



SCWA Legislative & Regulatory Update

March 18, 2024



SCWA Supports Letter Calling for CTA Delay

As we have previously reported a federal court recently declared the Corporate Transparency Act unconstitutional. However, federal regulators have made clear they intend to continue enforcing the statute, stoking confusion among the more than 32 million affected entities.

In light of these developments SCWA has joined in support of the letter below, which asks the Senate to move legislation delaying the CTA by one year. (Its companion bill passed the House late last year 420-1.)

Dear Chairman Brown and Ranking Member Scott:

The undersigned organizations, representing millions of small businesses, urge you to delay the filing deadlines of the Corporate Transparency Act by passing S. 3625, the Protect Small Business and Prevent Illicit Financial Activity Act introduced by Senator Tim Scott.

The companion to this legislation (H.R. 5119), introduced by Representatives Zach Nunn (R-IA) and Joyce Beatty (D-OH) was adopted by the House of Representatives on a bipartisan vote of 420-1 on December 12, 2023.

A one-year delay of the CTA's filing deadline would 1) allow the court process begun with the recent decision in National Small Business Association v. Yellen to work its way through the Appellate and Supreme Courts, 2) be consistent with congressional intent to give covered entities two years to comply with the CTA's reporting requirements, and 3) provide the business community and the Financial Crimes Enforcement Network (FinCEN) additional time to educate millions of small business owners regarding the new reporting requirements and the onerous penalties resulting if they fail to comply.

Background

The CTA began as an earnest attempt to combat illicit financial activity but has morphed into a bureaucratic nightmare targeted squarely at America's smallest businesses. It subjects covered entities and their "beneficial owners" to vague and complex reporting requirements while putting their sensitive personal information at risk. Failure to comply with the new statute – even in cases amounting to nothing more than a paperwork violation – can result in stiff fines and criminal penalties.

This burden is not evenly distributed across the business community. In general, the CTA's reporting requirements apply only to entities with 20 or fewer employees or less than \$5 million in revenue. Thus, of the 32.5 million entities that FinCEN estimates will be affected by the law, the vast majority will be small businesses – the very companies least equipped to shoulder the regulatory burden imposed by the CTA.

Court Challenge

Earlier this month, the United States Court for the Northern District of Alabama ruled that the CTA exceeded the Constitution's enumerated powers and was therefore

unconstitutional. The Court's injunction, however, was narrow and applied to the plaintiffs named in the case only: members of the National Small Business Association (NSBA).

Following the ruling, FinCEN indicated it would continue 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 that were members of the NSBA as of March 1st will enjoy the protections of the Constitution while the remaining 32 million small businesses targeted by the CTA will not.

Meanwhile, many small business owners will hear about the ruling and conclude that they are no longer obligated to comply, unaware that they are making themselves vulnerable to the CTA's stiff fines and criminal penalties. FinCEN, meanwhile, has no practical means of distinguishing between NSBA members and other small businesses. The NSBA's membership is not public, and the courts have previously ruled that the government cannot compel trade associations like the NSBA to turn over their membership lists.

Congressional Intent

The CTA statute, adopted as part of the National Defense Authorization Act for Fiscal Year 2021, 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. The two-year initiation period is in keeping with the legislation's preamble which instructs FinCEN to "seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information."

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 CTA compliance rates. The CTA covers tens of millions of legal entities plus all those millions of individuals defined as their so-called "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.

CTA Education

Filing under the CTA began more than two months ago, yet fewer than 2 percent of covered entities have submitted their required information to FinCEN. At this rate, it will take more than ten years for filings to reach FinCEN's estimates of 32 million submissions.

One reason for this low compliance rate is that most business owners are ignorant of the new law. A recent survey conducted by the National Federation for Independent Business found that four out of five small business owners are "not at all familiar" with the new reporting requirements. Meanwhile, as a Tax Notes article highlighted, while the accounting community is best positioned to educate their small business clients regarding their filing obligations under the CTA, they are precluded from doing so it could constitute practicing law without a license.

Both the business community and FinCEN have made strenuous efforts to educate small business owners as to their new obligations, but it is obvious more time is needed. Congress did not enact the CTA in order to turn millions of law-abiding small business owners into felons.

Action Requested

Fortunately, there are multiple efforts underway to give small businesses the relief they need from this onerous statute. A group of 80 of your colleagues recently wrote to Secretary Yellen urging a delay of the CTA, citing its myriad flaws and FinCEN's inadequate efforts to educate affected stakeholders on their new obligations.

Legislation which would delay implementation of the CTA (H.R. 5119) passed the House late last year with a bipartisan 420-1 vote, while its companion introduced by Senator Scott (S. 3625) has been referred to the Senate Banking Committee. A one-year delay, as called for in H.R. 5119, would give the court process time to reach a conclusion, grant small businesses much-needed time to fully understand these latest developments and afford FinCEN and the business community the opportunity to continue their education and outreach efforts to ensure that all covered small businesses are aware of their new reporting obligations.

For these reasons, the undersigned organizations strongly urge you to adopt S. 3625 and give America's small businesses the time they need to learn about the new CTA compliance obligations, as well as the Courts time to fully consider the NSBA's challenge.

Signed,

Southwest Car Wash Association and other professional trade associations

CRS Issues Report on Joint Employment and the NLRA

On March 4, the Congressional Research Service issued a 10-page report titled *Joint Employment and the National Labor Relations Act*.

The report does not present any new findings on the joint employer issue but does provide comprehensive background information and history on the joint employer standard and recent joint employer rulemakings.

The report specifically mentions the lawsuit challenging the rule before the District Court for the Eastern District of Texas.



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