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The CTA Is Back (Sort Of)—What Reporting Companies Need to Know

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After months of litigation—including a cameo before the Supreme Court—the last nationwide injunction of the Corporate Transparency Act (CTA) was vacated and the CTA was set to go back into effect. Since then, nothing has been simple. After the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) announced that it would issue an interim rule later in March setting forth extended reporting deadlines, the Secretary of the Treasury subsequently announced that his department was indefinitely suspending all enforcement of fines and penalties under the CTA against domestic U.S. companies and U.S. citizens, and that enforcement will continue only as to foreign entities registered to do business in the United States.[1] It is a rapidly evolving situation to say the least.

Accordingly, as we noted in our prior alerts, the most prudent course for CTA reporting companies may be to simply wait and monitor for more definitive guidance before taking further action.

Key Takeaways

- On January 23, 2025, the U.S. Supreme Court stayed the nationwide injunction of the CTA that had been entered in the *Top Cop Shop* case pending a consideration of the ruling on the merits by the Fifth Circuit.[2] Despite the Supreme Court's decision in *Top Cop Shop*, the CTA initially remained enjoined because of a different nationwide injunction entered by a separate district court judge in Texas, which was not addressed in the Supreme Court's decision.[3] However, on February 18, 2025, in deference to the Supreme Court's ruling in *Top Cop Shop* and at the request of the U.S. Department of Justice, the lower court vacated the remaining nationwide injunction and enforcement of the CTA's reporting rules was permitted to resume. No other nationwide injunctions have been entered since, although judicial challenges continue.
- In the immediate aftermath of that decision, FinCEN initially issued guidance extending the reporting deadline for most reporting companies to March 21, 2025,[4] before clarifying in a subsequent press release that FinCEN instead only planned to issue an interim final rule by March 21, 2025, and would be further extending the applicable reporting deadlines.[5]
- However, just a few days later—on Sunday, March 2, 2025—newly appointed Treasury Secretary Scott Bessent issued a press release

announcing that, even after the issuance of the interim final rule, the Treasury Department intended to indefinitely suspend **all** enforcement of CTA fines and penalties against "U.S. citizens" and "domestic reporting companies or their beneficial owners."[6] He further noted that the Treasury Department will "be issuing a proposed rulemaking that will narrow the scope of the rule to foreign reporting companies only."[7]

Analysis and Observations:

One of the only things that seems clear at the moment is that FinCEN intends to extend the CTA reporting deadlines for most reporting companies until some time after March 21, 2025, and will presumably issue further guidance before that date. That guidance is likely to frame the next steps with respect to CTA compliance for most companies, foreign and domestic. But some important questions remain, including whether—based on Secretary Bessent's recent statements—domestic U.S. reporting companies should plan to comply with the CTA at all. In that respect, we offer a few words of both consideration and caution.

First, it will be critical to see what the interim final rule actually says and how closely it tracks the Secretary's pronouncement. While the purported goal of the Treasury Department is to protect U.S. small businesses, the Secretary's statement articulates a plan to suspend enforcement against *all* U.S. domestic reporting companies and focus exclusively on "foreign reporting companies only." It is unlikely that the intent of this statement was to create a loophole to encourage foreign bad actors to use U.S.-based shell companies instead of foreign entities if they want to launder funds through the United States. With the benefit of further consideration of these issues by anti-money laundering professionals at the Treasury Department and FinCEN, we may see modifications in the interim final rule.

Second, as with other statutory regimes, a current administration's decision not to enforce a statute does not constitute a repeal of such statute. Unless or until the CTA is found to be facially unconstitutional or repealed, it does remain the law of the land. Importantly, the statute contains no blanket carve out for domestic entities or U.S. citizens, which in fact may require legislative action in order to bring Secretary Bessent's stated plan to fruition. The statute of limitations for criminal violations of Bank Secrecy Act provisions similar to the CTA is five years,[8] while the limitations period for civil violations is six years.[9] Given that enforcement trends can change, to the extent reporting entities are not explicitly exempted by regulation, they may ultimately want to consider filing on a voluntary basis in order to mitigate any future enforcement risk stemming from the CTA.

Third, significant uncertainty remains with respect to the CTA in each branch of the federal government. The federal courts continue to adjudicate challenges to the CTA's constitutionality on multiple fronts, while Congress considers proposals to substantially modify or repeal the statute and the Treasury Department has stated its desire to greatly carve back CTA enforcement. The ultimate resolution of whether the CTA will

survive (either in its current form or with a much more limited scope) and how its reporting rules will be enforced, if at all, is still unknown.

For all of these reasons, the most prudent course for reporting companies that have not yet filed their BOI reports may be to wait until definitive guidance is available from the Treasury Department and/or FinCEN. We will continue to monitor these developments and provide further updates.

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[1] Treasury Press Release, "Treasury Department Announces Suspension of Enforcement of Corporate Transparency Act Against U.S. Citizens and Domestic Reporting Companies," March 2, 2025, available at https://home.treasury.gov/news/press-releases/sb0038.

[2] *Henry v. Top Cop Shop, Inc.*, No. 24A653, 604 U.S. __ (Jan. 23, 2025).

[3] *Smith et al. v. U.S. Department of the Treasury et al*., 6:24-cv-00336 (E.D. Tex. Jan. 7, 2025).

[4] FinCEN, "Alert: Ongoing Litigation – *Smith et al. v. U.S. Department of the Treasury et al*., 6:24-cv-00336 (E.D. Tex.): Corporate Transparency Act reporting requirements back in effect [Updated February 19, 2025]," available at https://fincen.gov/boi.

[5] FinCEN, "FinCEN Not Issuing Fines or Penalties in Connection with Beneficial Ownership Information Reporting Deadlines," February 27, 2025, available at https://www.fincen.gov/news/news-releases/fincen-not-issuing-fines-or-penalties-connection-beneficial-ownership.

[6] U.S. Dep't. of Treasury Press Release, "Treasury Department Announces Suspension of Enforcement of Corporate Transparency Act Against U.S. Citizens and Domestic Reporting Companies," Issued March 2, 2025, available at https://home.treasury.gov/news/press-releases/sb0038.

[7] *Id*.

[8] 18 U.S. Code § 3282.

[9] 31 USC § 5321(b).

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