

Know the Areas That Transparency Laws Could Impact You When Doing Business In The United States

Wednesday, July 24, 2024

The old saying, “Sunshine is the best disinfect” is important when it comes to the topic of transparency. And in the United States, transparency is becoming a growing theme that businesses, individuals, and nonprofits need to become more familiar with as they are providing goods and services to customers.

Why It Matters

With blurred borders and transactions moving faster than ever, there are growing questions raised about the source of the money behind the transaction. The terms “Know Your Customer (KYC),” “Know Your Source (KYS),” and “Know Your Donor (KYD)” are becoming buzzwords that you should get to know when transactions involve money, valuable intangibles, and valuable tangibles. All-cash transactions, online activities, and cryptocurrency have made the calls for more transparency among the individuals, businesses, and others who engage in the activities. In the politics, concerns about the source of donor money are growing with more emphasis on whether the money is coming from foreign sources. For the nonprofit industry, there is more scrutiny about the source of funding and gifts used to meet their mission, while minimizing concerns of questionable influence. In addition, the nonprofit industry is facing more scrutiny on transparency about where the money is going, who is being served, and the number of individuals or families served.

Who Is Involved in the Transparency Laws

Ironically, the groups calling for more transparency are coming from your city/town, county, state, and federal governments. Many governments have passed or consider passing laws that call for more transparency when doing business with their respective government agencies or operating within their jurisdiction. For many, the call is knowing who the players are and to minimize any concerns of questionable transactions, conflicts of interests, or undue influence.

Areas Covered by Transparency Laws

Here are some areas that are on the transparency radar. Keep in mind that this list is not all inclusive, but gives you a sense of the areas that government focus their attention as part of promoting transparency in transactions.

Real estate transactions

The U.S. Federal government has been drafting new rules that would require all-cash purchases to be more transparent about the source of the buyer’s money. Realtors and escrow companies may be required to disclose and report the source of those all-cash transactions to a designated government agency.

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Art collections

Interested in purchasing expensive or exotic arts? There are potential transparency laws being drafted at the federal and some state levels that will require sellers involved in all-cash transaction to record and report the source of those funds.

Exotic/expensive cars

Fast cars, exotic cars, expensive cars, oh my. Like art collections and real estate transactions involving all-cash, sellers will need to report the source of that money to designated agencies.

Memorabilia

With the resurgence of memorabilia from sports and other industries, these items have been high ticket item with big money at play. Like art collections, the U.S. Federal government would like to know how the purchase was made. Some states and cities may have or are thinking about laws that pulls the veil from cash and digital transactions of memorabilia.

Artifacts

These items commonly found in museums, colleges and universities' collections, and private collections are facing more scrutiny. There is a growing movement for transparency about how the artifact was obtained, purchased, and the identity of the seller. Research projects are discovery that many artifacts were poached or stolen from ancestral sites and lands. As a result, transparency laws are coming onto the books at the federal, state, and even city level to safeguard artifacts and minimize reputation risks.

Business ownership

Financial Crimes Enforcement Network (FinCEN), a department within the U.S. Department of Treasury has implemented new rules that require most LLCs and certain corporations to start filing ownership information to its national database. The new disclosure law started on January 1, 2024, with a deadline for many impacting LLCs and corporations of December 31, 2024. Some states like Illinois and New York have either enacted or consider passing new laws that would require ownership disclosures of business holdings.

Cryptocurrency

The IRS requires disclose of your holdings as part of your tax return filing. Also, many states that recognize cryptocurrency are considering or passing laws that call for transparency in such holdings. Going back to the IRS, the interesting thing is that the tax agency's disclosure requirement is not as painful as completing the other parts of

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your tax filing. But that could change, so be prepared to provide more information as part of being transparent.

Name, Image, and Likeness (NIL)

College, high school, and developmental leagues have seen a fast-paced transformation in the recent years because of rulings and the NCAA changes. Student athletes have more opportunities to earn money based on their NIL. But the varying state rules and no federal standard have exposed the problem of kids having a lot of money and non-monetary benefits without reporting the value. As a result, there are concerns that many of student athletes will face the wrath of the IRS or other federal, state, county, or city government agency for not reporting their earnings or the value of the non-monetary benefits.

