

The Cost of Transparency: The Economic Limits of the Corporate Transparency Act

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INTRODUCTION

The Corporate Transparency Act (CTA) was designed to be one of the most consequential federal transparency reforms in decades. It was enacted to curtail the use of anonymous business entities in money laundering, fraud, and tax abuse and promised to transform beneficial ownership disclosure from a reactive investigative

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tool into a universal reporting regime.¹ Yet the CTA's implementation has proven far more complicated and unstable than its legislative ambitions suggested. The statute's practical significance has been nearly eradicated by enforcement delays,² shifting compliance expectations,³ and sustained constitutional challenges.⁴ However, the erosion of the CTA's regulatory force does not diminish the underlying problem that motivated its enactment. This Note primarily focuses on the CTA's original reporting framework, which defined the statute's compliance obligations and cost structure.

The proliferation of anonymous business entities poses significant challenges to financial transparency and regulatory oversight in the United States. Information asymmetry between entities with opaque ownership and the United States government enables a range of illicit activities, including money laundering, tax evasion, and fraud. This imbalance of information is a classic example of a market failure leading to inefficient outcomes. Anonymous entities contribute to a substantial portion of financial crime. It is estimated that \$300 billion is lost annually to money laundering in the United States alone.⁵ This demands a regulatory response that reduces information asymmetry while carefully balancing the compliance burden placed on legitimate business operations.

In response to these challenges, a bipartisan Congress enacted the CTA on January 1, 2021, as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021.⁶ The CTA aimed to reduce the anonymity that promotes financial crime by mandating that entities proactively disclose their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN).⁷ However, the Act's implementation sparked significant debate among policymakers, economists, and business owners about its potential costs.⁸

In part due to this pushback, the CTA was dramatically scaled back during the spring of 2025. On March 26, 2025, FinCEN issued an Interim Final Rule that removed the requirement for U.S. companies and U.S. persons to report BOI under

1. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59548 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

2. See *infra* notes 36–37 and accompanying text.

3. See *infra* Section IV.A.

4. See *infra* Section II.A.4.

5. U.S. DEP'T OF THE TREASURY, NATIONAL MONEY LAUNDERING RISK ASSESSMENT 2 (2015), <https://home.treasury.gov/system/files/246/National-Money-Laundering-Risk-Assessment-06-12-2015.pdf> [<https://perma.cc/2K67-NUK5>].

6. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (2020).

7. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59498.

8. See generally, e.g., *infra* Section II.A.4 (discussing the various constitutional challenges to the CTA); *The Corporate Transparency Act: Bad Policy and Unconstitutional*, S CORP (Nov. 18, 2022), <https://s-corp.org/2022/11/the-corporate-transparency-act-bad-policy-and-unconstitutional/> [<https://perma.cc/GJ3L-FSTT>] (criticizing the CTA as imposing vague, costly, and punitive reporting obligations on small businesses); Brief of Amici Curiae States of West Virginia, Kansas, South Carolina, and 22 Other States in Support of Respondents, *McHenry v. Tex. Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025) (Alito, J., in chambers) (No. 24A653) (reflecting opposition from twenty-five states concerned about federal overreach and compliance burdens).

the CTA and narrowed the definition of “reporting company” to include only certain foreign entities registered to do business in the United States.⁹ Under this Interim Final Rule, all entities formed in the United States are exempt from that obligation, and enforcement of penalties for domestic noncompliance has been suspended.¹⁰ This regulatory rollback substantially reconfigured the statute’s operational scope. FinCEN has not yet issued a final rule, underscoring the continued relevance of the statute’s original design.

This Note evaluates the original CTA through a cost-benefit analysis to explain both its economic implications and institutional instability. This framework is particularly useful in the context of disclosure-based regulation, where policymakers seek to reduce information asymmetries while inevitably imposing compliance burdens. The analysis goes beyond measuring regulatory costs and identifies the conditions under which transparency mandates become inefficient or ineffective. By examining the statute’s original reporting framework, this Note provides both an explanation of the CTA’s trajectory and insight into the design challenges facing future beneficial ownership disclosure regimes.

In Part I, this Note explores the history of money laundering regulations in the United States. It also provides background on the original CTA, including its objectives, key provisions, and the economic motivations behind its enactment. Part II delves into the compliance costs and examines the unintended consequences of the CTA, including market inefficiencies and barriers to entry for new entities. In Part III, the focus shifts to a cost-benefit analysis of the CTA’s reporting requirements. This analysis demonstrates that the costs generated by the CTA substantially exceeded its anticipated benefits, helping explain the Act’s eventual failure. Part IV begins by examining the Interim Final Rule and the narrowing of the CTA and then considers the structural and institutional conditions necessary for a viable federal beneficial ownership reporting regime. Finally, this Note concludes that while the CTA pursued important transparency objectives, its design reveals limitations that must be addressed for any federal beneficial ownership reporting regime to succeed.

I. THE PATH TO ENHANCED CORPORATE TRANSPARENCY

Historical regulations laid the groundwork for modern anti-money laundering (AML) laws, but their implementation has been gradual. It takes time for the government to develop a comprehensive regulatory scheme and for attitudes toward oversight to shift. The CTA was enacted as the next major reform to AML regulation, initially subjecting nearly every U.S. entity to some form of AML oversight. The economic justification for AML regulation centers on the idea that increased federal oversight will ensure AML laws are enforced more efficiently. This heightened scrutiny will also act as a deterrent, discouraging financial crime and thus benefiting society.

9. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688, 13690 (proposed Mar. 26, 2025) (to be codified at 31 C.F.R. pt. 1010).

10. *Id.*

A. The History of Anti-Money Laundering Regulations in the United States

The development of AML regulations in the United States is shaped by economic principles, law enforcement priorities, and political considerations. As illicit financial activities—such as money laundering through luxury real estate¹¹ and the use of shell companies to defraud the U.S. government¹²—become more sophisticated, the demand for improved AML regulations intensifies.

AML regulations in the United States can be traced back to the Currency and Foreign Transactions Reporting Act of 1970, commonly known as the Bank Secrecy Act (BSA).¹³ The BSA was the first major piece of legislation that targeted money laundering.¹⁴ This law required financial institutions to report suspicious transactions to FinCEN and established a framework for monitoring financial activity.¹⁵ Over the following decades, smaller pieces of AML legislation were enacted, but the next major reform took place in 2001 with the passage of the USA PATRIOT Act.¹⁶ This legislation significantly expanded and strengthened the government’s ability to track and prosecute money laundering.¹⁷

Modern AML laws serve a dual purpose: punishing those engaged in criminal activity and deterring future crimes.¹⁸ This punishment framework is rooted in a long tradition of criminal offenses against “receiving stolen goods.”¹⁹ Peter Lewisch characterizes this as a “secondary crime” designed not to punish the theft itself, but to punish the “concealing, disguising, or selling” of illegally obtained property.²⁰ These offenses go beyond penalizing the initial wrongdoing and also target efforts to conceal stolen assets, which diminish the rightful owner’s ability to recover them.²¹ Similarly, AML regulations target the financial pathways criminals use to hide their gains, making it more difficult for illicit activity to remain undetected. These regulations do more than address the initial theft or fraud; they criminalize the additional act of concealment,²² acknowledging the broader economic harm caused by making assets harder to trace.

11. S. Alexandra Bieler, *Peeking into the House of Cards: Money Laundering, Luxury Real Estate, and the Necessity of Data Verification for the Corporate Transparency Act’s Beneficial Ownership Registry*, 27 *FORDHAM J. CORP. & FIN. L.* 193, 193 (2022).

12. Jacob Azrilyant, *Shell Game: How the Corporate Transparency Act Aims to End the Illicit Use of Shell Companies, Where It Fails, and What to Do About It*, 51 *PUB. CONT. L.J.* 1, 3 (2021).

13. *The Bank Secrecy Act*, FINCEN, <https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act>.

14. *History of Anti-Money Laundering Laws*, FINCEN, <https://www.fincen.gov/history-anti-money-laundering-laws> [<https://perma.cc/B62H-9CSP>].

15. *Id.*

16. *Id.*

17. *Id.*

18. *USA PATRIOT Act*, FINCEN, <https://www.fincen.gov/resources/statutes-regulations/usa-patriot-act> [<https://perma.cc/5DV6-BVD3>].

19. Peter Lewisch, *Money Laundering Laws as a Political Instrument: The Social Cost of Arbitrary Money Laundering Enforcement*, 26 *EUR. J.L. & ECON.* 405, 406 (2008).

20. *Id.*

21. *Id.*

22. *See* 18 U.S.C. § 1956(a)(1)(B); § 5316(e)(2)(B)(i).

The deterrence aspect of modern AML laws aligns with Gary Becker's economic theory of criminal deterrence.²³ Becker posits that individuals rationally weigh the benefits and costs of engaging in illegal activities, especially white-collar crime, and only participate when the benefits outweigh the costs.²⁴ The motivation behind these crimes, often classified as "acquisitive," is primarily economic in nature.²⁵ Posner theorizes that "[t]he major function of criminal law in a capitalist society is to prevent people from bypassing the system of voluntary, compensated exchange . . . in situations where, because transaction costs are low, the market is a more efficient method of allocating resources than forced exchange."²⁶ In this context, white-collar crimes represent pure involuntary transfers of wealth that undermine the efficiency of market transactions.²⁷

Effective AML laws remedy this by increasing the cost of criminal behavior, not only through punishment but also by targeting actions that prolong the crime's economic consequences, such as the illicit use of shell companies and other mechanisms to obscure ownership.²⁸ By raising the probability of detection and heightening the penalties, these laws aim to shift the cost-benefit calculation for potential offenders, ultimately reducing the incidence of white-collar crime. Not only does this help deter the underlying crime, but it also increases the costs for actors attempting to shirk AML regulations when they must commit additional crimes—such as falsifying financial records—in order to comply with federal reporting requirements. Each additional layer of concealment increases the risk and expense for criminals. This further reinforces the deterrent effect of these laws.

Despite the strengthening of AML regulations, money laundering and fraud continue to be pervasive issues in the United States. In the real estate sector, for example, privately held entities frequently participate in luxury real estate transactions.²⁹ Since real estate can be purchased through a shell company in the United States, no beneficial owner automatically attaches to transactions conducted with shell companies.³⁰ In addition to the practicality and appreciation of property, real estate is one of "very few ways to successfully turn millions of dollars with suspicious origins into a legitimate investment without significant difficulty."³¹

23. Gary S. Becker, *Crime and Punishment: An Economic Approach*, 76 J. POL. ECON. 169, 214 (1968).

24. *Id.*; see also STEVEN SHAVELL, *ECONOMIC ANALYSIS OF LAW* 98 (2004) (explaining that optimal deterrence requires individuals to internalize the expected costs of sanctions, adjusted for the probability of detection, such that they will engage in harmful conduct only when the expected benefits exceed the harms).

25. See Richard A. Posner, *An Economic Theory of the Criminal Law*, 85 COLUM. L. REV. 1193, 1196 (1985).

26. *Id.* at 1195.

27. *Id.* at 1205.

28. See Azrilyant, *supra* note 12, at 3.

29. Bieler, *supra* note 11, at 193.

30. INT'L COMPAR. LEGAL GUIDES, *ANTI-MONEY LAUNDERING 2020*, at 223 (3rd. ed. 2020), https://www.acc.com/sites/default/files/resources/upload/AML20_E-Edition.pdf [<https://perma.cc/DE6J-P2SY>].

