

Corporate Transparency Act Back in Effect - Deadline Extended to Jan. 13, 2025 for Reporting Companies Formed Prior to 2024

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CTA – On Again, Off Again – And For Now, It’s Off Again

Yesterday, the U.S. Court of Appeals for the Fifth Circuit changed course and issued an order in Texas Top Cop Shop, Inc. v. Garland vacating its Dec. 23 order from just a few days earlier that had reinstated CTA reporting obligations. Yesterday's decision means the Dec. 3 preliminary injunction enjoining enforcement of the CTA is back in effect, and reporting obligations under the CTA are suspended until further notice.

Based on FinCEN's actions following the Dec. 3 order, we expect FinCEN to update its website to once again indicate that reporting companies are not obligated to, but may voluntarily, report beneficial ownership information while the preliminary injunction remains in effect. Reporting companies should continue to monitor developments closely.

On Dec. 23, the U.S. Court of Appeals for the Fifth Circuit granted the U.S. government's request for an emergency stay of a nationwide preliminary injunction blocking enforcement of the Corporate Transparency Act (CTA).

This means filings with FinCEN are once again required under the CTA. However, the Jan. 1, 2025 deadline for reporting companies formed prior to 2024 has been extended to Jan. 13, 2025.

The appellate court's Dec. 23 ruling reinstates the CTA, including all of its reporting requirements, deadlines and penalties. In its ruling, the appellate court included the following footnote:

"The Businesses warn that lifting the district court's injunction days before the compliance deadline would place an undue burden on them. They fail to note, however, that they only filed suit in May

CORPORATE TRANSPARENCY ACT BACK IN EFFECT - DEADLINE EXTENDED TO JAN. 13, 2025 FOR REPORTING COMPANIES FORMED PRIOR TO 2024 Cont.

2024 and the district court's preliminary injunction has only been in place for less than three weeks as compared to the nearly four years that the Businesses have had to prepare since Congress enacted the CTA, as well as the year since FinCEN announced the reporting deadline."

Later that evening, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) posted a statement on its website acknowledging the reinstatement of enforcement of the CTA and extending the reporting deadlines, as set forth below. In doing so, FinCEN wrote:

"However, because the Department of the Treasury recognizes that reporting companies may need additional time to comply given the period when the preliminary injunction had been in effect, we have extended the reporting deadline."

Reporting companies should plan to comply with the reporting deadlines contained in the CTA and continue to closely monitor for further developments. There are likely to be ongoing developments related to the CTA.

To comply with the requirements of the CTA, a reporting company must file information related to the reporting entity and all beneficial owners. To complete a BOIR, the reporting company should compile the following:

1. Reporting company information:

- Full legal name, including any trade names and d/b/a names
- Full address of the reporting company. The address cannot be a P.O. box or the address of a registered agent.
- Employer Identification Number (EIN) or Taxpayer Identification Number (TIN)
- An image of an identifying document from the formation jurisdiction, such as the articles of incorporation

2. All beneficial owner information (BOI) and company applicant information, which includes:

- Full legal name
- Date of birth
- Current residential address for beneficial owner
- An identification document, such as a driver's license or passport
- An image of the identification document

CORPORATE TRANSPARENCY ACT BACK IN EFFECT - DEADLINE EXTENDED TO JAN. 13, 2025 FOR REPORTING COMPANIES FORMED PRIOR TO 2024 Cont.

A “beneficial owner” is any individual who, directly or indirectly exercises substantial control over the reporting company (for example, through service as a senior executive such as CEO, CFO or general counsel, or through other authority to make substantial decisions on behalf of the entity), owns or controls 25% or more of the ownership interests of the reporting company or owns or controls a majority of the voting equity in the reporting company.

If a private trust meets the requirements of a reporting company as defined by the CTA, it must also submit a BOIR. For a trust, the beneficial owners include:

- The trustee and anyone else with authority to vote or dispose of trust assets.
- A beneficiary who is the sole permissible recipient of income or principal or has the right to demand a distribution of or withdraw substantially all trust assets.
- A grantor/settlor who has the right to revoke or withdraw assets.

Preparing to File a BOIR?

If you believe that your business or entity may have a CTA filing requirement, there are things to you can do now to prepare to file. To prepare to file a BOIR an entity should do the following:

- Determine if your entity is a reporting company.
- Determine which individuals will be considered “beneficial owners” for the reporting company under the CTA.
- Collect the required information that will be needed to complete the BOIR for each beneficial owner.

An entity can file its BOIR through the FinCEN reporting portal. Once the report is submitted, FinCEN will send an email confirming that the report was received and accepted.

Plunkett Cooney is here to help you understand the Corporate Transparency Act Beneficial Ownership Report process. Contact one of our attorneys if you would like more