



SCWA Legislative & Regulatory Update

August 5, 2024



CTA Delay Gets Renewed Focus in Senate

SCWA and other small business groups have come out in force calling on Congress to adopt a one-year delay of the Corporate Transparency Act as part of this year's National Defense Authorization Act.

The effort, led by the Main Street Employer's coalition and backed by SCWA and more than 135 of its trade association allies, is in support of a pair of NDAA amendments. As our letter explained:

Amendments sponsored by Senators Tim Scott (#2169) and James Lankford (#2831) would provide the business community and federal regulators additional time to educate millions of small business owners regarding the CTA's new reporting requirements and the onerous penalties resulting if they fail to comply. They would also allow time for the on-going legal challenge to work its way through the courts while restoring Congress's original intent to give covered entities a full two years to comply with the statute's reporting requirements.

And here's a bit more on each of those important points:

Although filing under the CTA began at the start of this year, only a few million businesses have registered while an estimated 28 million covered small businesses have yet to file. This compliance rate of less than 10 percent is a direct result of the general lack of awareness among business owners regarding the new rules.

...Recent court decisions have added to the confusion. In March, the United States District Court for the Northern District of Alabama found the CTA exceeded the Constitution's enumerated powers and is therefore unconstitutional. That case was appealed and will be heard by an appellate court later this year. In the meantime, however, FinCEN continues to enforce the CTA against all small businesses and other entities not named in the lawsuit.

...Finally, in enacting the CTA lawmakers explicitly called for a reporting deadline of "not later than 2 years after the effective date of the regulations" for existing entities. This timeframe was designed to give affected entities sufficient time to learn of, understand and comply with the new reporting regime, while minimizing the burdens on reporting companies. In its rulemaking, however, FinCEN shortened this deadline and gave existing entities just one year to comply.

The CTA originally was enacted as part of the FY2021 NDAA, so it makes sense to initiate a delay via this year's defense spending bill.

It's also worth noting that while the CTA was quietly snuck into the NDAA – after having received no public debate or hearings.

- The one-year delay called for by Senators Scott and Lankford is what the business community needs right now. It would give them time to learn about the CTA, time for the courts to issue a ruling, and time for FinCEN to finish the job of educating the public about the new law.

CTA Legal Update

The Eleventh Circuit Court of Appeals announced a hearing in NSBA v Yellen, the case challenging the constitutionality of the CTA, will take place on September 27. While the court is working under an expedited timeline, that date is just three months ahead of the year-end filing deadline for existing entities.

To recap our latest alert, the total number of pending CTA challenges is currently at six nationwide:

- Massachusetts: BECMA et al v Yellen (5/29/2024)
- Texas: NFIB et al v Yellen (5/28/2024)
- Maine: William Boyle v. Yellen (3/15/2024)
- Michigan: Small Business Association of Michigan et al v. Yellen (3/1/2024)
- Ohio: Robert J. Gargas Co., L.P.A. et al v. Yellen (12/29/2023)
- Alabama (appealed): NSBA et al v. Yellen (11/15/2022)

SCWA Sends Letter Calling for CTA Delay

Dear Chairman Brown and Ranking Member Scott:

SCWA and the undersigned organizations, representing millions of small businesses, strongly support amending the FY2025 National Defense Authorization Act to delay by one year the Corporate Transparency Act's (CTA) filing deadline.

Amendments sponsored by Senators Tim Scott (#2169) and James Lankford (#2831) would provide the business community and federal regulators additional time to educate millions of small business owners regarding the CTA's new reporting requirements and the onerous penalties resulting if they fail to comply.

They would also allow time for the on-going legal challenge to work its way through the courts while restoring Congress's original intent to give covered entities a full two years to comply with the statute's reporting requirements.

Although filing under the CTA began at the start of this year, only a few million businesses have registered while an estimated 28 million covered small businesses have yet to file. This compliance rate of less than 10 percent is a direct result of the general lack of awareness among business owners regarding the new rules.

While the business community and FinCEN have gone to great lengths to educate small business owners, it is clear additional time is needed. Absent a delay, millions of law-abiding citizens will be at risk of steep fines and criminal penalties come the end of this year.

Recent court decisions have added to the confusion. In March, the United States District Court for the Northern District of Alabama found the CTA exceeded the Constitution's enumerated powers and is therefore unconstitutional. That case was appealed and will be heard by an appellate court later this year.

In the meantime, however, FinCEN continues to enforce the CTA against all small businesses and other entities not named in the lawsuit. This decision effectively creates two classes of small businesses – those NSBA members who are exempt and everybody else who must still comply.

Finally, in enacting the CTA lawmakers explicitly called for a reporting deadline of “not later than 2 years after the effective date of the regulations” for existing entities. This timeframe was designed to give affected entities sufficient time to learn of, understand and

comply with the new reporting regime, while minimizing the burdens on reporting companies.

In its rulemaking, however, FinCEN shortened this deadline and gave existing entities just one year to comply. That decision is problematic both in its disregard of congressional intent and its practical implications for compliance rates.

The CTA covers tens of millions of legal entities plus all those millions of individuals considered to be “beneficial owners,” yet the vast majority of the law’s targets remain wholly unfamiliar with their new compliance obligations. They simply need time to learn about the new law.

The one-year delay proposed by Senators Scott and Lankford in their respective amendments would address these challenges and they are consistent with legislation (H.R. 5119) which passed the House on a bipartisan 420-1 vote just last year.

The undersigned organizations therefore strongly urge you to support inclusion of these amendments as part of the FY2025 National Defense Authorization Act.

Sincerely,

SCWA and other trade associations

Treasury, IRS Issue Updated Guidance on Required Minimum Distributions from IRAs, Other Retirement Plans; Generally Retains Proposed Rules

The Department of the Treasury and the Internal Revenue Service issued final regulations updating the required minimum distribution (RMD) rules.

The final regulations reflect changes made by the SECURE Act and the SECURE 2.0 Act impacting retirement plan participants, IRA owners and their beneficiaries. At the same time, Treasury and IRS issued proposed regulations, addressing additional RMD issues under the SECURE 2.0 Act.

While certain changes were made in response to comments received on the proposed regulations issued in 2022, the final regulations generally follow those proposed regulations.

Specifically, Treasury and IRS reviewed comments suggesting that a beneficiary of an individual who has started required annual distributions should not be required to continue those annual distributions if the remaining account balance is fully distributed within 10 years of the individual’s death as required by the SECURE Act. However, Treasury and IRS determined that the final regulations should retain the provision in the proposed regulations requiring such a beneficiary to continue receiving annual payments.

The new proposed regulations include provisions for which Treasury and IRS are soliciting public comments, including provisions addressing other changes relating to RMDs made by the SECURE 2.0 Act.

For details on how to submit comments, see the proposed regulations.