31. Bieler, *supra* note 11, at 199.

In addition to the use of shell companies to conduct shady real estate transactions, these structures have also been used in recent years to circumvent government regulation, particularly in the defense sector.³² Shell companies owned by foreign adversaries have infiltrated the U.S. defense supply chain and “allow[ed] bidders to defraud the Department of Defense (DOD) by creating a false appearance of competition, bidding on contracts they would otherwise be ineligible for, [and] artificially inflating contract prices.”³³ These examples reinforce the fact that even with enhanced AML regulations, significant gaps remain. The CTA’s BOI reporting requirements were an attempt to increase transparency in shell companies, punish those engaged in criminal activity, and deter bad actors from committing financial crimes.

B. The Original Corporate Transparency Act Regime

The CTA, codified at 31 U.S.C. § 5336,³⁴ marked a significant development in the federal government’s approach to combating illicit financial activity in the U.S. corporate landscape. While the CTA was enacted on January 1, 2021, its reporting requirements did not go into effect until January 1, 2024.³⁵ Entities in existence prior to that date initially had until January 1, 2025, to file their first reports.³⁶ Amid ongoing litigation, the deadline was then extended to March 21, 2025.³⁷ Under the statute’s original implementation framework, the CTA aimed to address the misuse of anonymous entities for illicit purposes like money laundering, tax evasion, and fraud.³⁸ To accomplish this goal, the CTA required that entities proactively disclose information about their beneficial owners to FinCEN.

A “beneficial owner” was defined as “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial control over the entity; or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.”³⁹ This definition included officers of an organization who had “substantial control” and were authorized to make decisions on behalf of the entity.⁴⁰ It also included owners, or those receiving profits

32. Azrilyant, *supra* note 12, at 3.

33. *Id.*

34. Beneficial Ownership Information Reporting Requirements, 31 U.S.C. § 5336. Citations to this section refer to the 2022 version of the Act, as in effect as of April 2026; regulatory revisions are anticipated upon finalization of FinCEN’s Interim Final Rule.

35. FINCEN, U.S. DEP’T OF THE TREASURY, BENEFICIAL OWNERSHIP INFORMATION FREQUENTLY ASKED QUESTIONS 3 (2025), <https://www.fincen.gov/system/files/shared/BOI-FAQs-QA-508C.pdf> [<https://perma.cc/WSW7-QGQF>] [hereinafter FAQ].

36. *Id.*

37. *Corporate Transparency Act Reporting Requirements Reinstated with Deadline Extension*, COOLEY (Feb. 20, 2025), <https://www.cooley.com/news/insight/2025/2025-02-20-corporate-transparency-act-reporting-requirements-reinstated-with-deadline-extension> [<https://perma.cc/LTZ4-GS3H>].

38. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59548 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

39. 31 U.S.C. § 5336(a)(3)(A)(i)–(ii).

40. *Id.* § 5336(a)(3)(A)(i).

from an entity, whether they were involved in the day-to-day operations or not.⁴¹ This definition had several exemptions, including for minors, intermediaries, creditors, mere employees, and individuals whose only interest in an entity was through an inheritance right.⁴²

The CTA required that entities submit a BOI report to FinCEN, which must include the entity's legal name, any "doing business as" names, the address of its principal place of business, its jurisdiction of formation or registration, and a taxpayer identification number.⁴³ Additionally, the report required details about each beneficial owner, including their full legal name, date of birth, current address, and an identifying number from an approved identification document.⁴⁴ FinCEN further clarified that each beneficial owner must submit a *residential* address⁴⁵ and an image of the identification document used.⁴⁶ Entities were mandated to keep their BOI reports current by filing an updated report within thirty days of any change to the information provided on the initial report.⁴⁷ This included updates to beneficial ownership, entity details, and personal information, like an address change for a beneficial owner.⁴⁸

Even when it was first enacted, the CTA did not apply to all entities formed or approved to do business in the United States. It defined an entity required to comply (a "reporting company") as:

[A] corporation, limited liability company, or other similar entity that is—(i) created by filing a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by filing a document with the secretary of state or a similar office under the laws of a State or Indian Tribe.⁴⁹

The statute included twenty-three entity-type exemptions, including exemptions for banks, investment companies, investment advisers, securities brokers or dealers, tax-exempt entities, and large operating companies.⁵⁰ Large operating companies were defined as entities that:

(I) employ[ed] more than 20 employees on a full-time basis . . . (II) filed in the previous year Federal income tax returns in the United States demonstrating more than \$5,000,000 in gross receipts or sales in the

41. *Id.* § 5336(a)(3)(A)(ii).

42. *Id.* § 5336(a)(3)(B)(i)–(iv).

43. FAQ, *supra* note 35, at 34.

44. § 5336(b)(2)(A).

45. FAQ, *supra* note 35, at 37.

46. *Id.* at 34.

47. *Id.* at 43.

48. *Id.*

49. § 5336(a)(11)(A)(i)–(ii).

50. FAQ, *supra* note 35, at 9.

aggregate . . . [and] (III) ha[d] an operating presence at a physical office within the United States.⁵¹

These exemptions reflected the government’s attempt to target smaller, privately held companies, which have historically operated with limited transparency. In contrast, many of the larger corporations and financial institutions that were exempt from the CTA were already subject to stringent reporting requirements. The CTA aimed to fill the gaps that other AML regulations left open.

Figure 1: List of Exemptions to CTA BOI Reporting⁵²

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

The CTA imposed significant penalties for noncompliance. Individuals who “willfully provide[d], or attempt[ed] to provide, false or fraudulent beneficial

51. § 5336(a)(11)(B)(xxi)(I)–(III).

52. FAQ, *supra* note 35, at 9.

ownership information, including a false or fraudulent photograph or document, to FinCEN,” as well as those who “willfully fail[ed] to report complete or updated beneficial ownership information to FinCEN,” faced civil penalties of \$500 per day (not to exceed \$10,000), imprisonment for up to two years, or both.⁵³ The daily civil penalty was also set to be adjusted annually for inflation, bringing the 2024 fine to \$591 per day.⁵⁴ Reporting companies that made a mistake or omission in their initial BOI report might have avoided penalties if they corrected their mistake within ninety days of the original filing deadline.⁵⁵

The BOI database was designed to provide law enforcement and regulatory agencies greater insight into corporate ownership structures to aid in their efforts to combat illegal financial activities. While BOI would be reported directly to FinCEN, the bureau would be authorized to share the information with other government agencies.⁵⁶ The reports could be shared with federal agencies “engaged in national security, intelligence, or law enforcement activit[ies],” state and local law enforcement agencies working on a “criminal or civil investigation,” financial institutions subject to “customer due diligence requirements,” and even “trusted foreign countries” to aid in an investigation.⁵⁷ Like the harsh penalties that reporting companies and their agents faced for noncompliance with the CTA,⁵⁸ employees of law enforcement agencies and financial institutions that utilized BOI data for an unintended purpose also faced strict civil and criminal penalties, ranging as high as \$250,000, imprisonment for not more than five years, or both.⁵⁹

While the CTA was a groundbreaking piece of legislation that had the potential to greatly improve AML oversight in the United States, its implementation quickly revealed substantial practical and interpretive challenges. FinCEN issued an official answer to more than 120 questions from attorneys, accountants, reporting companies, and professionals employed by reporting companies or impacted by the CTA in 2024 alone.⁶⁰ The high volume of inquiries highlights how widespread the uncertainty surrounding the Act’s reporting requirements was. The early implementation challenges revealed structural tensions within the disclosure regime. These tensions are best understood through the economic logic underlying disclosure-based regulation.

C. Enhancing Efficiency in Regulatory Compliance Efforts

The economic rationale for the CTA has always been rooted in the reduction of information costs, coupled with increased efficiency in combating noncompliance. By creating a centralized BOI database, the CTA sought to streamline regulatory and enforcement efforts. The lack of transparency in certain corporate structures poses

53. § 5336(h)(1)(A)–(B), (3)(A)(i)–(ii).

54. FAQ, *supra* note 35, at 46.

55. *Id.* at 46.

56. § 5336(c)(2)(B).

57. *Id.* § 5336(c)(2)(B)(i)–(ii).

58. *Id.* § 5336(h)(3)(A).

59. *Id.* § 5336(h)(3)(B)(i)–(ii).

60. *See generally* FAQ, *supra* note 35 (containing explanatory answers to frequently asked questions).

significant challenges for government agencies, financial institutions, and law enforcement in tracing ownership of organizations engaged in illicit financial activities. The CTA directly addressed these obstacles by mandating the disclosure of BOI for reporting companies.

Compliance with the CTA was expected to reduce the information costs associated with investigating corporate ownership. Uncovering who owns and controls a shell company is one of the most time-consuming tasks in a financial investigation. Many shell companies are purposely structured to obscure ownership, which makes tracing their beneficial owners incredibly challenging.⁶¹ The BOI database was designed to help eliminate this issue and grant FinCEN quick and easy access to beneficial ownership information. The idea was that once BOI was collected, FinCEN would be able to share it with other regulatory bodies at a very low cost.⁶² Agencies and financial institutions seeking to access BOI would be required to “enter into a memorandum of understanding (MOU) with FinCEN that describes how [the agency would] protect the security and confidentiality of the information,”⁶³ but would then be permitted to access a secured, non-public database.⁶⁴ This would essentially eliminate the ongoing information-sharing costs associated with criminal enforcement in the financial domain.

This focus on reducing information costs aligns with the broader economic theory of information transmission. Kenneth J. Arrow’s analysis of information economics emphasizes that the costliest part of information is its initial acquisition.⁶⁵ Arrow posits that once information has been gathered, it has an “extreme form of increasing returns.”⁶⁶ Information is relatively inexpensive to transmit and distribute, and the same piece of information can be used over and over without ever diminishing its value.⁶⁷ The original design of the CTA reflects this idea. The statute leaned into this economic principle by shifting the burden (and the costs) of BOI data collection onto private entities. By requiring reporting companies to keep accurate information on file with FinCEN, through the threat of civil and criminal penalties, FinCEN could achieve significant economies of scale in information dissemination. This in turn would make regulatory oversight more efficient.

The reduction in information costs would also facilitate greater coordination among federal and state agencies. With FinCEN’s consolidation of BOI data in a central database, various regulatory bodies could access the same set of data, which would reduce the need for redundant data collection efforts and increase the efficiency of investigations. Ultimately, the CTA was initially designed to make regulatory compliance more efficient by streamlining the process of obtaining crucial information. As Arrow emphasizes, the value of information lies in its ability to be

61. Brendan O’Leary, *The Corporate Transparency Act: A Step Toward Broken Shells*, 47 J. LEGIS. 133, 137 (2021).

62. § 5336(c)(2)(B).

63. FAQ, *supra* note 35, at 56.

64. Beneficial Ownership Information Access and Safeguards, 88 Fed. Reg. 88732, 88733–34 (Dec. 22, 2023) (codified at 31 C.F.R. pt. 1010).

65. Kenneth J. Arrow, *The Economics of Information: An Exposition*, 23 EMPIRICA 119, 120 (1996).

66. *Id.* at 121.

