

Corporate Transparency Act Enforceable With Extended Deadlines Following Actions of Fifth Circuit and FinCEN

Update

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On December 23, 2024, the US Court of Appeals for the Fifth Circuit granted an emergency motion for a temporary stay pending appeal requested by the federal government. The government submitted the motion in connection with its appeal of the previously reported nationwide preliminary injunction of the Corporate Transparency Act (CTA) that was issued by the US District court for the Eastern District of Texas in *Texas Top Cop Shop, Inc., et al. v. Garland*. The temporary stay of the preliminary injunction allows the Treasury Department to enforce the CTA and its implementing regulations.^[1]

The timing of the stay had the potential to leave many reporting companies with relatively few working days to comply with upcoming deadlines, including any reporting company that was in existence on January 1, 2024. Recognizing this issue, the Financial Crime Enforcement Network of the US Department of Treasury (FinCEN) provided additional time to comply on the following adjusted deadlines:

- Reporting companies that were created or registered prior to January 1, 2024 have until January 13, 2025 to file their initial beneficial ownership information reports with FinCEN. (These companies would otherwise have been required to report by January 1, 2025.)
- Reporting companies created or registered in the United States on or after September 4, 2024 that had a filing deadline between December 3, 2024 and December 23, 2024 have until January 13, 2025 to file their initial beneficial ownership information reports with FinCEN.
- Reporting companies created or registered in the United States on or after December 3, 2024 and on or before December 23, 2024 have an additional 21 days from their original filing deadline to file their initial beneficial ownership information reports with FinCEN.

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FinCEN also noted that certain reporting companies may have further extended deadlines as a result of the disaster relief it granted in response to Hurricanes Milton, Derby, Beryl and Francine. FinCEN confirmed that plaintiffs in the previously reported *National Small Business United v. Yellen* are not currently required to report their beneficial ownership information to FinCEN at this time.

Various legal challenges to the CTA and its enforcement are pending. In granting the motion, the Fifth Circuit noted that “the government has made a strong showing that it is likely to succeed on the merits in defending CTA’s constitutionality.” The court identified the regulation of anonymous ownership and operation of businesses as part of an economic class of activities that have substantial effect on interstate commerce, which would serve as the jurisdictional hook other courts have found missing.

The Bracewell CTA Task Force will continue to monitor this case and other related challenges to the enforceability of the CTA.

[1] The temporary stay will remain in place during the pendency of the case in chief before the Fifth Circuit.