = P(X_1) + P(X_2) + P(X_3) - P(X_1 \cap X_2) - P(X_1 \cap X_3) \\ - P(X_2 \cap X_3) - P(X_1 \cap X_2 \cap X_3)$$

Probabilities for changes in the personal residency addresses of beneficial owners were derived from Census Bureau data on migration expectancy contingent upon age³¹ and SBA data on the age demographics of small business owners.³² The age-weighted probability that a business owner will change their personal residency in any particular year is estimated to be 16.2 percent.³³ The probability that a business will change physical location in any particular year during the next ten years was calculated using survey data published by Priceonomics in 2018. We estimate this probability to be approximately 15.9 percent.³⁴ Finally, we estimate the probability of an ownership change

³⁰ The percentage of firms aged 6 to 10 years old that had fewer than 20 employees according to the SBA's data.

³¹ "Table 1. Migration Expectancy - Using American Community Survey estimates from Table B07001 in American FactFinder".

³² "Demographic Characteristics of Business Owners and Employees: 2013", SBA Office of Advocacy, Issue Brief Number 6, 2013.

³³ Per the Census Bureau data, the mobility rate of individuals 18 years old or older is hump-shaped. Individuals aged 18 y.o. or 19 y.o. have a mobility rate of .298573. The mobility rate peaks during the younger part of the age spectrum (mobility rate of 0.350483 for individuals aged 20 y.o. to 24 y.o.) and gradually declining thereafter with age. Also, according to the SBA, the age of business owners is heavily skewed toward older individuals. In 2013, 15.6 percent of small business owners were under the age of 35, 32.7 percent were aged 35 years old to 49 years old, and 51.7 percent were aged 50 years old or older.

³⁴ According to a Priceonomics survey of 170 executives working at companies with 50-to-500 employees, 7.5 percent of executives said their company did not move physical locations a single time within the last ten years, 48.4 percent said their company moved once during that time period, 21.1 percent said their

in any particular year using NFIB survey data collected in July.³⁵ Using the NFIB data, we estimate the probability of an ownership change for a covered small business in any particular year during the next ten years to be approximately 2.4 percent.³⁶ And using these three discrete probabilities, we estimate that the probability of at least one of the three “trigger” events occurring in any of the ten years spanning 2023 to 2032 is approximately 31.1 percent. **Table 3** gives the estimated number of covered entities for years 2023 to 2032 under the above assumptions regarding business formation and probabilities of trigger events, the associated annual paperwork hours imposed on covered entities required to file reports with the FinCEN, and the monetized costs of the paperwork burdens.

Table 3: Estimated Number of Covered Entities, Additional Paperwork Hours, and Monetized Regulatory Costs Under Senate Amendment 2198, 2023 to 2032

Year	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032
Est. # Covered Entities (Millions)	26.368	25.921	26.161	26.563	26.918	27.197	27.506	28.391	28.949	29.479
Est. # Covered Net New Entities (Thousands)	N/A	0	240.2	401.7	354.6	279.2	309.5	884.9	557.6	529.7
Est. Paperwork Hours (Millions)	22.439	6.850	6.971	7.116	7.199	7.254	7.343	7.715	7.784	7.917
Est. Monetized Regulatory Costs (Nominal Millions of Dollars)	\$976.1	\$298.0	\$303.3	\$309.6	\$313.1	\$315.6	\$319.4	\$335.6	\$338.6	\$344.4

company moved twice, 18.6 percent said their company moved three times, and 4.3 percent said their company moved four or more times.

See: “Why Do Companies Move Offices?”, Priceonomics Data Studio, November 15, 2018.

³⁵ “Covid-19 Small Business Survey (10)”, NFIB Research Center, July 20-21, 2020.

³⁶ The survey was conducted with a random sample of 20,000 NFIB members from NFIB’s membership database of about 300,000 small business owners. The survey was conducted by email on July 20-21, 2020. NFIB collected 654 usable responses.

According to the survey data, 77 percent of owners reported zero ownership changes having occurred with their business in the last 10 years, 17 percent reported one change in ownership, two percent reported two changes, and one percent reported three changes. No owner reported four or more ownership changes.

Results Summary

Over a ten-year period spanning 2023 to 2032, the estimated number of covered businesses is estimated to increase from approximately 26.3 million businesses in 2023 to approximately 29.5 million businesses in 2032. The number of estimated annual paperwork hours for these businesses is large in the first year due to the initial reporting requirement for existing firms at the time the proposed regulation is assumed to take effect. Estimated paperwork hours stemming from the proposed regulation in the first year of the ten-year forecast window total 22.4 million hours. In subsequent years, estimated paperwork hours increase steadily from 6.9 million hours in 2024 to 7.9 million hours in 2032. The monetized cost of first-year paperwork hours is \$976 million. For years 2024 to 2032, the monetized cost of paperwork hours increases steadily from \$298 million per year to \$344 million per year. Over the entire ten-year forecast period, covered business entities would have to deal with a cumulative 88.5 million additional paperwork hours due to Senate Amendment 2198, equivalent to \$3.9 billion in monetized regulatory costs.