67. *Id.* at 120–21.

shared and utilized across multiple contexts.⁶⁸ The CTA's original design allowed resources to be allocated toward enforcement and regulatory actions rather than investigative efforts.

II. THE COST OF CORPORATE TRANSPARENCY

The CTA had the potential to increase efficiency in AML enforcement and reduce information-sharing costs among government agencies. This is an undeniably important goal; however, it is also an expensive one. The cost of effective compliance raised significant concerns for entities subject to the Act's reporting requirements. These costs are central to understanding the statute's trajectory, as they generated the practical constraints that contributed to its unraveling. This Section explores the various economic burdens imposed on reporting companies and FinCEN by the CTA. Many of the direct financial costs would be borne by reporting companies. Conversely, many of the opportunity costs would flow to FinCEN. The CTA, despite its intended benefits, created new challenges for both the private and public sectors.

A. Compliance Costs for Reporting Companies

The financial obligations the CTA imposed on reporting companies were part of a larger trend of increasing compliance costs in the United States and worldwide.⁶⁹ The introduction of the CTA represented a further escalation of this trend. Even absent new regulations, companies have faced mounting compliance costs,⁷⁰ which suggests that the CTA's new requirements would only intensify this financial burden.

1. Direct Financial Costs

In January 2024, FinCEN published a regulatory impact analysis that detailed the anticipated costs to different types of reporting companies required to comply with the CTA.⁷¹ This impact report is required by the Regulatory Flexibility Act when an

68. See Arrow, *supra* note 65, at 119–20.

69. FORRESTER, TRUE COST OF FINANCIAL CRIME COMPLIANCE STUDY, 2023 UNITED STATES AND CANADA 2 (2023), <https://risk.lexisnexis.com/-/media/files/financial%20services/research/true-cost-of-financial-crime-compliance-study-uscan-2023.pdf> [<https://perma.cc/4UA3-DP9M>].

70. See BUSINESS ROUNDTABLE, THE CUMULATIVE REGULATORY BURDEN IS SUBSTANTIAL AND GROWING, WEIGHING ON BUSINESSES AND THE BROADER U.S. ECONOMY 1, <https://s3.amazonaws.com/brt.org/CumulativeRegulatoryBurden.pdf> [<https://perma.cc/8WJZ-BAGK>] (“The Office of Management and Budget (OMB) estimates the cost of ‘major’ rules enacted in the last decade totals nearly \$100 billion per year in current dollars.”). The total number of restrictions in federal regulations grew 167% from 1971 to 2021. *Id.*; see also *Up to Code: The Costs of Regulation and Regulatory Uncertainty*, KENAN INST. OF PRIV. ENTER. (Apr. 25, 2024), <https://kenaninstitute.unc.edu/kenan-insight/up-to-code-the-costs-of-regulation-and-regulatory-uncertainty/> [<https://perma.cc/F2NG-2DMJ>].

71. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59549 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

agency proposes a rule that will have a “significant economic impact upon a substantial number of small entities.”⁷² FinCEN estimated that 32.6 million reporting companies would be required to file initial BOI reports in year one (2024).⁷³ They estimated that an additional five million reporting companies would be required to file initial reports in years two through ten.⁷⁴ To better estimate the cost of filing BOI reports, FinCEN separated reporting companies into three categories based on the complexity of their ownership structure.⁷⁵ Reporting companies with one beneficial owner were classified as “simple structure” entities.⁷⁶ Reporting companies with four beneficial owners were considered “intermediate structure” entities.⁷⁷ Reporting companies with eight or more beneficial owners were defined as complex structure entities.⁷⁸ FinCEN estimated that 59% of reporting companies would be simple structure entities, while 36.1% would have intermediate structures and just 4.9% would have a complex structure.⁷⁹

The cost to each type of beneficial ownership structure varied based on the time required to understand the reporting requirements, collect and review information about beneficial owners, file the report, and consult professional expertise.⁸⁰ For simple structure reporting companies, the estimated cost for an initial report was \$85.14.⁸¹ For intermediate structure reporting companies, an initial filing would cost about \$1,350.⁸² And, for a complex structure, the cost of the initial report was estimated to be \$2,614.87.⁸³

Figure 2: Burden and Cost of Initial BOI Reports Per Reporting Company⁸⁴

Description	Simple Structure	Intermediate Structure	Complex Structure
Read FinCEN BOI documents, understand requirement, and analyze reporting company definition	40 minutes	170 minutes	300 minutes
Identify, collect, and review information about beneficial owners and company applicants	30 minutes	135 minutes	240 minutes
Fill out and file report	20 minutes	65 minutes	110 minutes
Total time burden to file:	90 minutes	370 minutes	650 minutes
Avg. wage rate to file (in dollars)	\$56.76	\$56.76	\$56.76
Professional expertise cost (in dollars)	\$0	\$1,000	\$2,000
Cost per initial report:	\$85.14	\$1,350.00	\$2,614.87

72. Regulatory Flexibility Act, 5 U.S.C. § 610(a) (1980).

73. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59549.

74. *Id.*

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.*

79. *Id.*

80. *Id.* at 59573.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

Applying these cost estimates to the distribution of reporting companies' beneficial ownership structures, FinCEN estimated the total cost of filing initial BOI reports in year one would amount to \$21.7 billion.⁸⁵ In years two through ten, the total cost of initial BOI reports was estimated to be \$3.3 billion annually.⁸⁶ However, even those estimates, taken at face value, did not capture the full tangible cost to reporting companies. In addition to their initial BOI reports, reporting companies were required to keep their list of beneficial owners and their beneficial owners' personal information updated with FinCEN.⁸⁷ The total estimated cost to reporting companies for full compliance with the CTA in year one was \$22.8 billion.⁸⁸ In years two through ten, the cost was estimated to be \$5.6 billion annually.⁸⁹

Figure 3: Total Burden and Cost⁹⁰

Year 1			
Activity	Count of reports	Burden hours	Cost
Initial BOI reports	32,556,929	118,572,335	\$21,673,487,885.48
Updated BOI reports	6,578,732	7,657,096	\$1,038,524,428.72
FinCEN identifier applications for individuals	325,569	108,523	\$6,159,488.81
FinCEN identifiers updates for individuals	12,180	2,030	\$115,218.68
FinCEN costs			\$82,000,000.00
Totals	39,473,410	126,339,984	\$22,800,287,021.69
Year 2+			
	Count of reports	Burden hours	Cost
Initial BOI reports	4,998,468	18,204,421	\$3,327,532,419.21
Updated BOI reports	14,456,452	16,826,105	\$2,282,108,290.77
FinCEN identifier applications for individuals	49,985	16,662	\$945,666.84
FinCEN identifiers updates for individuals	26,575	4,429	\$251,386.22
FinCEN costs			\$35,600,000.00
Totals	19,531,480	35,051,617	\$5,646,437,763.04

85. *Id.*

86. *Id.*

87. FAQ, *supra* note 35, at 43.

88. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59582 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

89. *Id.*

90. *Id.* at 59581. These tables are from the Federal Register document, with internal footnote call numbers omitted to avoid confusion.

In total, FinCEN’s estimate of the “present value of cost [to reporting companies] for a 10-year horizon at discount rates of seven and three percent . . . [was] \$55.7 billion and \$64.8 billion, respectively.”⁹¹

While FinCEN’s estimate of the compliance cost to reporting companies provided a quantitative framework for understanding the financial burden of the CTA, it is essential to recognize the inherent limitations of this approach. These estimates relied on a host of assumptions that FinCEN had no way to verify. For example, FinCEN assumed that simple structure entities would not need to seek professional expertise to comply with the BOI reporting requirements.⁹² Intermediate and complex structure entities would need to consult professional expertise, but only to the tune of \$1000 and \$2000, respectively.⁹³ Reporting companies disagreed with this assessment. In a number of constitutional challenges to the CTA, discussed in Section II.A.4 below, plaintiffs alleged that many small business owners, even those who solely own an entity, would need to consult an attorney to parse through the difficult and vague language of the statute to see if they qualified for an exemption.⁹⁴ If the entity did qualify for an exemption, it would have expended resources that were unaccounted for in FinCEN’s analysis. If the entity did not qualify for an exemption, it would need further professional guidance to determine what and who must be included in the BOI report.⁹⁵ Plaintiffs alleged that “these Americans [would] likely have to pay hundreds or even thousands of dollars to attorneys to navigate the statute’s labyrinthine reporting requirements.”⁹⁶ This is just one example of an assumption FinCEN made that was probably unrealistic in practice.

The actual cost of compliance was likely to be much higher than FinCEN’s figures suggest, as many relevant data points remained uncollected by FinCEN and unconsidered in their analysis. The complexities of compliance, especially when considering variations across different industries, contributed to a landscape that was far more nuanced than these estimates implied. Ultimately, the reliance on these simplistic (though already enormous) metrics was, without a doubt, an underestimation of the true economic burden of the CTA on reporting companies.

2. Opportunity Costs

These compliance costs extended beyond just the monetary expense of preparing and filing accurate reports. Reporting companies would be required to allocate resources to ensure accurate data collection, reporting, and ongoing recordkeeping. In addition to the tangible cost of compensating employees for the hours they worked on CTA-related matters, discussed above, this work would also divert attention from other core business functions. Figure 3 illustrates the vast number of “burden hours” FinCEN expected reporting companies to spend on CTA compliance. In the ten years

91. *Id.*

92. *Id.* at 59573.

93. *Id.*

94. Complaint at 20–21, *Nat’l Small Bus. United v. Yellen*, No. 721 F. Supp. 3d 1260 (N.D. Ala. 2024), *rev’d*, *Nat’l Small Bus. United v. U.S. Dep’t of Treasury*, 161 F.4th 1323 (11th Cir. 2025).

95. *Id.*

96. *Id.* at 20–21.

that followed the implementation of the CTA, reporting companies were projected to spend almost 442 million hours filing and updating BOI reports.⁹⁷ Whether reporting companies hired additional employees to address these requirements or had existing employees take on this task, FinCEN's calculation did not account for these opportunity costs.

The CTA did not remain in force long enough to examine the impact that this diversion of resources might have had on reporting companies. However, a useful historical comparison is the BSA, discussed above in Part I.A. The BSA applies AML regulations to financial institutions (many of which were exempt from the CTA), including banks, securities brokers or dealers, investment banks, and insurance companies.⁹⁸ The BSA's long history allows its effectiveness to be examined.⁹⁹ A 2015 cost-benefit analysis of the BSA pointed out that AML compliance costs associated with the Act have skyrocketed since its implementation in 1970.¹⁰⁰ Yet, "[t]here is no indication that 'higher' standards and the massive costs imposed on banks are actually effective in reducing money laundering and other financial crimes."¹⁰¹ Further, "when banks spend an enormous portion of their budget on compliance, this money is no longer available for the core business of banking—providing loans and services to customers."¹⁰²

Studies on the BSA illustrate how sustained compliance burdens may reshape organizational priorities and resource allocation decisions. In the long term, it is likely that the CTA would have similar effects on reporting companies that the BSA has had on the entities subject to its regulations. Compliance with the CTA would have almost certainly forced reporting companies to shift their focus away from core operations, resulting in a loss of productivity. Resources that could have been used to expand into new markets, develop new products, or improve customer service would instead be reallocated to managing regulatory compliance. For businesses with limited resources, this shift could have stifled growth and innovation.¹⁰³ For larger or more sophisticated operations, it could have led to inefficiencies in resource allocation.¹⁰⁴

97. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59581 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

98. 31 U.S.C. § 5312(a)(2).

