



TTAA Legislative & Regulatory Update

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FinCEN Releases CTA Relief Rule

More good news on the battle over privacy. Treasury's Financial Crimes Enforcement Network on Friday released the following statement:

The Financial Crimes Enforcement Network (FinCEN) is issuing an interim final rule that removes the requirement for U.S. companies and U.S. persons to report beneficial ownership information (BOI) to FinCEN under the Corporate Transparency Act.

In that interim final rule, FinCEN revises the definition of "reporting company" in its implementing regulations to mean only those entities that are formed under the law of a foreign country and that have registered to do business in any U.S. State or Tribal jurisdiction by the filing of a document with a secretary of state or similar office (formerly known as "foreign reporting companies"). FinCEN also exempts entities previously known as "domestic reporting companies" from BOI reporting requirements.

A couple of thoughts. First, this action clears up any remaining confusion as to whether domestic entities needed to file their beneficial ownership information. With Friday's announcement, filing your information "just to be safe" no longer appears necessary. Big shout out to the new team at Treasury for getting these changes out the door so quickly. It could not have been easy.

Second, while the new rules alleviate the need to file, this relief is temporary. As long as the underlying CTA statute remains in place, a future administration could rewrite the rules to be more expansive.

That means permanent relief will have to come from the courts or Congress. The courts are teed up to act quickly, with pro-business rulings coming from District Courts in Alabama, Texas and Michigan just in the past year. Those rulings focused on the lack of constitutional authority underpinning the CTA as well as the damage it does to the protections of speech, association, federalism, and warrantless searches. As the recent Michigan decision noted:

The CTA's reporting requirements reach indiscriminately across the smallest players in the economy to extract and archive a trove of personal data explicitly for future law enforcement purposes at an expected cost to the reporting players of almost \$22 billion in the first year alone. The Fourth Amendment prohibits such an unreasonable search.

The CTA's overreach is almost comical – thirty million law abiding small businesses and other legal entities forced to report the personal information of perhaps one-hundred million owners and their employees? The sheer scale of it suggests a successful challenge is a distinct possibility.

Failing that, however, Congress will have to act. It won't be easy – support for the CTA extends across the aisle – but legislation to repeal the CTA has already been introduced, and the committees of jurisdiction are chaired by strong critics of the law – Representative French Hill of Arkansas and Senator Tim Scott of South Carolina.

An upcoming hearing in the House Financial Services Committee should give businesses a good idea of how the new congressional leadership intends to close the book on the CTA for good. It's a bad idea that should never have been implemented in the first place.

Legislative Update

Both the House and the Senate return this week, following a week-long recess. Congress will be in session for the next three weeks, before breaking from April 12-27.

Budget Reconciliation: Just before recessing, Congress passed a continuing resolution to fund the federal government through the end of fiscal year 2025. GOP leaders will spend the next three weeks trying to negotiate a compromise budget resolution and pass it in one or both chambers. Many are skeptical of the timeline given that leadership has several very significant foundational disputes to resolve, including how deeply to cut social spending programs and how to score the bill.

Senate Budget Committee Republicans are planning to meet with the Parliamentarian over the next few weeks to try to get a sense of her position on using a current policy baseline as a scoring method. Senate Finance Committee Chairman Mike Crapo (R-ID) said last week that using a current policy baseline to score extension of the 2017 tax law's expiring provisions would shave about \$3.8 trillion off the cost. If the Parliamentarian indicates that she would not approve of that scoring method, Republicans would have to weigh their options, which could include overruling her interpretation during debate of the reconciliation bill, ignoring any scores produced by the Joint Committee on Taxation or the Congressional Budget Office (CBO), relying on an obscure federal statute to expand the House Budget Committee's ability to set budgetary estimates, or replacing the current Parliamentarian with someone more sympathetic to their preferred approach.

Last Friday, CBO released an analysis requested by Joint Economic Committee Chair David Schweikert (R-AZ), estimating that permanent extension of the expiring provisions of the 2017 tax law would increase the national debt to more than double gross domestic product over the next three decades (absent other changes to fiscal policy or interest rates). Rep. Schweikert pointed to the report to argue against efforts to score the reconciliation bill based on current policy, highlighting continuing intra-party disputes relating to the proposal.

Members of the Senate Finance Committee say they are meeting regularly to talk through their plans. House Ways and Means members plan a series of meetings over the next three weeks, building on two held before the recent recess, to discuss how to implement the President's tax priorities. Ways and Means will not start drafting language until both chambers pass an identical budget resolution.

Debt Limit: CBO will release its debt-limit "x-date" this week. Speaker Mike Johnson (R-LA) continues to say that he prefers to increase the debt limit as part of the reconciliation bill. But if Congress cannot enact that package before the x-date, it will have to suspend or increase the debt limit in a separate measure.

New House Party Ratio: Rep. Raul Grijalva (D-AZ) died on March 13. The House now has 218 Republicans and 213 Democrats, giving the GOP a two-vote majority. The Arizona governor announced a special primary election on July 15 and a special general election on September 23 to fill the seat. Democrats are expected to retain control of the district.

The Week Ahead

House: The House returns today, with votes scheduled through the end of the week, except on Wednesday to accommodate members who will travel to Arizona to attend former-Rep. Grijalva's funeral.

Leadership plans to bring three measures to the floor under a rule, requiring a simple majority vote for passage. The University Foreign Gift Disclosures Act (H.R. 1048) would require federally funded colleges and universities to report in more detail when they accept gifts from or contract with foreign entities. It also prohibit those schools from contracting with foreign entities tied to China, Iran, North Korea, and Russia, and with designated terrorist groups and sanctioned entities. The chamber also will take up two resolutions brought under the Congressional Review Act to disapprove of agency

regulations finalized late in Biden's term that require stricter energy efficiency standards for commercial refrigerators (H.J. Res. 75) and walk-in coolers and freezers (H. J. Res. 24).

The schedule includes eight measures to be considered under suspension of the rules, requiring a two-thirds majority vote for passage. The list includes bills relating to Department of Energy cost-sharing reports (H.R. 359), National Science Foundation math modeling education grants (H.R. 730), a change to the CHIPS and Science Act definition of a “malign foreign talent recruitment program” (H.R. 1318), Commerce Department consideration of applications to operate private remote sensing space systems (H.R. 1325), Department of Energy research partnerships (H.R. 1326, H.R. 1350, and H.R. 1368), and a Department of Energy program to support pollution-free cement and concrete (H.R. 1534).

Senate: The Senate also returns today, and plans votes this week to confirm more presidential appointees, including Marty Makary to be Commissioner of the Food and Drug Administration, Jay Bhattacharya for Director of the National Institutes of Health, and John Phelan to be Secretary of the Navy.



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