



September 26, 2023

The Honorable Patrick McHenry
Chairman
Committee on Financial Services
2129 Rayburn House Office Building
United States House of Representatives
Washington, D.C. 20515

Dear Chairman McHenry and Members of the Committee,

On behalf of the National Small Business Association¹ (NSBA) and its 65,000+ members, as well as the millions of small businesses across the nation, I am writing to ask that you act quickly to prevent potentially disastrous consequences for the small business community. Specifically, we oppose the Corporate Transparency Act (CTA) and the Financial Crimes Enforcement Network (FinCEN) rulemakings it has spawned. The reporting provisions, rules on beneficial ownership, and administrative burdens imposed by the CTA make it profoundly damaging for small businesses across the country. As a result, we urge Congress to pass the Protecting Small Business Information Act of 2023 (H.R.4035), and ultimately repeal the CTA in its entirety.

Small business owners understand the ostensibly positive intent behind the CTA as an attempt by Congress to crack down on fraud and shell companies. The reality for them, however, is that contrary to its stated intent, the CTA has become an administrative distraction that will force millions of hours and upwards of \$5.7 billion to be spent on lawyers and annual reporting. These are hours not spent innovating, creating, or operating for each small business affected. Importantly: this paperwork burden is also redundant. Banks are already collecting the information FinCEN is seeking. The Customer Due Diligence (CDD) framework requires banks to collect the same information the CTA targets. Currently, these reporting requirements are handled by the legions of compliance and regulatory staff already employed at these financial institutions. The CTA transfers this burden from that high-resource environment of financial professionals directly onto the backs of the nation's small businesses.

Worryingly, this onerous reporting requirement is being passed onto small businesses while simultaneously bypassing traditional safeguards for American citizens – namely the need for law enforcement to obtain a warrant. Representative Loudermilk put it simply in a recent Subcommittee hearing on the subject: "...if my local sheriff wanted to get that information from our financial institution, he would have to have a search warrant. If the FBI wants to get it, they just go to FinCEN and it's there." Beyond these problems, the penalties assessed for noncompliance are gravely concerning as well, and the small business community has openly shared that the government's efforts to communicate these changes to businesses have been ineffective.

¹ Founded in 1937, NSBA is the nation's oldest small-business advocacy organization. We operate on a bipartisan basis to represent the interests of all American small businesses. We have 65,000+ members in every state and every industry across the country, including our numerous state affiliates. More information about NSBA and our priorities can be found on our website at: www.nsba.biz.

Delaying the implementation of the CTA by passage of H.R.4035 will at least temporarily alleviate some of the great burdens the law will impose on small businesses, but this is only a band-aid fix to a larger problem. We also firmly believe that the CTA is unprecedented and unconstitutional, and therefore, on November 15, 2022, NSBA sued in federal district court challenging the constitutionality of the CTA on grounds that it violates:

- The First Amendment's protection against compelled speech and unreasonable burdens on the freedom of speech and association.
- The Fourth Amendment's protection against unreasonable search and seizure.
- The Fifth Amendment's protection against compelled self-incrimination.
- The Fifth Amendment's ensuring of due process, as the CTA's terms are unconstitutionally vague.


While we have these serious underlying concerns about the constitutionality of the law, as mentioned above, a delay in the CTA entering into force would help the situation in the short term. This primarily would allow Congress to better understand the ramifications of the CTA and what it means for small businesses over time. As currently written, the vague nature of much of the law's language grants far too much interpretive latitude to FinCEN and law enforcement. In addition, the collection, storage, and dissemination of information will cause irreparable harm, and the financial consequences will begin to affect the small enterprises that employ nearly half of all private sector employees.

Legislative delays introduced by Congress are common. They prevent Congress from moving too quickly, allow time for agencies to understand their jurisdiction and limitations, and give greater notice to those affected by the legislation. For example, in 2015, Congress passed the Consolidated Appropriations Act of 2016. As a result of massive additional taxes on healthcare benefits to employees, portions of the Act were delayed two separate times, allowing a 6-year notice for those potentially affected.

Ultimately, the CTA is discriminatory in nature. Only businesses with 20 employees or fewer and less than \$5 million in sales are being targeted. The information demanded will be due annually and if a small business employee or owner makes a mistake, or cannot afford a lawyer, accountant, or other expensive counsel, they are punished with tens of thousands of dollars in fines. Never has Congress so harshly punished millions of businesses for not being big enough. **While banks are considered "too-big-to-fail" it appears the government has deemed small businesses "too-small-to-succeed."**

NSBA and the small business community absolutely support efforts to curtail money laundering, however we believe in doing so responsibly. Though we are confident in our lawsuit, we also believe that Congress has a vital opportunity to right a historic wrong, and stand up for small business by delaying and ultimately repealing the CTA.

Thank you,



Todd McCracken
President & CEO
National Small Business Association