99. See *The Bank Secrecy Act*, FINCEN, <https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act> [<https://perma.cc/8C9T-5DFZ>].

100. Lanier Saperstein, Geoffrey Sant & Michelle Ng, *The Failure of Anti-Money Laundering Regulation: Where is the Cost-Benefit Analysis?*, 91 NOTRE DAME L. REV. ONLINE 1, 4–5 (2015).

101. *Id.* at 3.

102. *Id.* at 8.

103. Saperstein et al., *supra* note 100, at 8; see also Derek Khanna, *Regulations Stifle Innovation*, THE HILL (Sept. 15, 2015, at 13:00 ET) <https://thehill.com/blogs/congress-blog/technology/253625-regulations-stifle-innovation/> [<https://perma.cc/9ZWK-KGGZ>].

104. See Robert C. Bird & Stephen Kim Park, *Turning Corporate Compliance into Competitive Advantage*, 19 U. PA. J. BUS. L. 285, 289 (2017).

3. Barriers to Market Participation

In addition to the financial and opportunity costs that may have stifled growth for reporting companies, the CTA had the potential to act as a barrier to market participation. In *The Nature of the Firm*, R.H. Coase highlights the essential role transaction costs—like information gathering, negotiation, and enforcement—play in the formation and operation of firms.¹⁰⁵ Businesses exist to reduce inefficiencies that arise from market transactions.¹⁰⁶ However, as firms get larger, they face decreasing returns due to the cost of organizing, managerial mistakes, and the rising costs of factors of production.¹⁰⁷ Coase's theory suggests that when the cost of participating in the market exceeds the benefit of formal incorporation, firms may choose to remain informal or avoid market participation altogether.¹⁰⁸

Coase's theory of the firm is especially relevant to the CTA because additional regulatory oversight increases the costs for formally incorporated entities. For some reporting companies, the CTA may have made the cost of organizing an additional transaction too expensive to complete in a formally incorporated firm. For example, wealthy private actors who would typically set up a limited liability company (LLC) to house a real estate transaction or a specific type of investment may have opted to complete the transaction inside an existing entity (which may be exempt) or forgo the transaction entirely to avoid BOI reporting. This behavior could lead to decreased risk-taking. These actors may have been more reluctant to invest in higher-risk investments, like startups, if they couldn't house the transaction in its own entity, for fear of the potential impact on their other investments.¹⁰⁹ Reduced willingness to create new entities, due to the CTA's requirements, could limit investment diversification and potentially discourage market participation. Instead, wealthy private actors might have chosen to allocate more of their capital into existing, lower-risk investments, thereby stifling growth and investment in emerging sectors.¹¹⁰

More broadly, the CTA may have generated managerial mistakes. Entrepreneurs who act as the firm's management would be forced to allocate employees and other resources to ensuring CTA compliance,¹¹¹ even if those resources would be used more efficiently to serve core business operations. Finally, the cost of the factors of

105. R. H. Coase, *The Nature of the Firm*, 4 *ECONOMICA* 386, 390–91 (1937).

106. *Id.* at 392.

107. *Id.* at 394–97.

108. *Id.* at 392.

109. See Jackie Bedard, *North Carolina Asset Protection Lawyer Explains How to Shield Your Investment Properties Using Multiple LLCs*, CAROLINA FAM. EST. PLAN., <https://www.carolinafep.com/blog/cary-asset-protection-lawyer-explains-how-to-shield-your-investment-properties-using-multiple-ll.cfm#:~:text=By%20creating%20separate%20LLCs%20for,to%20funds%20from%20the%20others> [<https://perma.cc/PCB3-84SS>] (explaining how a single investment could jeopardize the entire LLC's assets). See generally Matthew Soener & Michael Nau, *Citadels of Privilege: The Rise of LLCs, LPs and the Perpetuation of Elite Power in America*, 48 *ECON. & SOC'Y* 399 (2019) (exploring how affluent investors use different LLCs and LPs to hold their assets).

110. See CAROLINE FREUND, *RICH PEOPLE POOR COUNTRIES: THE RISE OF EMERGING-MARKET TYCOONS AND THEIR MEGA FIRMS* 89 (2016).

111. See Bird & Park, *supra* note 104, at 287.

production may have risen for firms subject to the CTA because compliance becomes more complex as firms scale.¹¹² Larger or more sophisticated firms would have been required to report additional management or ownership information.¹¹³ This, in turn, would have raised the overall cost of maintaining a formally incorporated firm, which may have deterred small entities from entering the market and encouraged them to remain informal.

Admittedly, if a firm became large enough, it could have fallen under the “large operating companies” exemption to the CTA and would no longer have been required to report or update BOI information.¹¹⁴ That may have created an incentive for entities to scale their operations. In the long term, scaling operations to avoid CTA compliance costs could be a benefit to entities. However, in the short term, entities that started out as a simple structure entity would have first needed to move through the intermediate structure and complex structure phases, both with increased CTA compliance costs,¹¹⁵ before they qualified for an exemption. That progression may have acted as a deterrent for entities that either did not wish to scale their operations or could not bear the costs of compliance as an intermediate or complex structure entity.

Following from Coase’s theory of the firm, research demonstrates that increased regulatory burdens deter market participation. The BSA illustrates this phenomenon, as “regulatory punishments and compliance costs have contributed to banks retreating from high-risk regions and businesses.”¹¹⁶ Due to the high cost of compliance with the BSA, banks opted not to expand into new sectors of the market.¹¹⁷ This trend is observed empirically as well. “[A] 10% increase in industry-specific regulatory restrictions is associated with a 0.5% reduction in the number of firms regardless of firm size”¹¹⁸ While this seems like a negligible impact, 0.5% of the 32.6 million firms FinCEN estimated qualified as reporting companies in year one would amount to more than 160,000 firms.¹¹⁹ Furthermore, a 10% increase in regulatory restrictions also leads to “a 0.6% reduction in employment only among small firms.”¹²⁰ Regulation disproportionately impacts small businesses by decreasing their ability to enter the market or forcing them to reduce the scale of their operations.¹²¹ These findings reinforce the concern that disclosure mandates of the scale contemplated by the original CTA design could deter entrepreneurship and firm creation, particularly among smaller entities.

112. See Coase, *supra* note 105, at 394–97.

113. See Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59549 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

114. 31 U.S.C. § 5336(a)(11)(B)(xxi).

115. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59573.

116. Saperstein et al., *supra* note 100, at 5.

117. *Id.*

118. Dustin Chambers, Patrick A. McLaughlin & Tyler Richards, *Regulation, Entrepreneurship, and Firm Size*, 61 J. REGUL. ECON. 108, 111 (2022).

119. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59549.

120. Chambers et al., *supra* note 118, at 108.

121. *Id.*

4. Constitutional Challenges

While this Note does not focus on the constitutional challenges to the CTA, it is necessary to briefly address the litigation as it highlights some critical concerns raised by domestic entities, particularly small businesses. These challenges also amplified the economic and institutional uncertainty surrounding the statute.

The constitutional challenges to the CTA started in March 2024, when the U.S. District Court for the Northern District of Alabama ruled in the class-action lawsuit *National Small Business United v. Yellen* that the CTA exceeded Congress's legislative authority.¹²² Specifically, the court found that Congress could not justify the CTA under the Commerce Clause¹²³ or the Necessary and Proper Clause¹²⁴ and enjoined enforcement against the plaintiffs, members of the National Small Business Association.¹²⁵ The decision was subsequently appealed to the Eleventh Circuit.¹²⁶

Since *National Small Business United*, district courts have been divided on whether Congress overstepped in passing the CTA. Judges in Oregon¹²⁷ and Virginia¹²⁸ denied requests for preliminary injunctions, concluding that plaintiffs failed to establish a sufficient likelihood that the Act fell outside Congress's legislative authority or violated the First, Fourth, Fifth, Eighth, or Tenth Amendments.¹²⁹ These decisions have been appealed to the United States Court of Appeals for the Ninth Circuit¹³⁰ and the United States Court of Appeals for the Fourth Circuit.¹³¹ By contrast, a district court in Michigan granted a summary judgment motion in favor of plaintiffs on Fourth Amendment grounds, holding that the CTA's reporting requirements constituted an unreasonable search.¹³² Additionally, two district courts in Texas granted injunctions, temporarily halting enforcement of the statute nationwide.¹³³

On December 3, 2024, one Eastern District of Texas court issued a nationwide preliminary injunction against enforcement of the CTA,¹³⁴ leading FinCEN to

122. 721 F. Supp. 3d 1260, 1272–89 (N.D. Ala. 2024), *rev'd*, Nat'l Small Bus. United v. U.S. Dep't of the Treasury, 161 F.4th 1323 (11th Cir. 2025).

123. *Id.* at 1277–87.

124. *Id.* at 1273–77, 1288–89.

125. Final Judgment at 2, *Nat'l Small Bus. United*, 721 F. Supp. 3d 1260.

126. Notice of Appeal at 1, *Nat'l Small Bus. United*, 721 F. Supp. 3d 1260.

127. *Firestone v. Yellen*, No. 3:24-CV-1034-SI, 2024 WL 4250192 (D. Or. Sept. 20, 2024).

128. *Cnty. Ass'ns Inst. v. Yellen*, No. 1:24-cv-1597 (MSN/LRV), 2024 WL 4571412 (E.D. Va. Oct. 24, 2024).

129. *Firestone*, 2024 WL 4250192, at *8; *Cnty. Ass'ns Inst.*, 2024 WL 4571412, at *6.

130. Notice of Appeal at 1, *Firestone*, 2024 WL 4250192.

131. Notice of Appeal at 1, *Cnty. Ass'ns Inst.*, 2024 WL 4571412.

132. *Small Bus. Ass'n of Michigan v. Yellen*, 769 F. Supp. 3d 722, 738–39 (W.D. Mich. 2025).

133. *Tex. Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 4953814, at *37 (E.D. Tex. Dec. 3, 2024), *amended and superseded by* 758 F. Supp. 3d 607 (E.D. Tex. Dec. 5, 2024); *Smith v. U.S. Dep't of the Treasury*, 761 F. Supp. 3d 952, 974 (E.D. Tex. 2025).

