

The Corporate Transparency Act May Be on Life Support, But It Is Not Dead

03.14.25 01.07.26

I was hoping to take a short breather from covering the Corporate Transparency Act ("CTA"). However, I am getting several inquiries from attorneys and business owners, asking if they have missed anything with respect to the CTA and more specifically whether the CTA is dead or alive. Accordingly, I decided to provide readers with a brief update.

I apologize in advance if this report creates stress or anxiety. Unfortunately, this entire ordeal has created unrest for business owners and their advisers. We continue to hope that the saga will come to an end.

Here is where I believe we are in the continuing CTA drama:

Litigation

On the litigation front, as you may recall, on January 23, 2025, the SCOTUS in *Texas Top Cop Shop, Inc. et al v. Merrick Garland, Attorney General of the United States et al.*, [lifted the Fifth Circuit's injunction](#), that was preventing the government from enforcing the CTA. However, as also reported, the SCOTUS decision had no practical impact on the government's ability to enforce the CTA because another court (the Eastern District of Texas) in a different case (*Smith et. al. v. U.S. Department of Treasury et. al.*) had issued (on January 7, 2025) a nationwide injunction against the government's enforcement of the CTA. Accordingly, that court's injunction, despite the high court's decision in *Texas Top Cop Shot, Inc.*, remained in place.

On February 5, 2025, the U.S. Department of Justice filed a notice of appeal of the Eastern District of Texas court's order in the *Smith* case and asked the appeals court to lift the injunction during the pendency of its appeal. On February 18, 2025, the court granted the government's request, lifting the injunction pending the appeal.

Both of these cases continue to make their way through the appellate process. Additionally, there are other lawsuits brewing in other states over the constitutionality of the CTA. In each case, the government presses the constitutionality of the law. On the other hand, opponents in these cases push to have the CTA declared unconstitutional. Eventually, the SCOTUS will likely have the final say.

Regulatory

On the regulatory front, we have had at least three big developments.

First, following the decision in the *Smith* case to lift the nationwide injunction, FinCEN extended the filing deadline (for most reporting companies) to March 21, 2025. It reported on its website:

"...because the Department of the Treasury (Treasury) recognizes that reporting companies may need additional time to comply with their BOI reporting obligations, FinCEN is generally extending the deadline 30 calendar days from February 19, 2025, for most companies. Notably, in keeping with Treasury's commitment to reducing regulatory burden on businesses, during this 30-day period FinCEN will assess its options to further modify deadlines, while prioritizing reporting for those entities that pose the most significant national security risks. FinCEN also intends to initiate a process this year to revise the BOI reporting rule to reduce burden for lower-risk entities, including many U.S. small businesses."

Second, on February 27, 2025, FinCEN made an announcement about the CTA filing deadlines. It announced that it will not issue any penalties or pursue enforcement action against reporting companies for the mere failure to meet the current filing deadlines until it issues interim final regulations on the CTA (which are anticipated to be issued by the end of March 2025).

Third, after FinCEN's announcement, the Treasury proclaimed that, in addition to not enforcing the CTA or imposing penalties for a mere failure to meet the new March 21, 2025 reporting deadline, it will not enforce the CTA or impose penalties thereafter against U.S. citizens or domestic reporting companies or their beneficial owners. In other words, the Treasury only intends to enforce the CTA against foreign reporting companies. The Treasury also reports that it will issue regulatory guidance relative to its proclamation.

Please note a few things about these developments:

1. FinCEN, a bureau of the Treasury empowered to enforce the CTA, has not acknowledged the Treasury's latest announcement on its CTA website.
2. Many legal commentators question the Treasury's authority to refrain from enforcing a law enacted by Congress against a certain segment of the population. In a bipartisan effort, members of Congress have posed that very question - whether Treasury can suspend enforcement of a law against a specific category of persons (i.e., U.S. citizens and domestic reporting companies). In fact, on March 10, 2025, Senators Sheldon Whitehouse (D – Rhode Island) and Charles E. Grassley (R – Iowa) requested that Treasury Secretary Scott K. Bessent report to Congress with the legal support for the Treasury's proclamation.
3. Should the Treasury's selective enforcement proclamation withstand legal scrutiny, reporting companies and their advisers will need regulatory guidance relative to whether a company is a domestic reporting company. For example, if a domestically formed entity has direct or indirect owners that are not U.S.

citizens (in the case of owners who are individuals) or domestic reporting companies (in the case of owners that are entities), does the entity have a CTA reporting obligation? Likewise, does a foreign reporting company that has U.S. citizens who are owners have to report the U.S. citizens as beneficial owners in its CTA registration?

- I. If the Treasury's proclamation withstands legal scrutiny or the SCOTUS ultimately finds the CTA to be unconstitutional, will the Treasury instruct FinCEN to destroy the data it has already received from reporting companies that are ultimately not required to register?

Current Status of the CTA

The fighting in the courts continues on several battlefields, with the ultimate path likely leading to the SCOTUS. Concurrently, FinCEN has given most reporting companies until March 21, 2025, to comply with the CTA. However, shortly thereafter, the Treasury announced that the government will not enforce the CTA against U.S. citizens and domestic reporting companies. Add to the chaos, if there is not enough craziness already, lawmakers are currently challenging the Treasury to provide Congress with the legal basis for its decision to selectively enforce the CTA.

If you are not confused and dazed by the madness, you should re-read this blog post. The state of affairs surrounding the short life of the CTA is mind-boggling.

The big question is whether domestic reporting companies need to comply with the CTA by the current March 21, 2025 deadline. The Treasury appears to say no to that question. FinCEN (the division of the Treasury empowered to enforce the CTA) is silent on the issue. However, FinCEN has announced that it will not impose penalties and fines against reporting companies for failure to meet reporting deadlines until it issues regulatory guidance.

Commentators seem split on how to answer this important question. Some commentators suggest that all reporting companies (domestic and foreign) should register by the March 21, 2025 compliance deadline because the ultimate fate of the CTA and its reporting scope is uncertain.

Other commentators suggest that, at least, while keeping a vigilant eye out for developments, domestic reporting companies should refrain from reporting if and until the CTA and its scope are ultimately determined to apply to them.

My take on this question is in the middle of these two positions. On the one hand, if the craziness surrounding the CTA is causing anxiety, registering by March 21, 2025, is a good

approach. If, however, keeping a keen eye on continuing CTA developments and being ready to file on a dime, if required, is acceptable, taking a wait-and-see approach is understandable. Ultimately, this is a decision each domestic reporting company needs to make before March 21, 2025.

Keep a watchful eye out for future developments.

Posted in [Federal Law](#), [Legislation](#), [Tax Laws](#)

Tagged as [Corporate Transparency Act \(CTA\)](#), [Financial Crimes Enforcement Network \(FinCEN\)](#), [foreign reporting companies](#), [Reporting Companies](#), [Treasury](#), [U.S. Supreme Court](#)

Authored by

[Larry J. Brant](#)

[Principal|Portland](#)

[503.553.3114](tel:503.553.3114) larry.brant@foster.com