Organic foods

Is it organic OR is it not organic? That is the question many ask when shopping for organic products. Unfortunately, not all organic foods are created equal with concerns about false labeling and claims. The U.S. Food and Drug Administration, U.S. Department of Agriculture and the Federal Trade Commission (FTC) are taking more steps to require testing and better labeling of organic items. Many states like California are tightening laws to promote more transparency in the organic food market.

Junk fees

These are hidden charges attached to products and services sold to customers. These fees are considered unexpected fees that supposedly “hide” the true price of those products and services. Critics believe that the lack of transparency could result in businesses making profits off so-called “gotchas” and prevent comparison shopping. The Biden administration through agencies like HUD and Consumer Financial Protection Bureau have started to go after junk fees, calling for more transparency or requiring businesses to provide more details in its pricing to customers. States like California (Senate Bill 478) and Minnesota have signed anti-junk fees laws in 2024. Lawmakers in Connecticut and New York are considering similar legislation banning junk fees.

Resellers

The resale market has become a place for individuals and businesses to resale items from necessities to valuable items such as sneakers and LEGOs. The growing resale market through marketplaces have increased concerns about stolen items making it into these platforms. Many states have considered transparency laws that call for more KYC and KYS protocols within marketplaces and other resale sites to address these concerns.

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Short-Term rentals

Short-term rentals like Airbnb and Vrbo have become popular alternative to hotels and motels. The growth of short-term rentals has impacted housing in many cities and towns. The concerns of unregistered short-term rentals do not help these companies earn goodwill within communities. As a result, many cities have restricted, banned, or now require owners of short-term rentals to register their housing units into a database to promote more transparency of the availability within communities.

Artificial Intelligence

Use artificial intelligence (AI) and there is a good chance that some of the elements were obtained from other sources without consent, compensation, or credit. The U.S. Federal government is slowly, pun not intended, working on laws that would require more protection and disclose about using AI for your work. Many U.S. states, counties, and cities are enacting laws that require users or creators to state whether their work was AI generated and to what extent were others' work used in the creation.

Fashion

The fashion industry is facing more scrutiny about sustainability and work conditions related to the many clothing brands sold not only in the U.S., but import from other countries. At the federal level, there are laws that restrict the import of material or products from countries with questionable labor practices. Another area that the federal government is paying attention to the climate impact in obtaining, making, transporting, and selling fashion. At the state level, New York had introduced the Fashion Sustainability and Social Accountability Act that would require global fashion brands to disclose climate and social impacts. The state of California passed the Garment Worker Protection Act in 2021 to address labor issues in the garment industry.

Supply Chain

With more products and goods being shipped across boundaries, there are growing concerns about the impact of supply chains. Add in concerns about products and goods coming from "conflict zones" or geographical areas with questionable labor practices, sanctions, or other questionable practices and your supply chain could impact your operations. And you do not need to be in a conflict zone or questionable geographical area to have issues with your supply chain. In many countries, there is the question of climate impact and reputation risk associated with your vendors within your supply chain. Many Federal, state, county, and city government agency have laws or considering laws that will require disclosures about your supply chain. You may need to disclose the source of your suppliers' material, climate impact, etc. as part of doing business in that area. In California, lawmakers passed the Transparency in Supply

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Chains Act to address modern slavery involved in the making and selling of products and goods within the state.

Lobbying

With election season, many businesses and individuals need to ensure that they disclose any political activities related to politicians, initiatives, etc. Many city, state, and federal governments require disclosing their lobbying efforts as part of doing business with these entities. Disclosing their lobbying efforts will ensure there are no potential conflicts of interest.

Online endorsements

This is an area that many influencers, athletes, and celebrities forget when it comes to transparency about online endorsements of products and services. The FTC requires that individuals must disclose whether their endorsement of a product or service was tied to a nonpayment or payment. In addition, the FTC requires social posts endorsing products or services must include '#ad' and a statement as to whether they received compensation, monetary or nonmonetary, for the endorsement.

