Corporate Transparency Act Update: CTA MAY NOT APPLY to Domestic Entities After New Rule

Client Alert

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Last week, we reported that the U.S. Department of Treasury (DOT) through the Financial Crimes Enforcement Network (FinCEN) is temporarily staying enforcement of the monetary penalties for failure to comply with the Corporate Transparency Act (CTA), at least until March 21, 2025, when FinCEN intends to announce new reporting rules.

Yesterday, on March 2, 2025, the DOT further changed its position by announcing that:

- After the new rules take effect on March 21, **penalties and fines would no longer be levied** against United States citizens and domestic reporting companies that fail to report on a permanent basis, and
- DOT will be proposing **additional rulemaking that will narrow the reporting requirements** solely to foreign reporting companies, i.e., reporting companies owned by non-U.S. citizens.

DOT's stated intention is to "support hard-working American taxpayers and small businesses" in addition to "ensuring the rule is appropriately tailored to advance the public interest."

While the permanent removal of fines and penalties does not immediately impact the pending oral argument in *Texas Top Shop* and *Smith* - as these are primarily claims of violations of privacy - not penalties - it is unclear whether the second proposal (i.e., limiting the law solely to foreign owned businesses) may impact these pending cases. Federal District Court and Circuit Court judges may delay rendering opinions if a legislative change is pending.

However, although DOT may seek to impose regulation related to law, it is not a lawmaking body itself. The financial and criminal penalties are in the language of the CTA, not imposed by regulation, and the implementation of the CTA against all reporting entities - including domestic - is likewise included in the legislative text.

DOT does not have the authority to overrule an act of Congress without the support of Congress itself. Perhaps the DOT is relying on the recently (and unanimously) passed bill in the House of Representatives to extend CTA deadlines, but this bill does not yet have a Senate sponsor and does not limit reporting to foreign-owned entities. Thus, it is unclear how DOT will change the law as passed in 2020.

Once again, we are on the CTA see-saw, without a clue as to how these DOT efforts, the pending litigation, or further acts of Congress will play out.

While the penalty-free reporting is available, and while DOT's proposed changes are not yet authorized or in effect, we can answer any questions you have about your beneficial ownership information or reporting obligations in light of this latest development. In addition, we will continue to provide information on legal developments related to the CTA as matters unfold. Please contact the author of this Alert with your questions.

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