



Corporate Transparency Act FAQ

On Friday, March 1, 2024, a U.S. District Court Judge ruled in favor of NSBA in our lawsuit against the U.S. Department of Treasury to stop the harmful Corporate Transparency Act – here’s why.

About the CTA:

What is the law being challenged?

The Corporate Transparency Act (CTA), which would in effect create a national registry of owners of small businesses. This law was passed by Congress in 2021 as part of the National Defense Authorization Act (NDAA).

What does the CTA do?

The CTA significantly changes the requirements of who is responsible for providing information to combat money laundering. The law requires small businesses to provide information to the federal government, specifically the U.S. Department of Treasury’s Financial Crimes Enforcement Network (FinCEN), for each beneficial owner and incorporation applicant for the business or nonprofit.

What is FinCEN’s role under the CTA?

FinCEN has been charged with forming the rules to implement the CTA. The rule was made public on Sept. 29, 2022, and went into effect Jan. 1, 2024, for new business formations and will go into effect Jan. 1, 2025 for businesses in existence prior to Jan. 1, 2024.

NSBA Lawsuit Against CTA

Who is NSBA suing?

In November 2022, NSBA formally sued Janet Yellen in her capacity as U.S. Secretary of the Treasury and which is charged with carrying out the CTA.

What is the history of NSBA's suit over the CTA?

The challenge to the CTA began in 2022 when the NSBA and Huntsville business owner Isaac Winkles first brought their case before the District Court.

What is the latest on the suit?

In early March 2024, Judge Liles Burke of the U.S. District Court of the Northern District of Alabama granted summary judgment in NSBA’s challenge of the constitutionality of the CTA.

What does the District Judge's ruling mean for me as a member of NSBA?

The U.S. Treasury Department's FinCEN announced it would only follow the U.S. District Court’s ruling in favor of NSBA’s lawsuit to strike down the CTA, but ONLY for small businesses that were members of NSBA as of March 1, 2024.

What does the District Judge's ruling mean for me if I was not a member of NSBA at the time of the District Court ruling?

Rather than suspend enforcement of the CTA for all, FinCEN has declared “full speed ahead” on compliance for all but the plaintiffs in the case—meaning NSBA members as of March 1.

How is the Department of Justice responding to the District Court ruling for NSBA?

The U.S. Department of Justice (DOJ) and Treasury Department's FinCEN has formally appealed the U.S. District Court of Northern Alabama's ruling in favor of NSBA's lawsuit to strike down the CTA.

What can happen with the appeal?

Elevated from the District level in Alabama, the case is moving to the Eleventh Circuit for appeals – the same jurisdiction over Georgia and Florida – where the appeals court judge can affirm the ruling obtained from the District Court or disagree with the ruling and reinstate the CTA requirements over NSBA members.

Are there other options besides a legal appeal in court?

Congress can repeal the CTA. If Congress does not repeal the CTA, eventually the Supreme Court will need to address this issue, as well and strike down the statute for the entire United States – not just NSBA members.

What were the arguments made in the initial lawsuit filing?

Successful already at the District Court level, NSBA is continuing its challenge against the CTA in three different ways. Those are:

- **Federalism principles:** the federal government is seizing a power traditionally belonging to the states, a violation of the 10th amendment.
- **Unreasonable searches and seizures:** the information reporting obligation imposed on U.S. citizens under CTA violates the 4th amendment's protection against unreasonable searches and seizures.
- **Fairness and due process:** The CTA is vague and oppressive and creates new terms and definitions made up out of whole cloth which are not normally used in the entity formation process or in corporate or entity governance.

If this is a constitutional question, rather than one around implementation, why did NSBA wait until now to come forward with this case?

The small-business community has been sounding the alarm on these issues for as long as the CTA has been under discussion. Now that FinCEN has published the final rules and the law is going into effect, we had no choice but to act to protect the rights of small businesses owners by filing suit in November 2022.

CTA Background:

What are the issues surrounding the CTA for small businesses and nonprofits?

The CTA will create a cumbersome reporting process for small businesses that are rarely equipped with compliance teams or staff attorneys. This was previously handled effectively by the banks, under Customer Due Diligence (CDD) rules, when small businesses opened or maintained their bank accounts.

Who is required to file? Who is a beneficial owner?

Generally, anyone who has control of a small business (or any entity that is not specifically exempted) or has a 25 percent or greater beneficial interest in that small business. This would include a business's owner and investors.