134. *Tex. Top Cop Shop*, 2024 WL 4953814, at *37.

suspend enforcement.¹³⁵ The government appealed,¹³⁶ and on December 23, 2024, the Fifth Circuit granted an emergency stay.¹³⁷ However, three days later, the Fifth Circuit vacated that stay,¹³⁸ effectively reinstating the nationwide injunction. In response, the Solicitor General filed an application for a stay of the injunction with the Supreme Court.¹³⁹ On January 23, 2025, the Supreme Court stayed the nationwide preliminary injunction granted in *Texas Top Cop Shop*, indicating that reporting companies must file BOI reports while the constitutional challenge moved through the court system.¹⁴⁰

Following the Supreme Court's intervention, it appeared that the CTA was once again fully operative; however, that was not the case. The Supreme Court's decision only applied to the injunction granted in *Texas Top Cop Shop*. While the Supreme Court was considering the government's application for a stay in *Texas Top Cop Shop*, on January 7, 2025, a different Eastern District of Texas court issued a separate nationwide preliminary injunction in *Smith v. United States Department of the Treasury*.¹⁴¹ This meant that the Supreme Court's stay was essentially a moot point for reporting companies. On February 17, 2025, the U.S. District Court for the Eastern District of Texas took a second look at *Smith* because of the Supreme Court's guidance and stayed the nationwide injunction they had previously granted in January.¹⁴² Reporting companies were once again required to file BOI with FinCEN by the new deadline of March 21, 2025.¹⁴³ In addition to the ongoing litigation, on February 10, 2025, the House of Representatives unanimously passed the Protect Small Businesses from Excessive Paperwork Act of 2025, which would have extended the filing deadline to January 1, 2026.¹⁴⁴ These shifting court and legislative developments were ultimately eclipsed by the Interim Final Rule, which eliminated the CTA's domestic reporting requirements.¹⁴⁵

135. *Beneficial Ownership Information Reporting*, FINCEN (Mar. 26, 2025), <https://fincen.gov/boi> [<https://perma.cc/4EJS-B578>].

136. Notice of Appeal at 1, *Tex. Top Cop Shop*, 2024 WL 4953814.

137. *Tex. Top Cop Shop v. Garland*, No. 24-40792, 2024 WL 5203138, at *3 (5th Cir. Dec. 23, 2024).

138. Memorandum to Counsel or Parties Listed Below, *Tex. Top Cop Shop*, 2024 WL 4953814.

139. Application for a Stay of the Injunction Issued by the United States District Court for the Eastern District of Texas at 1, *Tex. Top Cop Shop*, 2024 WL 4953814.

140. *McHenry v. Tex. Top Cop Shop, Inc.*, 145 S. Ct. 1 (2025) (Alito, J., in chambers).

141. 761 F. Supp. 3d 952, 974 (E.D. Tex. 2025).

142. *Smith v. U.S. Dep't of the Treasury*, No. 6:24-cv-336-JDK (E.D. Tex. Feb. 17, 2025) (order granting stay pending appeal).

143. FinCEN Notice 2025-CTA1, FinCEN Extends Beneficial Ownership Information Reporting Deadline by 30 Days; Announces Intention to Revise Reporting Rules, at 1 (Feb. 18, 2025), <https://fincen.gov/sites/default/files/shared/FinCEN-BOI-Notice-Deadline-Extension-508FINAL.pdf> [<https://perma.cc/NPC5-3QUF>].

144. Protect Small Businesses from Excessive Paperwork Act of 2025, H.R. 736, 119th Cong. (2025).

145. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688, 13689 (proposed Mar. 26, 2025) (to be codified at 31 C.F.R. pt. 1010).

However, that was not the end of the CTA's constitutional journey through the U.S. court system. Recently, in December 2025, the United States Court of Appeals for the Eleventh Circuit unanimously reversed the district court's ruling in *National Small Business United* and upheld the constitutionality of the CTA, concluding that the statute falls within Congress's authority under the Commerce Clause.¹⁴⁶ Although the Eleventh Circuit's decision strengthens the CTA's constitutional footing, it does not necessarily mark the conclusion of CTA litigation. Other challenges remain pending in various circuits.¹⁴⁷ Until the Supreme Court definitively addresses the constitutionality of the CTA, constitutional scrutiny may persist.

Beyond the doctrinal debate, the litigation itself imposed measurable economic costs. For small businesses, the CTA functioned as a regulatory barrier that could limit market participation and increase operational expenses. These burdens were compounded by shifting injunctions, emergency stays, evolving filing deadlines, and conflicting judicial interpretations, all of which complicated compliance planning. Prolonged judicial uncertainty that pushed up against key filing deadlines without a doubt increased transaction costs for domestic entities who remained uncertain about their filing requirement.¹⁴⁸ In this way, constitutional instability operated as an independent regulatory cost, compounding the compliance burdens imbedded in the CTA's design.

B. Institutional and Administrative Costs for FinCEN

The CTA imposed substantial costs on reporting companies but also generated increased costs for FinCEN. The implementation and enforcement of the CTA produced direct costs for taxpayers and significant opportunity costs for FinCEN. FinCEN's primary responsibility prior to the enactment of the CTA was the enforcement of the BSA. FinCEN is still responsible for BSA implementation and would need additional resources to meet its obligations to both programs. Without adequate funding, FinCEN would likely have needed to divert resources from its BSA enforcement to fully support the CTA's enforcement. The enactment of the CTA therefore created both direct financial costs to taxpayers and opportunity costs for FinCEN.

146. *Nat'l Small Bus. United v. U.S. Dep't of the Treasury*, 161 F.4th 1323, 1334 (11th Cir. 2025). On April 15, 2026, the National Small Business Association filed a petition for a writ of certiorari with the Supreme Court in its ongoing challenge to the CTA. *See* Press Release, NSBA Petitions Supreme Court on Corporate Transparency Act, CTA (April 16, 2026), <https://www.nsbaadvocate.org/post/press-nsba-petitions-supreme-court-on-corporate-transparency-act-cta> [<https://perma.cc/URZ6-DCKE>].

147. *See* *Tex. Top Cop Shop, Inc. v. Bondi*, No. 24-40792, 2025 WL 2609731, at *2 (5th Cir. Aug. 5, 2025); *Cnty. Ass'ns Inst. v. U.S. Dep't of the Treasury*, No. 24-2118, 2025 WL 1824824, at *1 (4th Cir. May 6, 2025).

148. *See infra* note 212 and accompanying text.

1. Direct Financial Costs

The most immediate cost of the CTA was the increased budget request from FinCEN. The additional funds would come from the federal government, so the cost associated with this budget request would be borne by taxpayers. While this cost would not be incurred by FinCEN directly, it arose out of FinCEN's expanded responsibilities and the need to implement the CTA's reporting requirements.

FinCEN received a \$39 million increase in funding for Fiscal Year (FY) 2024 in anticipation of the CTA's rollout on January 1.¹⁴⁹ This 20.5% increase brought their total budget to \$229 million for the year.¹⁵⁰ In its budget request, FinCEN earmarked this money to "support the launch of the Beneficial Ownership Secure System and to invest in the Treasury offices charged with closing financial reporting loopholes that allow illicit actors to evade scrutiny, mask their dealings, and undermine corporate accountability."¹⁵¹ In FY 2025, FinCEN only received \$216 million from the federal government.¹⁵² While this is a decrease of 5.7% from FY 2024, it still reflected a 13.6% increase from FY 2023, which was the budget allocated to FinCEN pre-CTA.¹⁵³ The additional \$26 million above the FY 2023 level was intended to "support Beneficial Ownership Information reporting which [would] be required for existing covered companies beginning in 2025. This reporting [would] provide investigative tools making it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures."¹⁵⁴

While these increases would be necessary for FinCEN to fulfill its new obligations under the CTA, questions remained as to whether the funding levels were sufficient to fully address the regulatory burden. The lack of adequate resources raised concerns about the effectiveness of CTA and BSA enforcement. If FinCEN's capacity remained strained, the CTA's intended benefits may not have been fully realized, which would have undermined the Act's potential impact.

2. Opportunity Costs

Beyond the direct financial cost, the CTA imposed substantial opportunity costs on FinCEN. Prior to the enactment of the CTA, FinCEN's focus was on the implementation and enforcement of the BSA, which has long served as an important tool in the war against money laundering and other financial crimes.¹⁵⁵ However, even with the budget increases discussed above, FinCEN projected that it would only hire fifteen additional full-time employees to support CTA efforts.¹⁵⁶ That would

149. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2024, at 114 (2023).

150. *Id.*

151. *Id.*

152. OFF. OF MGMT. & BUDGET, EXEC. OFF. OF THE PRESIDENT, BUDGET OF THE U.S. GOVERNMENT, FISCAL YEAR 2025, at 116 (2024).

153. *Id.*

154. *Id.*

155. *What We Do*, FINCEN, <https://www.fincen.gov/what-we-do> [<https://perma.cc/9V43-DG6G>].

156. U.S. DEP'T OF THE TREASURY, *supra* note 5.

bring FinCEN's total employment to approximately 300 full-time employees.¹⁵⁷ At most, FinCEN would have had 300 full-time employees that could have been tasked with managing the first full year of CTA enforcement, including reviewing the nearly thirty-three million initial BOI reports it expected to receive in 2024.¹⁵⁸ In addition, FinCEN would have needed to balance enforcement of both the CTA and the BSA. With only approximately 300 full-time employees spread between both programs,¹⁵⁹ the CTA was certain to create inefficiencies due to limited funding and personnel.

Naturally, FinCEN would have less time and fewer resources to dedicate to its BSA enforcement activities. This diversion of resources created a trade-off: By focusing on CTA compliance, FinCEN may have reduced opportunities to strengthen, or just maintain, its AML efforts under the BSA. The lack of monetary resources and full-time staff also raised the possibility that neither the CTA nor the BSA would be enforced effectively. If CTA enforcement came at the expense of BSA enforcement, the opportunity costs would be considerable.

III. COST-BENEFIT ANALYSIS OF THE CTA

The CTA was designed to promote transparency and deter money laundering efforts by requiring reporting companies to disclose BOI. However, an evaluation of the original CTA design indicates that its cost substantially exceeded its anticipated benefits. Proponents of the CTA argued that BOI reporting would not only raise the probability of detecting illicit activity but would also deter individuals from using corporate entities as a vehicle to commit financial crime. They further contended that the CTA would reduce information costs and make the entire regulatory compliance scheme in the United States more efficient.

While these are certainly important goals, the benefits of the CTA did not clearly justify the costs because they remained largely aspirational and unproven. The costs to reporting companies, by contrast, were calculable and astronomical. By FinCEN's own estimate, in 2024 alone, the cost to reporting companies of full compliance with the CTA was estimated to be almost \$23 billion dollars¹⁶⁰ and more than 126 million

157. *Frequently Asked Questions*, FINCEN, <https://www.fincen.gov/frequently-asked-questions#:~:text=Currently%2C%20there%20are%20approximately%20300%20employees%20on%20board> [<https://perma.cc/35D8-CGGY>].

158. FinCEN's FY 2024 budget indicated that the bureau planned to hire an additional sixty employees to assist with CTA implementation. Specifically, though, these employees were hired to help build out the CTA enforcement program by establishing reporting standards, building an IT system, and creating access protocols, among other things. *See* U.S. DEP'T OF THE TREASURY, FINCEN, CONGRESSIONAL BUDGET JUSTIFICATION AND ANNUAL PERFORMANCE PLAN AND REPORT FY 2024, at 5–6 (2023), <https://home.treasury.gov/system/files/266/15.-FinCEN-FY-2024-CJ.pdf> [<https://perma.cc/X5MT-JH9Y>]. Importantly, it does not appear that FinCEN actually hired the additional employees requested. In FY 2023, FinCEN had 289 full-time employees. *Id.* at 4. As of February 22, 2024, they only had 279 full-time employees. *See* FINCEN, U.S. DEP'T OF THE TREASURY, LAPSE IN APPROPRIATION PLAN 3 (2024), <https://web.archive.org/web/20240713173934/https://home.treasury.gov/system/files/266/FI NCEN-FY24LapsePlan.pdf>.

