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December 11, 2024

Nationwide Injunction Against Corporate Transparency Act Enforcement: What To Know and What To Expect



The U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction against enforcement of the beneficial ownership information reporting requirements of the Corporate Transparency Act (CTA) on December 3, 2024.

**The Financial Crimes Enforcement Network (FinCEN) has appealed the district court’s ruling but confirmed that companies that would have been required to report under the CTA—both existing and newly formed entities—are not required to file or make updates to beneficial ownership information reports (BOIRs) until the injunction is lifted.** In the meantime, FinCEN will continue to accept voluntary submissions from companies. In light of this order, companies may choose to go pencils-down on preparing and submitting BOIRs. However, given the uncertainty, many companies may wish to avoid potential timing concerns if the injunction is ultimately lifted or to otherwise avoid future administrative burdens in light of efforts that have already been expended in preparing and filing prior reports. In this regard, reporting companies may consider continuing preparations to be in a position to file on short notice or even making voluntary submissions while the challenges make their way through the courts.

This Update discusses the injunction, current status of the appeals, and advice for companies navigating this new and uncertain terrain going forward.

### **Background**

The CTA is part of a landmark series of updates to U.S. anti-money laundering laws and regulations—the largest since the USA PATRIOT Act. The goal is to ensure the United States meets global anti-money laundering standards by providing U.S. federal authorities with information about the individual natural persons who own or control companies operating in the United States. This information helps law enforcement and national security agents investigate crimes like sanctions evasion, drug trafficking, terrorist financing, and other forms of money

laundering that can be conducted through the use of shell companies and complex corporate structures that obscure ownership and the individuals involved in these crimes.

Broadly speaking, unless one of 23 narrowly defined exemptions applies, the CTA requires all companies formed or registered to do business in the United States to file BOIRs with FinCEN identifying owners and certain other individuals associated with the formation and control of the entity. Entities formed or registered to do business in the United States in 2024 may have already been subject to these requirements because BOIRs were required to be filed within 90 days of formation or registration in 2024. For companies formed or registered before January 1, 2024, the deadline for filing was fast approaching; all such existing companies were required to have their BOIRs filed with FinCEN by January 1, 2025.

New York state adopted its own corporate transparency law that goes into effect in 2026, and other states are considering imposing beneficial ownership disclosure requirements.

For more details regarding the CTA's reporting requirements, see our prior publications regarding [the CTA as a whole](#), [a mid-year status update](#), [New York's corporate transparency law](#), and [our Compliance Collective CLE webinar](#), among [other publications](#) discussing application of specific CTA exemptions or ambiguities.

## **Litigation Landscape**

On December 3, 2024, a nationwide preliminary injunction was issued in *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.). While the Texas district court has yet to rule on the merits of the constitutional challenge to the CTA, the injunction is based on a preliminary determination that the challenge has a substantial likelihood of success and that irreparable harm is likely to occur in the absence of injunction pending the outcome of the litigation. FinCEN appealed to the U.S. Court of Appeals for the Fifth Circuit on December 5, 2024, seeking to overturn the Texas district court decision.

This case is only one of several around the country considering various constitutional challenges to the CTA, which largely center on arguments regarding privacy rights and Congressional overreach into affairs typically left to the states (*i.e.*, corporate formations). Most notably, on March 1, 2024, the U.S. District Court for the Northern District of Alabama issued a declaratory judgment holding the CTA unconstitutional in *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.). But the corollary injunction issued by the Alabama district court was far more limited, only prohibiting CTA enforcement against the plaintiffs in that action: the National Small Business Association and its members as of March 1, 2024.

FinCEN appealed the Alabama district court's judgment, and oral arguments in that appeal were heard by the U.S. Court of Appeals for the Eleventh Circuit in September. The Eleventh Circuit has yet to rule on the Alabama appeal. In the meantime, other federal district courts—including the U.S. District Courts for the Eastern District of Virginia and District of Oregon—have declined to issue CTA injunctions on the basis that they do not believe the constitutional challenges to the CTA are likely to succeed on the merits.

## **What To Expect Next**

### **Before the New Year**

In theory, the Fifth Circuit could lift the stay at any time prior to the end of the year, in which case the January 1, 2025, deadline for filings applicable to existing entities would be automatically reinstated. However, there are a few practical considerations that may mitigate the risk of this occurring.

First, FinCEN has not yet indicated whether the agency will seek expedited relief from the preliminary injunction. The notice of appeal filed with the Texas district court did not refer to a request for expedited consideration nor did FinCEN suggest the agency intends to make any such request in the public alert it issued on the matter, available [here](#).

Second, even if FinCEN ultimately seeks and the Fifth Circuit grants expedited relief from the preliminary nationwide injunction prior to the January 1, 2025, deadline, FinCEN may determine that it would be appropriate to extend the deadline for filing to avoid prejudicing reporting companies for observing the injunction. This would not be required but would be within FinCEN's discretion and would become more likely if the injunction is lifted closer to the current filing deadline.