Conflict of Interests

Conflict of interests within business dealings within government has been an ongoing problem. Many businesses and nonprofits that go after funding and contracts do not pay enough attention to the conflict of interest disclosure requirements. With more scrutiny and policies being developed to address these concerns, you will need to understand the requirements for disclosing potential conflict of interests that could impact your business or nonprofits.

Political donations

Do you know the source of that political donation? How well do you know the donors to your political cause or candidate? With more money flowing into political campaigns and ballot initiatives, it is more important than ever to KYD. The growing influence of money in political campaigns are drawing more scrutiny about the source of the donation and the donors. More transparency laws are being drafted to bring more accountability to who and where the donations come from to support the candidate and ballot initiative.

Carbon Offsets

Carbon offsets is supposedly a way for businesses and individuals to purchase credits that offset their carbon footprint. However, there is a growing concern about the transparency of the offsets and its true impact. Some organizations see an opportunity to promote more transparency and accountability.

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DEI

How impactful is your DEI? DEI initiatives have been experiencing growing scrutiny with many organizations across different industries dropping it. The question about the impact of DEI initiatives raises questions about the transparency and accountability of the organizations' efforts. The question is whether your organization promotes the level of transparency needed to show the efforts of your DEI initiatives.

Contracting

Businesses and nonprofits provide many services and products to small and large clients. Especially for government, businesses and nonprofits help meet the goals and objectives through their services and products. As a part of transparency, contracting involves having access to lots of records and information involving the businesses and nonprofits. And when providing services and products to government, businesses and nonprofits need to make sure there is good recordkeeping in place. Transparency helps businesses and nonprofits know how they perform, where the money is, areas of improvement, and any potential compliance issues. The lack of transparency in government creates more problems and scrutiny from regulators and inspector generals.

Foreign Funding to Higher Education

Did you know that U.S. colleges and universities that receive or do business with foreign countries must report it to the U.S. government? Foreign partnerships help colleges and universities with many of their research and development projects and other initiatives. However, growing geopolitical issues and lapses in recordkeeping can put colleges and universities' foreign partnership under a magnifying glass. This law also applies to researchers and teaching faculty acting on behalf of the colleges and universities. The Department of Education requires colleges and universities and those acting on behalf of these institutions to report any foreign funding over a certain dollar amount involved in projects like research and development.

Salary

Transaction in salaries within job postings have become a growing trend within the U.S. Many states such as California and Washington state require employers to post salary ranges on job listings. New York City is among U.S. cities that have similar laws on the books to address alleged concerns about salary disparities.

Peer-to-Peer Transaction

Do you use peer-to-peer applications like Zelle, Venmo, and PayPal to pay for services and products? How about when paying independent contractors? If so, you need to

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make sure that you pay attention to IRS reporting requirements when using peer-to-peer transactions. As part of the American Rescue Plan Act of 2021, businesses that use peer-to-peer application to pay contractors when need to issue 1099-K forms if the amount is more than \$600. The old reporting threshold was 200 transactions that totaled more than \$20,000. The new rule is being phased in, but the lower threshold is supposed to promote more transparency and accountability in business transactions.

Cannabis

For those in the cannabis industry, many states and cities have rules for reporting or disclosing the content of cannabis products sold to consumers. Some of these reporting or disclosure laws include labeling requirements for tested versus not tested products. For example, the State of California State Bureau of Cannabis (yes, that is really the name of the agency) requires more testing for 66 pesticides, harmful chemicals, bacteria, and dangerous fungi. This increased testing includes better labeling that promotes more safety and transparency of cannabis products sold in California.

Takeaway

Transparency is everywhere and you need to make sure that pay attention to stay off the radar. Better transparency can result in better accountability for your business or nonprofit. Transparency provides you with a better picture of where you are doing well and where you need improvements. Transparency can set you apart from others in showing that you have nothing to hide. Transparency can be a tool for generating more business, partnerships, and investment. So, how familiar are you of the transparency laws that could impact your business or nonprofit when doing business in the United States?