159. *Frequently Asked Questions*, *supra* note 157.

160. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498,

burden hours.¹⁶¹ For such an immense investment of time and resources to be justified, FinCEN would have needed to demonstrate that the CTA would have an equally substantial impact on identifying or deterring financial crime. Yet, without concrete evidence of such outcomes, the Act risked imposing significant burdens on reporting companies, potentially stifling market growth without delivering the transparency benefits.

Even if the benefits of the CTA, like detection, deterrence, and regulatory efficiency, equaled its costs, optimal levels of those benefits would not be achieved for three main reasons. First, FinCEN's resource constraints limited its ability to effectively enforce the CTA. That would result in inefficient oversight. Second, there are diminishing returns to regulatory compliance efforts. This raised questions about the efficacy of the Act in curbing illicit activity in the long run. Lastly, the CTA incentivized entity restructuring, and reporting companies were likely to attempt to circumvent the very regulations intended to increase transparency. Taken together, these factors provide an economic explanation for the CTA's instability and ultimate contraction.

A. FinCEN's Resource Constraints

The implementation of the CTA imposed significant operational demands on FinCEN, especially given its already limited resources. The CTA was estimated to generate an initial wave of more than thirty-two million reports, with an expected five million additional reports each year.¹⁶² FinCEN's staffing and budgetary limitations raised serious concerns about its capacity to manage and effectively review this influx of data.

Despite FinCEN's increased funding for FY 2024 and FY 2025, FinCEN opted to only increase its full-time workforce by fifteen employees.¹⁶³ This decision was particularly troubling given historical precedents. To comply with the BSA, financial institutions are required to file Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) with FinCEN when certain suspicious incidents occur, yet many go unreviewed due to insufficient staffing.¹⁶⁴ If banks have a particularly suspicious case, they are simply encouraged to complete a SAR or CTR and physically "tak[e] the report into the offices of federal law enforcement agencies."¹⁶⁵ Banks have continued filing these reports as required, but only as defensive measures to avoid enforcement actions,¹⁶⁶ not with the view that they are acting as partners to

59581 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

161. *Id.* at 59581.

162. *Id.* at 59549.

163. U.S. DEP'T OF THE TREASURY, FINCEN, CONGRESSIONAL BUDGET JUSTIFICATION AND ANNUAL PERFORMANCE PLAN AND REPORT FY 2025, at 5 (2024), <https://home.treasury.gov/system/files/266/12.-FinCEN-FY-2025-CJ.pdf> [<https://perma.cc/639M-RKN4>].

164. Christopher J. Wilkes, Note, *A Case for Reforming the Anti-Money Laundering Regulatory Regime: How Financial Institutions' Criminal Reporting Duties Have Created an Unfunded Police Force*, 95 IND. L.J. 649, 674 (2020).

165. *Id.*

166. *Id.*

the federal government in combating fraud and money laundering. FinCEN is already struggling to keep up with the enforcement of the BSA, and a similar pattern was likely to emerge with the CTA. If the bureau was unable to allocate adequate resources for a thorough review process, it risked allowing a large volume of potentially critical data to go unexamined.

The expectation that FinCEN could have effectively processed millions of reports with its staffing levels raised questions about the feasibility of the CTA's objectives. It also highlighted the potential for regulatory fatigue. When an agency or bureau is overwhelmed by an influx of data, the quality of its oversight may diminish. This would have prevented FinCEN from receiving the intended benefit of reduced information costs.¹⁶⁷ Additionally, resources diverted to manage the CTA would almost certainly detract from FinCEN's ability to enforce the BSA, thus jeopardizing long-standing AML strategies. This dynamic could weaken the entire AML system, where both programs suffer and result in less effective punitive and deterrent measures.¹⁶⁸ The effectiveness of deterrence hinges on the perceived likelihood of detection and punishment.¹⁶⁹ If entities subject to the CTA perceived that FinCEN lacked the resources to effectively enforce compliance, the deterrent effect would be significantly weakened. The lack of adequate resources sent the message that the cost of noncompliance is low, which undermines the dual purpose of AML enforcement: to punish illegal activity and deter future violations.¹⁷⁰

FinCEN did not provide a detailed outline for how it planned to utilize the funds earmarked for CTA implementation beyond public outreach and sample-based data verification.¹⁷¹ Enforcement of the CTA against non-compliant reporting companies was likely to do far more than public outreach in terms of incentivizing compliance and deterring bad actors. The sample-based verification system FinCEN described was supposed to compare BOI data to data that already exists in commercial databases.¹⁷² Even assuming that these commercial databases were fully accurate (unlikely) and that the automation efforts significantly scaled down the number of reports FinCEN had to review, it was unrealistic to believe that just fifteen employees¹⁷³ would be effectively reviewing the tens of millions of BOI reports. This is especially true when considering that reviewing BOI reports was just one responsibility in addition to conducting CTA outreach, drafting congressional reports, giving authorized users access to the BOI system, and managing many other technical and administrative aspects of the regulation.¹⁷⁴ Further, an examination of BSA implementation demonstrates that even when FinCEN was on notice of potentially suspicious or non-compliant activity, they failed to review the submitted reports.¹⁷⁵

167. Arrow, *supra* note 65, at 121.

168. Lewisch, *supra* note 19.

169. See Becker, *supra* note 23; SHAVELL, *supra* note 24.

170. Lewisch, *supra* note 19.

171. U.S. DEP'T OF THE TREASURY, *supra* note 163.

172. *Id.*

173. See U.S. DEP'T OF THE TREASURY, *supra* note 158.

174. *Id.* at 7.

175. Wilkes, *supra* note 164.

Lastly, if the only verification system for BOI reports was a system that matched data reported in some other commercial database,¹⁷⁶ did BOI data even need to be reported in this way? If FinCEN could acquire the vast majority of this information from other databases through less intrusive means, how could it possibly justify the estimated \$55.7 billion cost to reporting companies over the next ten years?¹⁷⁷ Without additional funding and staffing to enhance FinCEN's verification and enforcement capabilities, the CTA was certain to fall short of its potential benefits. FinCEN's resource constraints not only compromised the effectiveness of the CTA but also suggested the need for structural reforms to combat this vulnerability directly.

B. Diminishing Returns to Regulatory Compliance

In addition to the resource constraints plaguing FinCEN, regulatory compliance efforts have diminishing returns, particularly for AML efforts. “[W]hile initial compliance efforts can significantly improve program quality, the impact of additional efforts becomes progressively smaller, eventually reaching a point where further increases in compliance bring negligible or even negative returns.”¹⁷⁸ This is true for compliance efforts generally, but also holds true for the AML compliance regime in the United States. The available data indicates that money laundering has not been “significantly thwarted or deterred in thirty years of increasing AML policy.”¹⁷⁹ While the cost of enforcement continues to rise, the marginal benefit declines, and fewer and fewer bad actors are being caught by AML regulations.¹⁸⁰ As a result, compliant entities are disproportionately affected by new AML regulations, while criminals are still evading capture.

As enforcement measures expand, criminals adapt by finding unregulated or alternative means of financing, ultimately undermining the intended goals of such regulations.¹⁸¹ This phenomenon indicates a troubling paradox in the current AML landscape. As the costs of regulatory compliance escalate, the benefits, particularly in terms of successfully apprehending financial criminals, decline. This trend reflects the classic case of diminishing returns. At a certain point, the cost of catching additional illicit actors becomes prohibitively high, and the burden of compliance disproportionately shifts to legitimate reporting companies. In essence, the CTA risked contributing to a regulatory environment in which the cost to honest businesses became excessive, while bad actors remained difficult to catch.

176. U.S. DEP'T OF THE TREASURY, *supra* note 163.

177. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59581 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

178. Rick Fiene, *Three Theories of Regulatory Compliance*, MEDIUM (Jan. 2, 2024), <https://medium.com/@rickfiene/three-theories-of-regulatory-compliance-369959cc70aa#:~:text=In%20conclusion%2C%20the%20regulatory%20compliance,better%20outcomes%20with%20fewer%20resources> [https://perma.cc/M3YA-PSX6].

179. Jacquelyn B. Lewis, *Money Finds a Way: Increasing AML Regulation Garners Diminishing Returns and Increases Demand for Dark Financing*, 55 VAND. J. TRANSNAT'L L. 529, 555 (2022).

180. *Id.* at 529.

181. *See* DEP'T OF THE TREASURY, *supra* note 5, at 26–32.

These diminishing returns underscore the key deterrence principle foundational to AML regulation. Shavell emphasizes that achieving perfect deterrence is not socially optimal under most circumstances, as the cost of enforcement would outweigh the benefits.¹⁸² In other words, society must tolerate some level of underdeterrence to avoid excessive enforcement costs, especially when the enforcement costs would be borne by reporting companies. In the current AML landscape, enforcement costs continue to escalate while the marginal benefits of compliance continue to diminish.¹⁸³ This may indicate that the benefits of increased AML regulation do not outweigh the costs.

Additionally, the CTA would predictably encounter the same diminishing returns observed in broader AML compliance efforts. Initially, the Act might have effectively caught the least sophisticated white-collar criminals. However, as enforcement continued and more sophisticated criminals gained insight into FinCEN's enforcement of the CTA, they would adapt their practices and adjust the information submitted to FinCEN to evade detection. Although the CTA might have shown early success, its long-term effectiveness would have likely declined over time due to diminishing returns.

C. Restructuring and Evasion Would Undermine the CTA's Goals

As the cost of AML compliance became too burdensome, firms would be incentivized to turn to restructuring tactics and evasion strategies that ultimately undercut the CTA's intended transparency. The increased reporting requirements may have incentivized reporting companies, especially more sophisticated entities, to restructure their operations to avoid compliance. To reduce transaction and information costs, companies typically create vertically integrated organizational structures.¹⁸⁴ Subject to the CTA requirements, reporting companies could exploit these structures by reshuffling assets or combining several reporting companies into one exempt entity. This would have effectively sidestepped the Act's requirements. This form of restructuring would have enabled firms to continue operations while minimizing costs stemming from the CTA's disclosure obligations.

The risk of portfolio reallocation and diversification reduction also followed from the CTA's reporting requirements. The potential for reduced portfolio diversity, as highlighted by Markowitz's modern portfolio theory, could have compromised the effective risk management of firms that chose to consolidate their holdings under a single entity or fewer entities to minimize reporting burdens.¹⁸⁵ The CTA may have inadvertently pushed firms away from the "efficient frontier" of diversification, resulting in less optimal risk distribution across asset types.¹⁸⁶ Particularly for institutional investors or trust managers bound by the Uniform Prudent Investor Act, this lack of diversification could pose fiduciary concerns.¹⁸⁷

182. SHAVELL, *supra* note 24, at 101.

183. Lewis, *supra* note 179.

184. *See* Coase, *supra* note 105, at 388, 390–91 (explaining that firms develop to reduce costs associated with market transactions).

185. *See* Harry Markowitz, *Portfolio Selection*, 7 J. FIN. 77 (1952).