It bears noting that the viability of the nationwide injunction issued by the Texas district court is subject to debate. The authority of a federal district court to issue an injunction with nationwide scope has been an increasingly controversial topic, with current U.S. Supreme Court justices openly questioning the constitutionality of such injunctions and members of Congress considering potential legislation to curtail the practice.

Of course, given other pending challenges and the Eleventh Circuit appeal that is ripe for a decision, there is also a possibility of intervening action by another court that could further delay CTA implementation.

#### **Longer Term**

Given the scope of challenges to the CTA nationwide, it seems likely that the litigation will remain active for some significant time to come, regardless of whether and/or how long the current nationwide injunction remains in effect. It is possible that the incoming presidential administration will reverse course on the U.S. Department of Justice's position in the pending appeals and accept the Alabama and Texas district court rulings as to the unconstitutionality of the CTA, scuttling the appeals. Alternatively, the incoming administration may consider recommending legislative or regulatory fixes to the CTA to address the Constitutional issues being raised. In addition, some of the state corporate transparency laws, which were similar to the CTA, such as the New York LLC Transparency Act that will go into effect in 2026, may also be targeted and subjected to similar constitutional and other legal challenges.

But even then, given the vast resources that have been expended to mount the CTA database and the millions of companies that have already submitted reports, the Treasury Department could consider other ways to leverage anti-money laundering laws currently in place to encourage voluntary filings to continue in accordance with global anti-money laundering standards. The upshot is that we should expect a long slog through the courts—and potentially the political branches, as well—before anyone can be certain what will become of the CTA.

#### **What Do We Do Now?**

In the face of such uncertainty, what should companies with potential CTA reporting requirements do?

##### **1. Be Prepared**

At a minimum, every company that was formed in the United States or is registered to do business in the United States should confirm their filing obligations, including whether any exemptions may apply. For many companies, determining the applicability of the CTA and which specific individuals may be required to be reported for each entity can be a laborious task. Companies with large portfolios of entities in their corporate

structures or complex ownership or control issues should consider working to ensure they can be prepared to file required reports on relatively short notice. Companies with relatively simple structures and ownership may reasonably decide to pause any further action on the CTA unless/until the injunction is lifted.

While we hope for FinCEN to provide a revised filing deadline offering reasonable notice to companies once the injunction is lifted, given the confusion the injunction has injected into the filing process, there is no guarantee as to what the agency may view as “reasonable.” If a filing deadline were reasonably missed by some small margin as a result of the injunction, we would be surprised to see aggressive enforcement by FinCEN, particularly given the agency’s frequent assurances that they do not intend to treat CTA enforcement as a “gotcha game.” However, there is no guarantee as to FinCEN’s future enforcement perspective in this uncertain environment.

Companies are permitted to make voluntary filings and may choose to do so to capitalize on work that has already been done, bring their portfolio of companies into consistent filing status where some BOIRs have already been filed, and/or to avoid the administrative burden of a potential short turnaround filing deadline (particularly over the holidays when staff may be thinner than usual).

Before moving forward with voluntary filings, companies should consider any potential confidentiality restrictions that may apply to personal information of the company’s “beneficial owners” now that the BOIRs are no longer mandatory.

## **2. Continue To Monitor for Changes in Beneficial Ownership**

Reporting companies that have already filed their initial report with FinCEN should continue to monitor and record changes in beneficial ownership, including changes to senior officers, so that timely updates to existing reports can be made if the injunction is lifted. Reporting companies may decide to continue to collect beneficial ownership information from individual beneficial owners and file updates to their initial reports voluntarily.

## **3. Continue To Require CTA Provisions in Policies, Contracts, and Agreements**

Many companies have incorporated CTA policies and procedures and have adopted CTA provisions in employment agreements, corporate documents, and certain transaction agreements (*i.e.*, mergers and acquisitions). These policies, procedures, and agreements should remain in place and continue to protect the ability of reporting companies to obtain CTA information and be indemnified, as appropriate, pending final resolution of these issues in the courts.

## **4. Keep Records Regarding New Formations**

Given that there may be a lengthy period of uncertainty as to the implications of the CTA, companies should keep CTA compliance items on checklists for all new entity formations that may include, among other things, its taxpayer identification number (TIN) as well as the names of its beneficial owners and be prepared for a potentially expedited timeframe for making their initial filings if the injunction is stayed.

## **5. Stay Abreast of Developments**

It has been a bumpy ride so far, and there will likely be further twists and turns to come in the saga of the CTA. Companies should ensure that they remain abreast of developments and consult with knowledgeable resources about the implications of such developments.

Please reach out to the Perkins Coie team with any questions or for support in relation to CTA compliance.

## Authors

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