

U.S. DEPARTMENT OF THE TREASURY SUSPENDS ENFORCEMENT OF CORPORATE TRANSPARENCY ACT AGAINST U.S. CITIZENS AND DOMESTIC REPORTING COMPANIES

March 5, 2025

On February 27, 2025, the Financial Crimes Enforcement Network (“**FinCEN**”) of the U.S. Department of the Treasury (the “**Treasury Department**”) issued a notice announcing that it would not issue any fines or penalties or take any other enforcement actions against any companies based on any failure to file or update beneficial ownership information (“**BOI**”) reports pursuant to the Corporate Transparency Act (the “**CTA**”) by the current applicable deadlines, which for most reporting companies had been set at March 21, 2025. In its notice, FinCEN stated that there would be no enforcement of the CTA until a forthcoming interim final rule becomes effective and the new relevant due dates in the interim final rule have passed. FinCEN also stated in its notice that it intended to issue the interim final rule extending BOI reporting deadlines by March 21, 2025.

Three days later, on March 2, 2025, the Treasury Department issued a notice regarding the future of the CTA. In its notice, the Treasury Department went further than FinCEN’s initial statements and committed that even after the forthcoming rule changes take effect, FinCEN will not enforce the CTA against U.S. citizens, domestic reporting companies, or any beneficial owner of any domestic reporting company. The Treasury Department also stated in its notice that FinCEN will issue a proposed rule that will narrow the scope of the rule to only “foreign reporting companies.”¹

In the Treasury Department’s notice, U.S. Secretary of the Treasury Scott Bessent said that “[t]his is a victory for common sense. Today’s action is part of President Trump’s bold agenda to unleash American prosperity by reining in burdensome regulations, in particular for small businesses that are the backbone of the American economy.” Afterwards, President Donald Trump praised the Treasury Department’s announcement on Truth Social as “[e]xciting news,” stating that the BOI reporting requirement for U.S. citizens was “outrageous and invasive” and that “[t]he economic menace of BOI reporting will soon be no more.”

Despite FinCEN’s and the Treasury Department’s notices, someone reviewing FinCEN’s website at the date of this Client Alert to determine the status of the CTA would not be able to discern it.

¹ Under the CTA, the term “foreign reporting company” is defined very narrowly to include only entities formed under non-U. S. law that are registered to do business in a U.S. state or tribal jurisdiction. 31 C.F.R. § 1010.380(c)(1). Importantly, this term does not encompass U.S. entities that are ultimately beneficially owned by foreign individuals or entities. It is quite common for foreign individuals and entities to create U.S. affiliates or subsidiaries for transacting business in the United States, rather than registering a foreign entity for that purpose. Thus, the Treasury Department’s proposed narrowing of the CTA’s requirements, if adopted, would seem to leave a broad scope of foreign-owned entities outside of the CTA’s reporting requirements.

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What Does This Mean?

As a practical matter, the Treasury Department's issuance of its notice means that 14 months after taking effect and three months after the start of a roller coaster ride of judicial decisions, regulatory changes, and proposed legislation, the CTA's BOI reporting requirements are once again voluntary until more information is provided by FinCEN. The next step will be issuance of an interim rule and then adoption of a final amended CTA rule that will apparently apply only to "foreign reporting companies." Once a new, narrower rule is adopted by FinCEN, it appears that the Treasury Department envisions that CTA reports will only be required to be filed and updated by "foreign reporting companies."

In the meantime, despite the Treasury Department's decision to not enforce the BOI reporting requirements, the CTA and its implementing regulations remain in effect and continue to be the law. Even when new rules are adopted, there will be questions regarding the validity of those rules to the extent that those rules are not consistent with the statute. However, it appears clear (at least at the present time) that the Trump Administration does not intend to enforce the CTA against U.S. citizens or domestic companies. Nevertheless, it is important that businesses be aware that they may have contractual obligations to comply with applicable law and that the failure to file a BOI report by the March 21 deadline may run afoul of these covenants and representations regardless of the Treasury Department's stated intention not to enforce the CTA fully.

Truly Off the Hook?

Businesses may face lingering uncertainty about the CTA for some time. The CTA was passed by a two-thirds majority of Congress over President Trump's veto in the waning days of his first term. It targets the ease with which anonymous shell companies can be used to hide illicit funds, which law enforcement and national security officials have long identified as a vulnerability in the U.S. financial system.