Who would be considered an applicant under the CTA?

Anyone involved in filing to form a small business with fewer than 20 employees, OR any existing business under that employee threshold that takes on new investors or partners that hold 25 percent or greater beneficial interest.

When must small businesses submit information under the CTA?

When all new entities are formed or, for existing entities, within two years after the regulations are finalized. AND every time that entity takes on a new partner or investor with 25 percent or greater beneficial interest.

How many businesses and nonprofits will have to submit information under the CTA?

More than 32 million existing companies and an additional 5 million newly created companies per year.

What will each small business and nonprofit be required to submit to the federal government?

Small businesses and nonprofits will be required to submit the full legal name, date of birth, current residential or business address, unique identifying number from a valid U.S. passport, personal identification card, or state driver's license.

What are the penalties for small businesses and nonprofits that make a mistake in their submissions?

The CTA will potentially make a felon out of any unsuspecting person who is simply trying to make a living in his or her own lawful business or who is trying to start one and makes a simple mistake on a submission. The CTA imposes criminal penalties for violations, up to \$10,000 in fines and up to two years in jail.

Where will the information submitted under CTA be kept?

It will be stored in a database (housed within Treasury—which has already been breached by hackers in the past) that will be accessible by law enforcement and the federal government without the need for warrants or probable cause.

Will the database developed by CTA be public?

Despite the significant privacy concerns involved, there are calls for Congress to open the database to the public exposing millions of small business owners' information.

Don't states currently handle most of the incorporation of new small businesses?

Yes, entity formation has been handled by the states for more than 250 years, since before the U.S. was founded. The CTA lays the groundwork for a federal takeover of entity formation and governance practices.

Is the information from small businesses and nonprofits currently reviewed without the CTA? By whom?

Yes, business owners are already providing substantial ownership information to the federal government. Nearly every business must have a bank account to operate and bank accounts cannot be opened without providing drivers license, passport and other detailed personal information to a bank counterparty under existing laws and regulations, namely the Customer Due Diligence ("CDD") rules.

Are the CDD rules better than the CTA rules for ensuring compliance?

Yes, the CTA actually weakens anti-money laundering efforts currently managed through the CDD. For example, the CDD rules already require account openers to provide more detailed and verifiable information and documentation than the CTA. Information submitted under the CDD rules is then reviewed, vetted, and verified by compliance staff of the bank. There is no review of information submitted under the CTA.

Do the CDD rules prevent access to law enforcement since the CTA's proponents keep mentioning criminal and national security?

No, law enforcement has ready access to CDD information upon request.

If the CDD rules work so well, why did Congress create the CTA?

The largest opponents to the current CDD rules are banks that have to verify the information of their account holders. The CTA merely passes the buck from Wall Street to Main Street small businesses so the banks can save money on compliance costs - pushing those costs on to small businesses.

How does FinCEN determine who is properly reporting?

FinCEN will have no way to discern who is properly reporting and who is not as FinCEN will not perform any quality control over the database. Essentially, the reporting companies who are engaged in lawful activities will comply with the CTA, others will not and will be able to get around it, unlike under the CDD Rules providing a significant opportunity for unlawful activity.

Has a reporting process like in CTA been done anywhere else in the world? Did it work?

It has been tried unsuccessfully in the United Kingdom through the Companies House Register. The register was found to be utterly unreliable, subject to fraud and to reporting companies simply “making stuff up.”

Isn't there a way to work with Congress/Treasury/FinCEN to address your concerns, rather than seeking to throw the whole law out?

- We believe this is the fastest and best way to relieve small businesses of this flawed policy. We share the desire to cut off channels for illegal money laundering and we have strived to be a constructive part of the dialogue on how to do so, but placing an unfair and unconstitutional burden on small business owners is not the answer.
- A simpler and fairer solution is to use - and if necessary expand - the Customer Due Diligence framework that is already on the books. Furthermore, Congress can very easily require that the IRS share with FinCEN the information they are seeking.

You say you support efforts to crack down on money laundering, so what steps do you think Congress and the administration should take if not the CTA?

- There is a simpler, easier, and fairer way that is already in place and working. We should utilize and expand the Customer Due Diligence framework under existing laws and regulations to require the financial institutions to collect beneficial ownership information from their clients.
- If need be, we can expand the reach of the CDD rules to include accounts currently being missed – escrow accounts, title companies and other financial intermediaries etc.