

Corporate Transparency Act

Issue

The Corporate Transparency Act (CTA) establishes uniform beneficial ownership information reporting requirements for certain types of corporations, limited liability companies, and other similar entities created in or registered to do business in the U.S. The CTA authorizes the Treasury Department's Financial Crimes Enforcement Network (FinCEN) to collect that information and disclose it to authorized government authorities and financial institutions, subject to effective safeguards and controls. The measure is intended to help prevent criminals, terrorists, proliferators, and corrupt oligarchs from hiding illicit money or other property in the U.S. A final rule implementing the beneficial ownership information reporting requirements of the CTA was issued in September 2022. These regulations go into effect on January 1, 2024.

The Roundtable and its coalition partners have provided input to FinCEN in response to its Advance Notice of Proposed Rulemaking (ANPRM).

The Roundtable's Position

- In the CTA, the term “beneficial owner” applies to an individual who directly or indirectly exercises “substantial control” over an entity or owns or controls not less than 25% of an entity. The definition of “substantial control” is expected to be addressed in the FinCEN regulations. FinCEN released proposed regulations on Dec. 7, 2021, seeking to implement the “beneficial ownership information” (BOI) requirement of the Corporate Transparency Act (CTA).
- Although the measure is intended to provide support for law enforcement investigations into shell companies engaged in money laundering, tax evasion, and terrorism financing, it places many costs and legal burdens on small businesses, especially those in the real estate industry.
- In 2021, The Roundtable and its coalition partners submitted detailed comments to FinCEN regarding the development, disclosure, and maintenance of a new federal registry that will contain beneficial ownership information.
- The real estate coalition's extensive comments emphasize the “scope of the CTA is far-reaching and will impact many commercial residential real estate businesses who are frequent users of the LLC structure for conducting business. If not implemented with a clear set of rules and regulations, the CTA could result in an outcome of confusion, missteps, and ultimately fines on law-abiding businesses.”

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The Roundtable's Position (Continued)

- The coalition's comments detail "concerns and recommendations for establishing regulations to implement reporting requirements—as well as provisions regarding FinCEN's maintenance and disclosure of reported information effectively and fairly."
- The coalition raised several specific implementation issues, including how small companies targeted by the CTA will face compliance burdens. The time-consuming and challenging process of gathering required information on all beneficial owners of a reporting company that may have been created years ago is also addressed.
- In 2022, The Roundtable and its coalition partners submitted comments to the U.S. Department of the Treasury (DOT) and FinCEN that support efforts to thwart illegal money laundering in real estate, while encouraging policymakers to find a balanced approach that does not unfairly burden law-abiding businesses.
- The Roundtable is part of a broad coalition of business trade groups that supports a legal challenge by the National Small Business Association (*NSBA v. Janet Yellen*), which challenges the constitutionality of the CTA. The [coalition stated](#), "It is clear whatever marginal benefit the CTA affords law enforcement will be far outweighed by the costs borne by small businesses and their owners."
- The Roundtable continues to work with industry partners to address the implications of FinCEN's proposed rules and the impact it could have on capital formation and the commercial real estate industry.