

March 19, 2024

The Honorable Sherrod Brown
Chairman, Committee on Banking
United States Senate
Washington, D.C. 20510

The Honorable Tim Scott
Ranking Member, Committee on Banking
United States Senate
Washington, D.C. 20510

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.¹ Thus, of the 32.5 million entities that FinCEN estimates² 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 District Court for the Northern District of Alabama ruled that the CTA exceeded the Constitution's enumerated powers and was therefore unconstitutional.³ The Court's

¹ 31 CFR 1010.380

² Financial Crimes Enforcement Network. *Program Summary by Budget Activity*. <https://home.treasury.gov/system/files/266/13.-FinCEN-FY-2024-BIB.pdf>

³ *National Small Business United et al v. Yellen et al*, No. 5:2022cv01448 - Document 51 (N.D. Ala. 2024)

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.⁴

Congressional Intent

The CTA statute, adopted as part of the National Defense Authorization Act for Fiscal Year 2021⁵, 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."⁶

In its rulemaking, however, FinCEN shortened this deadline and gave existing entities just one year to comply.⁷ 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 FinCEN⁸. 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

⁴ https://www.supremecourt.gov/oral_arguments/argument_transcripts/2020/19-251_h3ci.pdf

⁵ P.L. 116–283, William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021

⁶ *Ibid*, Sec. 6403 (pp. 1225)

⁷ 31 CFR 1010.380

⁸ Statement by Andrea M. Gacki, FinCEN Director. Committee on Financial Services hearing, February 14, 2024. <https://docs.house.gov/meetings/BA/BA00/20240214/116841/HHRG-118-BA00-Wstate-GackiA-20240214.pdf>

five small business owners are “not at all familiar” with the new reporting requirements.⁹ 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 CTA¹⁰, 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,

Agricultural Retailers Association
AICC, The Independent Packaging Association
Air Conditioning Contractors of America
American Building Materials Alliance
American Council of Engineering Companies
American Council of Independent Laboratories
American Dental Association
American Farm Bureau Federation
American Financial Services Association
American Foundry Society
American Hotel & Lodging Association

⁹ National Federation of Independent Business Research Center. *Financing Sales Survey, December 2023*, pp. 5.
<https://strgnfibcom.blob.core.windows.net/nfibcom/Financing-Sales-Survey.pdf>

¹⁰ <https://www.rickscott.senate.gov/services/files/0C5859CC-4BBB-475C-AEA7-E5212B04506D>

American Lighting Association
American Pipeline Contractors Association
American Rental Association
American Subcontractors Association
American Supply Association
American Veterinary Medical Association
Associated Builders and Contractors
Associated Equipment Distributors
Associated General Contractors of America
Brick Industry Association
Ceramic Tile Distributors Association
Community Associations Institute
Construction Industry Round Table
Design-Build Institute of America
Education Market Association
Energy Marketers of America
Family Business Coalition
FCA International
Finseca
Foodservice Equipment Distributors Association
Forest Resources Association
GAWDA
Global Cold Chain Alliance
Hardwood Federation
Hearth, Patio & Barbecue Association
Heating, Air-conditioning, & Refrigeration Distributors International
ICSC
Independent Bakers Association
Independent Electrical Contractors
Industrial Fasteners Institute
International Franchise Association
International Housewares Association
Irrigation Association
ISSA, The Worldwide Cleaning Industry Association
Leading Builders of America
Main Street Employers Coalition
Manufactured Housing Institute
Manufacturer & Business Association
Metals Service Center Institute
Michigan Farm Bureau
National Apartment Association
National Association of Convenience Stores
National Association of Electrical Distributors
National Association of Home Builders
National Association of Sporting Goods Wholesalers

National Association of Wholesaler-Distributors
National Automatic Merchandising Association
National Beer Wholesalers Association
National Community Pharmacists Association
National Cotton Council
National Council of Agricultural Employers
NATIONAL ELECTRICAL MANUFACTURERS REPRESENTATIVES ASSOCIATION®
National Fastener Distributors Association
National Funeral Directors Association
National Grange
National Lumber & Building Material Dealers Association
National Marine Distributors Association
National Multifamily Housing Council
National Onion Association
National Propane Gas Association
National Ready Mixed Concrete Association
National Roofing Contractors Association
National RV Dealers Association (RVDA)
National Small Business Association
National Tooling and Machining Association
National Utility Contractors Association
National Wooden Pallet & Container Association
New Mexico Farm & Livestock Bureau
North American Association of Food Equipment Manufacturers (NAFEM)
North American Equipment Dealers Association
NYS Agribusiness Association
Ohio Farm Bureau Federation
Oregon Cattlemen's Association
Outdoor Power Equipment and Engine Service Association
Pennsylvania Farm Bureau
Performance Racing Industry (PRI)
Petroleum Equipment Institute
Plumbing-Heating-Cooling Contractors--National Association
Power & Communication Contractors Association
Precision Machined Products Association
Precision Metalforming Association
Private Investor Coalition
Refrigerated Foods Association
Retail Bakers of America
Rocky Mountain Agribusiness Association
S Corporation Association
Service Station Dealers of America and Allied Trades
Small Business & Entrepreneurship Council
Small Business Legislative Council
Society of Collision Repair Specialists (SCRS)

South Dakota Trust Association
Specialty Equipment Market Association (SEMA)
Subchapter S Bank Association
Texas Farm Bureau
The Association for Hose and Accessories Distribution
The Fertilizer Institute
The Ohio Council of Retail Merchants
The Real Estate Roundtable
The Transportation Alliance
The Wholesale Florist and Florist Supplier Association
Tile Roofing Industry Alliance
Tire Industry Association
US Rice Producers Association
USA Rice
Virginia Cattlemen's Association
Virginia Cattlemen's Association
Virginia Farm Bureau
WASDA - Water and Sewer Distributors of America
Wholesale Florist & Floral Supplier Association
Wood Industry Association
Workplace Solutions Association
Wyoming Farm Bureau Federation
Wyoming Stock Growers Association