Under the CTA, regulators can issue exemptions to the CTA's reporting requirements beyond those identified specifically in the statute by Congress, even though FinCEN, in its initial rulemaking, chose not to expand upon the exemptions identified by Congress. Moreover, the Trump Administration may also cite section 5318(a) of the related Bank Secrecy Act ("BSA") as providing legal support for its narrowing of the CTA's application. This provision grants broad exemptive authority to the U.S. Secretary of the Treasury to unilaterally prescribe "appropriate" exemptions to BSA requirements.

Given how broadly the Trump Administration proposes to cut back the CTA's reach, it is possible there will be legal challenges to its proposed narrowing of the CTA on the basis the rollback goes beyond the President's authority to exempt additional categories of entities beyond those identified by Congress. This is an argument that may find more traction in the courts after the U.S. Supreme Court's decision last year in *Loper Bright Enterprises v. Raimondo*,² which substantially restricted the deference that may be given to regulators' interpretive authority. Yet it is not clear, who, if anyone would challenge the new rules.

Regardless of the success of its proposal to narrow the scope of the CTA, the Trump Administration still arguably has the power to decide not to enforce the CTA, as the President retains broad authority to exercise discretion in setting enforcement priorities within the executive branch. Thus, while the CTA remains U.S. law, it might not be enforced unless a succeeding presidential administration chooses to enforce its requirements.

This is predicated, of course, on the survival of the CTA itself. Any litigation over the scope of the proposed amended CTA regulations will be added to the robust and growing docket of constitutional challenges to the CTA that are winding their way through the U.S. appellate courts, some of which could potentially make it to the U.S. Supreme Court docket. The courts may ultimately hold the CTA either entirely or partially unconstitutional under one or more theories that have been advanced by plaintiffs challenging the law.

Congress may also set a new course for the CTA. The changes being proposed by the Treasury Department come on the heels of a unanimous House of Representatives vote on February 10, 2025, to approve extending the CTA deadlines for

² 603 U.S. 369 (2024).

existing reporting companies to January 1, 2026.³ A companion bill⁴ has been introduced in the Senate and, while it may take some time based on the current Senate workload, the Senate bill is likely to obtain considerable support (as it did in the House of Representatives) and to ultimately become law with possible amendments to reflect a separate filing deadline for existing foreign reporting companies to be consistent with the expected interim final rule. While these bills only propose delaying reporting deadlines under the CTA, prior bills have been introduced to repeal the CTA altogether and could gain traction again, particularly considering the Trump Administration's apparent commitment to nonenforcement.

If the CTA disappears in the near-term, there are at least two potential outcomes. First, states may take up the mantle – New York already has – and pass a patchwork of confusing and potentially more aggressive laws, which will go beyond entities formed in those states' borders to also capture entities registered to do business in those states in an attempt to close loopholes for entity formation in states that may not pass CTA-like laws. And second, the CTA may either be reenacted or reinvigorated federally in the future, as the U.S. will continue to receive significant pressure from the Financial Action Task Force and foreign banking authorities to implement a corporate transparency database, as this is seen as a major U.S. anti-money laundering weakness impacting global markets.

Key Takeaway: Stay Tuned

If we have learned anything from the regulatory whiplash endured over the past year, including the many changes since the beginning of December last year, it is that “it's not over until it's over” when it comes to the CTA.

For the foreseeable future, U.S. entities can choose to delay in filing their initial or updated BOI reports. Foreign reporting companies may ultimately be required to report under FinCEN's anticipated new rule, but given the uncertainties at play, many may choose to wait until FinCEN promulgates the new rule.

In the longer term, as reported in our previous Client Alerts, lengthy litigation and continued activity in the executive and legislative branches of the federal government are expected and may further affect the CTA's reporting requirements. Unless the CTA is repealed by Congress or ruled wholly unconstitutional by the U.S. Supreme Court, a subsequent presidential administration with different political or law enforcement and national security priorities may revive the full force of the CTA.

Please remember that the members of Hand Arendall Harrison Sale's CTA team continue to monitor closely legal developments relating to the CTA and will provide relevant updates as appropriate. In the meantime, our attorneys are available to assist with your CTA compliance needs.

³ H.R. 736, 119 Cong. (2025).

⁴ S. 505, 119 Cong. (2025).