186. *See id.*

187. *See* UNIF. PRUDENT INV. ACT § 3 (UNIF. L. COMM'N 1994) (requiring trustees to

In addition to portfolio shifts, firms may have increasingly relied on business trusts as a vehicle for evading CTA compliance. Business trusts in the United States are attractive due to their ability to avoid many reporting requirements,¹⁸⁸ an advantage that made them highly suitable for those who wished to remain anonymous under CTA exemptions. “While the Corporate Transparency Act would likely apply to statutory business trusts, common law business trusts can, and do, continue to exist in many jurisdictions and will continue to afford privacy to their owners and operators.”¹⁸⁹ Because common law business trusts are usually created through private agreements, their formation does not require registration with the state upon formation, making them exempt from reporting under the original CTA design. If this exemption was exploited, the CTA’s intended transparency benefits would be diluted, creating a loophole for entities looking to avoid regulatory scrutiny.

In addition to trusts, the CTA had a list of exemptions for reporting companies.¹⁹⁰ Sophisticated firms that desired to keep BOI confidential could easily restructure to bypass the reporting requirements. The large operating company exemption was particularly significant. A complex operation consisting of multiple LLCs, for example, each managing distinct assets or tasks, could potentially consolidate into a single entity that met the twenty employees, \$5 million in revenue, and physical office in the United States definition.¹⁹¹ This would have qualified them for an exemption under the CTA.

These potential restructuring behaviors highlight critical weaknesses of the CTA. While the statute sought to increase transparency, it simultaneously encouraged strategic reorganization that circumvented its reach. As a result, the CTA disproportionately targeted small businesses, which lack the resources to pursue complex restructuring or alternative organization strategies. Larger or more sophisticated entities that are more likely to engage in the type of behavior the CTA sought to eliminate would continue to evade disclosure. This dynamic undermines the CTA’s core objectives. Firms that could afford to restructure would do so, leaving compliance costs largely with those that could not.

IV. LESSONS FROM THE CTA’S FAILURE

Although the CTA pursued legitimate transparency objectives, it fell short of delivering benefits that outweighed its significant costs. The burdens imposed on reporting companies eclipsed the intended advantages of increased oversight and accountability. The preceding analysis suggests that the statute’s difficulties were not solely political or administrative, but also economic and institutional. This Part first examines the regulatory rollback of the CTA, including FinCEN’s Interim Final Rule, and then identifies design considerations that could have mitigated these

diversify investments as part of prudent investing).

188. Eric C. Chaffee, *Common Law Business Trusts, Anonymity, and Inclusion*, 48 ACTECLJ. 21, 24 (2022).

189. *Id.* at 27.

190. 31 U.S.C. § 5336(a)(11)(B).

191. *Id.* § 5336(a)(11)(B)(xxi).

failures and that remain critical to the viability of any future federal beneficial ownership reporting regime.

A. The Interim Final Rule and the Narrowing of the CTA

In March 2025, FinCEN and the U.S. Department of the Treasury significantly narrowed the scope of the Corporate Transparency Act's beneficial ownership reporting framework.¹⁹² In FinCEN's Interim Final Rule, the bureau revised the definition of "reporting company" and eliminated reporting obligations for all domestic entities (previously referred to in the CTA as "domestic reporting companies").¹⁹³ Under the revised rule, entities formed in the United States and their beneficial owners are no longer "require[d] to file initial BOI reports, or to update or correct previously filed BOI reports."¹⁹⁴ As a result, entities created by filing a document with a secretary of state or similar office under state or tribal law are excluded entirely from the reporting regime.¹⁹⁵ Enforcement of penalties related to domestic noncompliance has likewise been suspended.¹⁹⁶

While domestic entities are exempt under the Interim Final Rule, reporting obligations continue to apply to foreign reporting companies but not to U.S. persons who are the beneficial owners of foreign entities.¹⁹⁷ Thus, "[f]oreign reporting companies that only have beneficial owners that are U.S. persons will be exempt from the requirement to report any beneficial owners."¹⁹⁸ For foreign reporting companies still required to file BOI reports, the mechanics of filing and noncompliance remain the same as they were under the initial rule.¹⁹⁹ Foreign entities that were registered to do business in the United States prior to March 26, 2025, had until April 25, 2025, to file their initial reports.²⁰⁰ Foreign entities that registered to do business in the United States after March 26, 2025, have thirty days from the effective date of their registration to file their initial report.²⁰¹ These covered entities are still required to keep their information updated with FinCEN and face penalties for noncompliance.²⁰²

192. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. 13688, 13689 (Mar. 26, 2025) (to be codified at 31 C.F.R. pt. 1010).

193. *Id.* at 13690.

194. *Id.*

195. *Id.*

196. Press Release, U.S. Dep't of the Treasury, Treasury Department Announces Suspension of Enforcement of Corporate Transparency Act Against U.S. Citizens and Domestic Reporting Companies (Mar. 2, 2025), <https://home.treasury.gov/news/press-releases/sb0038> [<https://perma.cc/8B2P-NH8Q>].

197. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. at 13690.

198. *Id.*

199. *Id.*

200. *Interim Final Rule: Questions and Answers*, FINCEN, <https://www.fincen.gov/boi/ifr-qa> [<https://perma.cc/XT7D-QCPX>].

201. *Id.*

202. *See* Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. at 13690.

The Interim Final Rule represents a dramatic departure from the CTA's original disclosure framework. The statute was designed to impose broad reporting across millions of domestic entities but now operates as a far narrower regime focused solely on foreign firms with foreign beneficiaries. FinCEN expects that the revised rule will result in fewer than 12,000 reports filed annually.²⁰³ By significantly reducing the number of entities subject to the CTA, the Interim Final Rule reframes the CTA's original efficiency rationale.

This regulatory revision did not occur in isolation. It unfolded amid two significant sources of institutional uncertainty: a January 2025 presidential transition and continuing constitutional challenges to the CTA.²⁰⁴ Shortly after taking office, President Trump issued Executive Order 14192, *Unleashing Prosperity Through Deregulation*, which laid out an administrative policy aimed at reducing private expenditures associated with federal regulatory compliance.²⁰⁵ Consistent with this Executive Order, the Secretary of the Treasury reassessed the regulatory burdens imposed by the CTA.²⁰⁶ The Treasury determined that requiring domestic companies to report BOI "would not serve the public interest" and "would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes."²⁰⁷

FinCEN also acknowledged the substantial economic implications of narrowing the reporting regime. By reducing the number of entities required to report BOI, the Interim Final Rule significantly lowers the compliance costs associated with initial filings and updated filings.²⁰⁸ Under the Interim Final Rule, FinCEN estimates that the average aggregate reporting cost to reporting companies (now, only foreign entities) will be about \$21 million per year.²⁰⁹ This represents a dramatic reduction from the \$5.6 billion annually projected under the initial CTA regime.²¹⁰ At the same time, though, FinCEN noted that a significant portion of compliance expenditures had already been incurred.²¹¹ Based on 2024 data, approximately 40% of the expected year-one costs had already materialized, meaning that more than \$9.1 billion was spent by domestic entities on a federal regulation they would have never been required to comply with.²¹²

The efficiency dynamics underlying the CTA necessarily shift under this revised regulatory structure. Although centralized information systems can generate

203. *Id.* at 13695.

204. *See supra* Section II.A.4.

205. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. at 13691.

206. *Id.*

207. *Id.*

208. *Id.* at 13695.

209. *Id.*

210. Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59582 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

211. Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, 90 Fed. Reg. at 13694.

212. *Id.*

economies of scale,²¹³ those efficiencies depend on the breadth of the reporting base. A disclosure regime limited to foreign entities produces a substantially smaller dataset and diminishes the informational value of the database. This reduces its utility as a comprehensive ownership transparency mechanism. Additionally, efficiency gains derived from information aggregation are highly sensitive to the scale of participation, while the fixed administrative costs associated with maintaining the disclosure infrastructure remain the same regardless of the number of participants.²¹⁴ The Interim Final Rule therefore raises new questions regarding the statute's long-term cost-benefit balance.

B. Designing a Viable Beneficial Ownership Regime

The Interim Final Rule significantly reduced the compliance burdens associated with the CTA, but it did so by narrowing the statute's scope rather than correcting the structural imbalances that contributed to its failure. If a federal beneficial ownership reporting framework is to endure, it must address the deficiencies directly. The statute faltered, in part, because of its institutional capacity, incentive structure, and exemption design. A sustainable disclosure regime must align enforcement resources with reporting volume, realign private incentives with regulatory objectives, and eliminate loopholes that enable strategic avoidance. The following Sections identify key design considerations for any future beneficial ownership reporting framework.

1. Supply Additional Resources for FinCEN

FinCEN must significantly increase its resources through both greater funding and a larger workforce if it wants to effectively implement any type of disclosure regime like the CTA. Drawing from insights of the Cobb-Douglas production function, the interplay between labor and capital is crucial for maximizing output in any production process.²¹⁵ FinCEN's budget increases alone would do little to advance AML enforcement without a corresponding increase in staffing. It is clear that FinCEN is operating below its potential due to insufficient resources.²¹⁶ The successful implementation of a statute like the original CTA hinges on FinCEN's ability to process, verify, and analyze the vast amount of BOI that would be reported.²¹⁷ With its limited personnel and budget constraints, FinCEN currently lacks the necessary capacity to carry out these functions efficiently. If it were able to implement the original CTA effectively, that would have just been at the expense of the other programs FinCEN is responsible for, like the BSA.

213. *See supra* notes 65–68 and accompanying text.

214. *See Arrow, supra* note 65, at 123.

215. Charles W. Cobb & Paul H. Douglas, *A Theory of Production*, 18 AM. ECON. REV. 139, 139 (1928) (demonstrating that while an increase in either capital or labor alone can lead to diminishing marginal returns, a proportional increase in both will yield a corresponding increase in output).

216. *See id.*

217. *See* Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59549 (Sep. 30, 2022) (codified at 31 C.F.R. pt. 1010).

The demands placed on FinCEN to enforce the CTA risked generating significant backlogs and processing delays if not addressed with adequate resources. By increasing its budget and hiring more full-time staff members, FinCEN would have enhanced its capability to conduct thorough investigations and ensure compliance with the CTA's reporting requirements. This capacity expansion would have produced two related benefits: (1) FinCEN could catch and punish bad actors who are using entities in the United States to launder money or commit fraud; and (2) FinCEN's increased enforcement of CTA regulations would have acted as a deterrent to bad actors who were considering filing fraudulent BOIs or not filing required BOIs and using reporting companies as a tool in their criminal activity.²¹⁸

To realize the full potential of the CTA, or any future large-scale beneficial ownership reporting system, it is imperative for policymakers to allocate more funding and resources to FinCEN. The funding then needs to be used to hire more full-time employees specifically dedicated to reviewing reports and independently verifying the accuracy of the information contained in those reports. By leveraging the principles of the Cobb-Douglas production function, a strategic increase in both capital and labor would lead to significant improvements in FinCEN's operational efficiency. Absent sufficient institutional capacity, reporting regimes risk generating high compliance volume without equal enforcement value.

2. Provide Tax Incentives for Consistent Compliance

The government could have encouraged compliance with the CTA by introducing targeted tax deductions and credits, specifically benefiting reporting companies that accurately fulfilled BOI reporting requirements. A tax deduction system would have helped offset the cost of compliance. This would have allowed reporting companies to better manage the expenses involved. Under such a system, reporting companies could claim deductions for their initial reporting costs based on their entity type. For example, entities with a simple structure might be eligible for a deduction of around \$85.14, while entities with a complex structure could claim up to \$2,614.87 in deductions.²¹⁹ This tiered approach could have eased financial pressures by accounting for the diverse structures and needs of different companies. For reporting companies thoroughly updating their reports as their BOI changed, Congress could likewise have established additional annual deductions to reward proactive compliance.

