



## Corporate Transparency Act Reinstated Days Before Key Deadline

CTA Working Group

*Foster Swift Business & Tax Law E-Blast*

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On December 23, 2024, the Fifth Circuit Court of Appeals overturned a prior nationwide injunction of the Corporate Transparency Act ("CTA") issued just weeks ago. Recognizing the timing of these recent decisions just days before the January 1, 2025 filing deadline, FinCEN has adjourned some, but not all, filing deadlines. As such, if you have a Reporting Company that has not yet filed its BOI Report, please pay particular attention to the new due date, if any.

### **The recent preliminary injunction was overturned just days before the reporting deadline.**

Just 20 days ago, on December 3, 2024, the U.S. District Court for the Eastern District of Texas entered a nationwide preliminary injunction against enforcement of the CTA, finding constitutional defects in the law. The Court's ruling provided businesses with temporary relief from the upcoming January 1, 2025 filing deadline.

In a dramatic turn of events, on December 23, 2024, the United States Court of Appeals for the Fifth Circuit entered an emergency order overturning the nationwide preliminary injunction. In doing so, the Fifth Circuit found that an injunction was not warranted because: (1) the government made a "strong showing" that it was likely to succeed in defending the CTA's constitutionality under the Commerce Clause, (2) the imposition of a stay inflicts irreparable harm on the government, not businesses, (3) the harm in lifting the stay was minimal to businesses due to FinCEN's estimates as to the financial cost of compliance, and (4) the public interest favors enforcement as an injunction would "undermine [the government's] ability to push other countries to reform their anti-money laundering and counterterrorism regimes and to address the most fundamental gap in our own regime." The Fifth Circuit also ordered that the appeal is to be expedited to the next available oral argument panel. As such, and absent any further rulings, businesses are required to comply with the reporting requirements of the CTA.

### **AUTHORS/ CONTRIBUTORS**

James F. Anderton, V

Terri L. Bolyard

Amanda J. Dernovshek

Robert A. Hamor

Nicholas M. Oertel

Nicholas J. Stock II

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Presumably recognizing the impact of the lifting of the stay a few days before the January 1, 2025 deadline, FinCEN, only hours after the Fifth Circuit's decision, published guidance extending some, but not all, filing deadlines. This guidance provides that:

- 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.
- Reporting companies that qualify for disaster relief may have extended deadlines that fall beyond January 13, 2025. These companies should abide by whichever deadline falls later.
- Reporting companies that are created or registered in the United States on or after January 1, 2025 have 30 days to file their initial beneficial ownership information reports with FinCEN after receiving actual or public notice that their creation or registration is effective.

Financial Crimes Enforcement Center, *Beneficial Ownership Information Reporting* <https://fincen.gov/boi> (accessed December 23, 2024).

### **What does this mean for small businesses going forward?**

Absent any further orders, small business are now required to comply with the reporting requirements of the CTA. Depending on when the company was formed, the deadline may have changed. In summary:

If the company was formed before January 1, 2024

**You have until January 13, 2025 to file your BOI Report.**

If the company was formed between January 1, 2024 and September 3, 2024

**You should have already filed your BOI Report as it was due before the December 3, 2024 injunction.**

If the company was formed between September 4, 2024 and December 2, 2024

**You have until January 13, 2025 to file your BOI Report.**

If the company was formed between December 3, 2024 and December 23, 2024



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**You have 111 days from the date of formation to file your BOI Report (90 days plus an additional 21 days due to the injunction).**

If the company will be formed between December 24, 2024 and December 31, 2024

**You have 90 days from the date of formation to file your BOI Report.**

If the company will be formed on or after January 1, 2025

**You have 30 days from the date of formation to file your BOI Report**

Ultimately, the future of the CTA is uncertain with further appeals expected. Foster Swift's CTA Working Group will continue to keep a close eye on ongoing litigation and administrative developments which may affect businesses' obligations under the CTA. Please reach out to a member of Foster Swift's CTA Working Group with any questions.

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