

Small Business Notes

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Yes! New CDC Testing Requirements for Persons Entering the U.S. Do Apply to U.S. Citizens

Effective December 6, 2021, all airline travelers (including U.S. citizens and regardless of vaccination status) entering the United States from a foreign country must show proof of a negative COVID-19 test taken not more than 1 day before travel to the U.S. The earlier policy required vaccinated travelers to show proof of a negative COVID-19 test within 72 hours before boarding the aircraft.

To be accepted a test must include the following:

- The name and date of birth of the person tested. These identifiers must match the information on the travelers passport;
- A specimen collection date no more than one day before departure to the U.S.;
- A representation that the test is a nucleic acid amplification test or an antigen test;
- The test result stating “COVID-19 Not Detected” or other indication that SARS-CoV-2 was not detected in the specimen.
- Information about the testing entity (e.g., health care facility, laboratory) including the entity’s name and contact information.

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New Federal Proposals for Increased Participation of Small Disadvantaged Businesses in Federal Procurement and Contracting

Noting that less than 10 percent of federal contracting dollars go to small disadvantaged businesses, and less than 5 percent to women-owned small businesses, the Biden administration—on December 2, 2021,— announced a group of high level initiatives to increase procurement opportunities and federal contracting for underserved small businesses. Those actions include:

- Requesting federal agencies to increase participation goals so that 11 percent of contracting dollars will be awarded to small disadvantaged businesses. This is an increase from the present statutory goal of 5 percent.
- Aiding the management of the procurement process by releasing, for the first time, disaggregated data on federal contracting by race/ethnicity of the business owners receiving contracts.
- Making changes to federal “category management” procurement which allows for agencies to buy as an organized, consolidated entity rather than as thousands of independent buyers.
- Adopting new management practices (such as ensuring that contracting offices have direct access to senior leadership of their agencies) to drive accountability institutionalize achievement of small business contracting goals.
- Tasking agencies with benchmarking the inclusion of new entrants to the federal marketplace and developing strategies for diversifying the small business supplier base.

The announcement, however, was silent as to the timetable for initiating and completing these goals. It can be expected that some of these proposed efforts will require changes to Federal Acquisition Regulations (with required rulemaking) to effect the changes.

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U.S. Treasury Published Proposed Rule Implementing Corporate Transparency Act; Exemptions Are Driven by Type of Business Not Size

On January 1, 2021 the Congress passed the Corporate Transparency Act over the president's veto. That law requires "reporting companies" to report to Treasury's Financial Crimes Enforcement Network (FinCEN) on the nature of the companies themselves and the identities of all "beneficial owners" of the company. (See [Small Business Notes January 2021](#) for definitions and requirements).

On December 8, 2021, FinCen published a proposed rule implementing the new law [86 Federal Register No. 23]. The proposed rule devotes eight pages of close type to the background of the law and its intent to "prevent money laundering, terrorist financing, and other illicit activities such as tax evasion."

Contrary to the wishes of those who opposed the law on the basis of the costs of reporting it would create for businesses, and especially small businesses, the proposed rules do not exempt businesses from the definition of "reporting company" based on size. Instead it adopts a list of 23 categories of exemption "for entities already generally subject to substantial federal or state regulation under which beneficial ownership may be known." That list is: Sec reporting issuers of stock; governmental entities; banks; credit unions; bank holding companies; money transmitting businesses; securities brokers or dealers; securities exchanges or clearing agencies; other SEC registered entities; investment companies and investment advisors; venture capital fund advisors; insurance companies; state licensed insurance providers; Commodity Exchange Act reporting entities; accounting firms; public utilities; financial market utilities; pooled investment vehicles; tax exempt entities; entities assisting a tax exempt entity; large operating companies; subsidiaries of certain exempt entities; inactive entities.

Is COVID-19 a Disability? U.S. Equal Employment Opportunity Commission Says "Maybe"

On December 14, 2021, the U.S. Equal Employment Opportunity Commission (EEOC) amended its publication for employers "What You Should Know About COVID-19 and the ADA, the Rehabilitation Act, and Other EEOC Laws" with changes to Section N "COVID-19 and the Definition of 'Disability' Under the ADA/Rehabilitation Act."

The new section offers the guidance that a person who is infected with COVID-19 but is asymptomatic or exhibits only mild symptoms similar to those of the flu will not have an actual disability within the meaning of the ADA. An infected person who is more limited in life activities or has major damage to bodily functions *may* have a disability. The determination is an individualized, fact based inquiry.

As with other disabilities, the affected person may request a reasonable accommodation (such as working from home) to which the employer can respond with an analysis that weighs the accommodation against undue hardship to the employer to determine if an accommodation is achievable.

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