

## Nationwide preliminary injunction suspends enforcement of the Corporate Transparency Act

December 6, 2024 | Client Update | 4-minute read

The nationwide preliminary injunction pauses reporting under the Beneficial Ownership Information Reporting Rule for all reporting companies.

Finding that the Corporate Transparency Act (CTA) likely exceeds Congress's powers, the U.S. District Court of the Eastern District of Texas issued a nationwide preliminary injunction against the enforcement of the CTA, including the Beneficial Ownership Information Reporting Rule (BOI Reporting Rule).<sup>1</sup> As a result, for the time being at least, companies subject to the reporting obligations under the CTA and BOI Reporting Rule are not required to submit beneficial ownership information reports (BOI Reports) to the Financial Crimes Enforcement Network (FinCEN).

### Key takeaways, observations and recommendations:

- **Scope of the injunction:** Unlike previous successful challenges of the CTA,<sup>2</sup> the court issued a nationwide injunction against enforcement of the CTA and the BOI Reporting Rule, thereby pausing the reporting obligations for *all* reporting companies (not just the plaintiffs).
- **Next steps in the litigation:** The Department of Justice (DOJ) entered a notice of appeal on December 5, 2024 and we expect that DOJ will seek a stay of the preliminary injunction pending appeal.<sup>3</sup> Reporting companies should monitor for any updates concerning a stay of the injunction.
- **Statement from FinCEN:** On December 7, 2024, FinCEN issued a brief statement, stating that “reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force.” FinCEN notes, though, that reporting companies may voluntarily submit BOI Reports.<sup>4</sup>
- **Recommendations for reporting companies that have not filed BOI Reports:** Given that the year-end BOI reporting deadline for existing companies is rapidly approaching and uncertainty of whether and when a stay will be granted, we recommend that companies continue to assess their BOI reporting obligations and, as necessary, prepare BOI Reports. However, it is reasonable for reporting companies to hold off on submitting BOI Reports until FinCEN issues further guidance.
- **Recommendations for reporting companies that have filed BOI Reports:** Reporting companies that have already filed BOI Reports should continue to monitor for any changes to the information submitted in their initial BOI Reports; however, again, we think it is reasonable for reporting companies to wait on submitting any amended or updated BOI Reports until FinCEN issues further guidance.

Even if a stay of the preliminary injunction is granted, we expect that there will be more judicial and non-judicial challenges to the CTA and BOI Reporting Rule that may lead the incoming Administration to push for major changes to BOI reporting under the CTA. For example, on November 5, 2024, 40 members of Congress sent a letter to FinCEN, requesting a one-year delay of the CTA's implementation.<sup>5</sup> The BOI Reporting Rule could be in play for the incoming Administration, which has committed to eliminating unnecessary or overly burdensome regulations. The broad scope and

overall intrusiveness of the BOI Reporting Rule, along with the increasingly negative attention it has received, could make rescission or a major revision of the rule an easy “win” for an Administration looking to shake up the regulatory landscape.

Compliance with the BOI Reporting Rule has certainly been a challenge for many businesses, especially large companies with complex organizational structures, and the uncertainty introduced by the preliminary injunction only increases the degree of difficulty. While an extension of the reporting deadline is certainly possible, we recommend that all reporting companies continue to closely monitor for any additional updates from Treasury and FinCEN.

## Resources for reporting companies

Below we provide a few resources that may be helpful for reporting companies who are continuing to prepare their BOI reports and/or monitor for updates from Treasury and FinCEN:

- [Davis Polk – FinCEN publishes final rule on beneficial ownership](#)
- [Davis Polk – FinCEN releases initial beneficial ownership information reporting guidance](#)
- [FinCEN – Beneficial Ownership Information Frequently Asked Questions](#)
- [FinCEN – Small Entity Compliance Guidance](#)
- [FinCEN – Newsroom](#)
- [Treasury – Press Releases](#)
- [FinCEN – Beneficial Ownership Information<sup>6</sup>](#)

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- <sup>1</sup> *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 4953814 (E.D. Tex. Dec. 3, 2024). The court's ruling is available [here](#).
- <sup>2</sup> See, e.g., *Nat'l Small Bus. United v. Yellen*, No. 5:22-CV-01448, 2024 WL 899372 (N.D. Ala. Mar. 1, 2024).
- <sup>3</sup> Notice of Appeal, *Texas Top Cop Shop, Inc. v. Garland*, No. 4:24-CV-478, 2024 WL 4953814 (E.D. Tex. Dec. 3, 2024).
- <sup>4</sup> See, FinCEN, Alert: Impact of Ongoing Litigation – Deadline Stay – Voluntary Submission Only (Dec. 7, 2024), <https://fincen.gov/boi>.
- <sup>5</sup> Congress, Letter to U.S. Treasury Department and FinCEN, <https://s-corp.org/wp-content/uploads/2024/11/Letter-to-Treasury-FinCEN.pdf>; see also, Congress, Letter to U.S. Treasury Department and FinCEN, <https://williams.house.gov/sites/evo-subsites/williams.house.gov/files/evo-media-document/12.3.24%20Letter%20to%20TreasuryFinCEN%20regarding%20BOI%20Implementation%20in%20TX%20.pdf> (On December 3, 2024, 12 additional members of Congress sent a letter to Treasury and FinCEN, requesting that the BOI compliance deadline is extended and that FinCEN consider repealing or restructuring some of the BOI Reporting Rule requirements.)
- <sup>6</sup> Note, FinCEN issued its statement in the “Alert” section of its Beneficial Ownership Information website.