

TRUMP ADMINISTRATION APPEALS CURRENT CORPORATE TRANSPARENCY ACT STAY, REPORTING DEADLINE LIKELY TO BE EXTENDED IF STAY IS LIFTED

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IMPORTANT NOTICE: *As of March 2nd, 2025, the U.S. Treasury Department announced it will not pursue enforcement actions against domestic reporting companies or their beneficial owners for failing to file their Beneficial Ownership Information (BOI) reports by the deadline, and plans to narrow the scope of reporting requirements only to foreign reporting companies. Read the latest update [here](#), and we will keep you updated on the ongoing saga of uncertainty surrounding the status of the Corporate Transparency Act.*

Since our last alert on the uncertain and turbulent seas of Corporate Transparency Act news ...

U.S. Supreme Court Stayed *Texas Top Cop Shop* Injunction

On January 23, 2025, the Supreme Court stayed the nationwide preliminary injunction issued on December 3, 2024, by the U.S. District Court for the Eastern District of Texas in *Texas Top Cop Shop, Incorporated et al. v. McHenry (formerly Garland)*, Case No. 4:24-cv-00478. The injunction in *Texas Top Cop Shop* had prevented the Financial Crimes Enforcement Network (“FinCEN”) from enforcing the Corporate Transparency Act (“CTA”) and its implementing regulations (the “Reporting Rule”), including the compliance deadline requiring companies subject to the CTA and formed prior to January 1, 2024 to file their initial beneficial ownership information (“BOI”) reports with FinCEN no later than January 1, 2025.

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Separate Stay Against CTA Enforcement Issued in *Smith v. U.S. Department of Treasury* Remains in Effect

Given the whiplash of rulings in the *Texas Top Cop* case at the Fifth Circuit and Supreme Court since December 3, 2024, understandably the media's focus had been on developments in that case. If you only paid attention to the *Texas Top Cop* case, then you might have assumed the Supreme Court's January 23rd order meant that reporting companies were again required to file their initial BOI reports with FinCEN. However, this is not the case; **the compliance deadline of the Reporting Rule remains stayed as of the publication of this alert.**

While *Texas Top Cop* garnered most of the media attention, a separate judge in the Eastern District of Texas issued an order which granted a preliminary injunction against FinCEN's enforcement of the CTA, but solely with respect to the plaintiffs in that case, in *Smith v. U.S. Department of Treasury*, Case No. 6:24-cv-336. Judge Jeremy Kernodle additionally ordered, pursuant to § 705 of the Administrative Procedures Act ("APA"), that the effective date of the Reporting Rule be stayed while the *Smith* case is pending. This stay against the Reporting Rule becoming effective has nationwide impact and has prevented FinCEN from enforcing the CTA since the Supreme Court's January 23rd order.

Trump Administration's Request of Stay in *Smith*

On February 5, the Department of Justice filed a notice of appeal of the district court's order in *Smith* and motion to stay the order as the appeal proceeds. The motion to stay cites the Supreme Court's ruling in the *Texas Top Cop* case and argues that the *Smith* and *Texas Top Cop* facts and analysis are not distinguishable on any substantive issue and that Judge Kernodle should therefore follow the Supreme Court's precedent in *Texas Top Cop*.

In an important shift from the Department of Justice's position during the Biden administration, in its motion to stay the preliminary relief granted by Judge Kernodle, the Department of Justice indicated that **"[i]f the stay is granted, [FinCEN] intends to extend the [CTA] compliance deadline for thirty days"** and that during such 30-day period "FinCEN will assess whether it is appropriate to modify the CTA's reporting requirements to alleviate the burden on low-risk entities while prioritizing enforcement to address the most significant risks against U.S. national security."

Upon filing the notice of appeal and motion to stay in the *Smith* case, FinCEN issued an updated statement about the *Smith* case on its website (<https://www.fincen.gov/boi>). FinCEN's new statement details FinCEN's intentions regarding timelines if Judge Kernodle's January 7th order in *Smith* is stayed:

FinCEN intends to extend the reporting deadline for all reporting companies by 30 days. Further, in keeping with Treasury's commitment to reducing regulatory burden on businesses, FinCEN, during that 30-day period, will assess its options to modify further deadlines or reporting requirements for lower-risk entities, including many U.S. small businesses, while prioritizing reporting for those entities that pose the most significant national

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security risks.

In the meantime, FinCEN is complying with—and will continue to comply with—the district court’s order for as long as it remains in effect. . . . FinCEN is also not currently enforcing the requirements of 31 C.F.R. § 1010.380 against any individual or entity. Reporting companies are, therefore, not currently required to file beneficial ownership information with FinCEN. Reporting companies may continue to voluntarily submit beneficial ownership information reports, free of charge, using FinCEN’s E-Filing system. . . .

Accordingly, FinCEN is currently complying with the district court’s order in *Smith* and not enforcing the CTA at this time. While reporting companies are not presently required to file BOI reports or face penalties for noncompliance while the *Smith* order remains in force, it is anticipated that the injunction will be stayed, particularly in light of the Supreme Court’s decision staying the nationwide preliminary injunction in *Texas Top Cop*. If the *Smith* injunction is stayed, FinCEN has indicated that it intends to extend the reporting deadline for all reporting companies by 30 days.

In addition to the above legal developments in cases challenging the CTA, multiple bills have been introduced in both the U.S. House of Representatives and the U.S. Senate that if passed could completely repeal the CTA or extend the deadline for compliance for another year. As of now, if or when a vote will be taken on any of these bills is unclear.

Recommendations While Litigation Continues

Given the fluid nature of these legal developments, we recommend that companies take proactive steps to ensure they have gathered the necessary information and documentation for beneficial owners and are prepared to file BOI reports promptly should the reporting obligations be reinstated, and all reporting companies who have not yet filed should consider voluntarily reporting so as not to be caught off guard by future developments.

Conner & Winters will continue monitoring this evolving legal landscape to ensure we support clients in remaining proactive in their compliance efforts. For further guidance, contact your attorney at Conner & Winters.