

## Part 3: Addressing and Demystifying Common Denials Surrounding the Upcoming CTA

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### **CTA Denial #3: “My industry’s lobbyists would never allow such a law to get passed.”**

Lobbyists had staved off attempts to implement the CTA, and its predecessor bills, for decades. However, in December 2020, the U.S. Congress, majority-controlled by Republican lawmakers in both the House and the Senate, passed the CTA as part of the 2021 National Defense Authorization Act—which then-President Donald Trump vetoed (his sole veto during his term of office). On January 1, 2021, Congress, by a two-thirds vote in both the House and Senate, overrode Trump’s veto and passed the CTA into law.

Since the CTA’s adoption, the political landscape has changed. President Joe Biden and a Democratic-controlled Senate now hold office through at least 2024. A change of party control, if any, of the presidency or the Senate will not take effect until mid-January 2025—and control of the House may then also be uncertain. By that time, all existing business entities will have been required to file their initial CTA report into the BOSS, and a full year of newly formed entities will also have been required to comply with the CTA. In short, hopes of a conservative government sea change, with an overturning of the CTA, doesn’t account for the Act’s conservative lawmaker origins or the political cycle timing between now and the Act’s January 1, 2024, implementation.

Hope for a legislative repeal or delay in the implementation of the CTA likely ended with the passage of the bipartisan Fiscal Responsibility Act of 2023 (“debt ceiling bill”), which lacked provisions pertaining to the CTA. In mid-June 2023, subsequent to the passage of the debt ceiling bill, the Accountability Through Confirmation Act and the Protecting Small Business Information Act were each introduced in the House Financial Services Committee by Committee Chairman Patrick McHenry (R-NC). These bills are intended to effectively delay the date that the BOI reporting requirements go into effect and to “reform” FinCEN with requirements intended to increase transparency and accountability within the agency, while protecting individuals’ privacy and businesses’ sensitive information in the BOSS reporting regime. It bears noting that Representative McHenry was also the sponsor of the debt ceiling bill. With the current gridlock in Congress, and the House’s challenges replacing its Speaker, these new bills seem unlikely to move beyond the House or to become laws.

Further, the Biden administration has shown no indication of delaying the CTA’s implementation,

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with the U.S. Department of Treasury and FinCEN expressing publicly, and repeatedly, that implementation of the CTA by the end of 2023 is a top priority. The stated goals of the CTA—combating the use of “shell” companies in the commission of money laundering, terrorist financing, financial and tax fraud, and other domestic and international illicit activity and corrupt practices—appear to align with the administration’s agenda. In other matters, the administration has shown a proclivity to support initiatives to reign in business rather than favor it.

The CTA mandated that FinCEN promulgate regulations under the CTA prior to January 1, 2022. On December 7, 2021, FinCEN published a proposed rule related to BOI under the CTA, with a public comment period extending through February 7, 2022. In response to this notice of proposed rulemaking (NPRM), FinCEN received over 240 formal comments, with submissions coming from a broad array of individuals and organizations, including members of Congress, government officials, groups representing small-business interests, corporate transparency advocacy groups, the financial industry and trade associations representing their members, law enforcement representatives, and other interested groups and individuals. In addition to these formal responses to the NPRM, FinCEN also received, accepted, and considered many additional comments and inquiries from the public. The extensive, thorough, detailed, and pointed feedback, often in direct opposition to the proposed implementation of the Act and to specific components of the Act, was considered, weighed, and utilized by FinCEN in its adoption of the CTA BOI Final Rule, issued on September 30, 2022. FinCEN went to great length in the Final Rule to describe, with specificity, the extreme vetting on each point in the Final Rule. That Final Rule, with limited exceptions, stayed true to the CTA and the proposed rule initially proposed. FinCEN did not exercise its discretion to expand the list or scope of the enumerated reporting company exceptions (in spite of numerous pleas to do so), nor did it show any reluctance to, or anticipate delay in, implementing the CTA. Based on this process, the implementation of compliance and enforcement of the CTA’s reporting obligations will most certainly begin January 1, 2024. Hopes that a “white knight” will ride in to thwart the CTA, or that a delay or elimination of this reporting obligation implementation would occur, were vanquished last year (in 2022) and confirmed by the CTA’s omission from the bipartisan debt ceiling bill.

## **Conclusion**

The Corporate Transparency Act is a new beneficial owner reporting requirement in the United States. Beginning January 1, 2024, tens of millions of U.S. business entities, and their beneficial owners, will become subject to FinCEN’s new requirements which were originally designed to catch “bad” actors choosing to hide behind the “corporate veil.” Whether you like it, hate it, or are indifferent, the CTA is here to stay. Compliance is both mandatory and advisable. Now is the time to discuss this with your legal team for guidance.

Link to [Part 1](#)

Link to [Part 2](#)

Link to [Part 4](#)

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