This incentive structure would have encouraged reporting companies to adopt compliance as a cost-effective practice rather than a regulatory burden. By reducing the financial barriers to CTA compliance, deductions would have made reporting a feasible, economically rational choice for businesses of all sizes. As long as the deductions were proportionate, complex firms would not have been unduly burdened by the higher reporting costs, and this could have leveled the playing field between reporting companies.

218. See Becker, *supra* note 23.

219. These amounts reflect the estimated costs that would have been imposed on reporting companies for initial reporting compliance. See Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59573; *supra* Figure 2.

To further enhance compliance and encourage accuracy, a tax credit system could have rewarded businesses whose BOI reports passed FinCEN's verification standards. In this model, a tax credit would have served as a performance-based incentive. Reporting companies submitting accurate, complete information would receive a partial tax credit if FinCEN reviewed their BOI or their subsequent changes and was able to verify that the report was filed on time and the information reported was accurate. However, to successfully carry out a program like this, FinCEN would have needed increased resources to verify submissions and grant credits to eligible firms. This underlies the earlier recommendation for increased funding and staffing for FinCEN, allowing the bureau to administer credits efficiently.

This proposed tax credit would have transformed the CTA's framework from one centered merely on regulatory compliance to one where accuracy was rewarded. The shift would have encouraged reporting companies to submit high-quality, error-free data to qualify for the credits. This solution would have prevented the CTA from facing the same problems that the BSA did, where financial institutions were apathetic to the quality or accuracy of their reports to FinCEN because they knew they would not be thoroughly examined.²²⁰ Tax credits could have transformed reporting companies into partners with FinCEN instead of adversaries. Beyond just encouraging accuracy, tax credits would have also reduced the long-term regulatory burden on FinCEN by establishing a baseline of reliable data that required less ongoing oversight.

Admittedly, FinCEN did not have to provide additional incentives to reporting companies to encourage them to comply. The existing "incentives" were the avoidance of civil and criminal penalties,²²¹ which align with the deterrence-based theories of compliance.²²² However, given FinCEN's limited resources, some entities may have viewed the risk of enforcement as too low to justify the cost of compliance, skewing their cost-benefit analysis toward noncompliance.²²³ Tax incentives could have helped offset these high costs and rebalance the analysis, making compliance an economically rational choice.

The recommended tax credit and deduction regime is not unheard of for federal regulations. Public-facing businesses subject to Americans with Disabilities Act (ADA) requirements may be eligible for tax credits, tax deductions, or both.²²⁴ Small businesses can claim a disabled access credit for accessibility-related expenses.²²⁵ All businesses can claim a barrier removal tax deduction for the removal of

220. See Wilkes, *supra* note 164.

221. 31 U.S.C. § 5336(h)(3)(A).

222. See Becker, *supra* note 23; SHAVELL, *supra* note 24.

223. See Wilkes, *supra* note 164 (discussing how financial institutions subject to AML regulations are aware of the government's inability to process the high volume of required reports); see also *Losing the War*, THE ECONOMIST, Apr. 17, 2021, at 2 (noting that financial institutions file low-quality or incomplete reports that likely do not comply with reporting requirements).

224. *Tax Benefits of Making a Business Accessible to Workers and Customers with Disabilities*, IRS (Dec. 9, 2021), <https://www.irs.gov/newsroom/tax-benefits-of-making-a-business-accessible-to-workers-and-customers-with-disabilities> [https://perma.cc/C8LH-45E9].

225. *Id.*

architectural or transportation barriers.²²⁶ These tax incentives are provided even though businesses are required to comply with the ADA and face substantial penalties for noncompliance.²²⁷ A similar tax incentive structure for the CTA would have lessened the burden on reporting companies and ensured that FinCEN reaped the benefits of greater transparency.

Tax deductions and credits would have enhanced CTA effectiveness by decreasing FinCEN's enforcement costs and incentivizing accurate reporting. Reporting companies with strong reporting practices would have helped reduce FinCEN's workload, as fewer resources would be needed to investigate inaccuracies, allowing the bureau to focus on high-risk entities. Additionally, the incentivized compliance could have led to positive externalities where reporting companies set a cultural standard of transparency within their industries. While certainly not required, tax deductions or credits may have enabled the CTA to meet its transparency goals at a lower cost by harmonizing reporting companies' financial interests with regulatory objectives, making transparency a viable, mutually beneficial standard.

3. Eliminate and Redefine Exemptions to Deter Restructuring

To bolster the effectiveness of the CTA, it would have been crucial to reduce the number and scope of exemptions granted to reporting companies. The original exemptions, particularly for "large operating companies,"²²⁸ created significant loopholes that sophisticated entities could exploit to avoid compliance. In addition, tax-exempt entities and pooled investment vehicles were "exempt entities"²²⁹ even though these types of entities can also be used to facilitate financial crime.²³⁰ By

226. *Id.*

227. *Civil Monetary Penalties Inflation Adjustment Under Title III, ADA*, https://archive.ada.gov/civil_penalties_2014.htm [<https://perma.cc/9UGV-2SJP>].

228. 31 U.S.C. § 5336(a)(11)(B)(xxi).

229. *Id.* § 5336(a)(11)(B).

230. While tax-exempt entities usually do not have individuals with an ownership interest in the entity, they still have "beneficial owners" in the form of those who exercise "substantial control" over the entity. 31 U.S.C. § 5336(a)(3)(A). Tax-exempt entities are less likely to be culprits of illicit activity; however, they, too, play a role in money laundering schemes in the United States. See DEP'T OF THE TREASURY, *supra* note 5, at 21, 28, 85, 91. Pooled investment vehicles, like hedge funds and private equity funds, usually manage significant assets and have complex ownership structures. *Pooled Investment Vehicles: Keeping Assets (And Families) Together*, J.P. MORGAN PRIV. BANK (Aug. 26, 2021), <https://web.archive.org/web/20250103013827/https://privatebank.jpmorgan.com/latam/en/in-sights/audio-and-webcasts/audio/life-and-legacy/pooled-investment-vehicles-keeping-assets-and-families-together>. This can create layers of anonymity that may make it easier to conduct and conceal illicit activity. While pooled investment vehicles are already subject to significant government oversight, their exclusion from the CTA's reporting requirements may have incentivized restructuring or decreased transparency. See *The Laws that Govern the Securities Industry*, INVESTOR.GOV, <https://www.investor.gov/introduction-investing-investing-basics/role-sec/laws-govern-securities-industry#invadvact1940> [<https://perma.cc/Y4Q4-LRDB>]; *Private Funds*, SEC, <https://www.sec.gov/resources-small-businesses/capital-raising-building-blocks/private-funds> [<https://perma.cc/W3PZ-HHCC>]; *Private Equity*

narrowing the exemptions, the CTA could have ensured that a wider array of entities were subject to its reporting requirements.

One concrete approach would have involved reevaluating the criteria that define exempt entities. As originally written, the large operating company exemption applied to entities with more than twenty employees, \$5 million in revenue, and a physical office in the United States.²³¹ This, coupled with the exemption granted to subsidiaries of large operating companies,²³² created ample opportunity for sophisticated firms to restructure their entities strategically. Independent entities holding specific assets, like a particular investment or piece of real estate, could be consolidated to qualify under the large operating company criteria or reorganized to gain classification as a subsidiary of a large operating company. To address this, policymakers could have increased the employee threshold to fifty or even one hundred employees, while also increasing the revenue threshold. FinCEN should have aligned its large operating company definition with other federal entities. The U.S. Small Business Administration defines “small businesses” as entities that make \$41.5 million or less in revenue annually.²³³ If the large operating company exemption exists to target “large” entities, then any entity the government classifies as a small business for other regulations and government benefits should not also fall within the “large operating company” exemption.

This aligns with the principle of addressing information asymmetry.²³⁴ By reducing the scope of exemptions, the CTA could have gathered more comprehensive data about ownership structures across a wider range of businesses, which would have enhanced the government’s ability to detect and deter financial crime. Furthermore, this approach would have created a more level playing field in the business environment. Smaller companies often bear the brunt of regulatory burdens,²³⁵ while larger entities can afford to engage in strategic restructuring to avoid having to report. Reducing exemptions would have helped ensure that compliance costs were more equitably distributed. Additionally, fewer exemptions would have ultimately supported the CTA’s objective of increasing transparency in corporate governance. With these adjustments, FinCEN could have maximized the benefits of the CTA while mitigating the costs.

Funds, INVESTOR.GOV, <https://www.investor.gov/introduction-investing/investing-basics/investment-products/private-investment-funds/private-equity> [<https://perma.cc/2289-2CU4>]. While tax-exempt entities and pooled investment vehicles would not be shoo-ins for removal from the CTA’s exemption list, they deserve further examination.

231. § 5336(a)(11)(B)(xxi).

232. FAQ, *supra* note 35, at 9.

233. *What is a Small Business? Here’s How the SBA Defines Small Businesses.*, COM. INST., <https://www.commerceinstitute.com/small-business-definition/#:~:text=The%20US%20Small%20Businesses%20Administration,popular%20industries%20in%20the%20US>: [<https://perma.cc/LZJ5-U8J6>].

234. *See* Arrow, *supra* note 65.

235. Sean Hackbarth, *How Regulations at Every Level Hold Back Small Business*, U.S. CHAMBER OF COM. (Mar. 28, 2017), <https://www.uschamber.com/small-business/how-regulations-every-level-hold-back-small-business> [<https://perma.cc/5BBY-CD5P>].

CONCLUSION

The CTA was enacted to address a genuine problem within the U.S. AML framework. The statute sought to reduce the opacity of beneficial ownership structures and to increase ownership transparency as a means of deterring illicit financial activity. This objective reflected a policy goal that attracted rare bipartisan support. Yet the statute's regulatory trajectory reveals the difficulty of implementing large-scale disclosure regimes in practice. The original CTA design imposed substantial compliance costs while relying on a bureau with limited capacity to administer and enforce the reporting system effectively.

The economic analysis developed in this Note helps explain these difficulties. Beneficial ownership reporting requirements generated significant direct and indirect costs for reporting companies, while the anticipated benefits of deterrence and informational efficiency remained uncertain. FinCEN's resource constraints further complicated enforcement and reduced the likelihood that the statute's theoretical gains could be fully realized. Broader principles of regulatory design also suggest that compliance systems like the CTA exhibit diminishing returns and induce behavioral adaptations that may undermine disclosure objectives.

The Interim Final Rule substantially narrowed the CTA's reporting obligations. By reducing the number of covered entities, the revision alleviated many of the compliance costs but also limited the informational benefits that were the basis of justification for the original framework.

Despite the CTA's downsizing, it remains instructive. Its bipartisan origins and continuing constitutional litigation indicate that beneficial ownership transparency will likely remain a recurring feature of regulatory policy. Understanding the economic and institutional dynamics that constrained the CTA is essential for evaluating future disclosure frameworks. Effective reporting regimes require not only legitimate policy objectives but also careful calibration of their expected benefits and costs. In this respect, the CTA serves not only as a regulatory experiment but as a case study in the economic limits of disclosure-based financial regulation.