

# CORPORATE TRANSPARENCY ACT BLOCKED AGAIN

The U.S. Fifth Circuit Court of Appeals reinstated a nationwide injunction on the reporting of beneficial ownership information under the Corporate Transparency Act. The injunction issued by a Texas federal court in early December had been overturned last week by a different Fifth Circuit panel.

For now, reporting companies are (again) no longer required to report beneficial ownership information, but reporting of beneficial ownership under the CTA could be required in the future. The Fifth Circuit will hear arguments regarding the CTA reporting obligations on March 25, 2025. The Financial Crimes Enforcement Network has indicated that reporting companies may continue to submit beneficial ownership information on a voluntary basis. Given the uncertainty about what may happen in the appeal process, reporting companies should continue to gather beneficial ownership information in order to ensure compliance with any future reporting deadlines.

O'Neil Cannon will continue to monitor and provide further updates regarding the CTA. Please reach out to a member of the O'Neil Cannon team if you have questions related to the CTA.

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# CORPORATE TRANSPARENCY ACT REINSTATED WITH NEW REPORTING DEADLINES

On December 23, 2024, the U.S. Court of Appeals for the Fifth Circuit stayed a preliminary injunction of the Corporate Transparency Act. As a result, the U.S. federal government is again able to enforce the CTA, which includes the reporting of beneficial ownership information. Shortly after the Fifth Circuit issued the stay, the U.S. Financial Crimes Enforcement Network extended the filing deadlines for certain reporting companies to submit beneficial ownership information. The response to the Fifth Circuit's decision by FinCEN[1] states in part:

*"In light of a December 23, 2024, federal Court of Appeals decision, reporting companies, except as indicated below, are once again required to file beneficial ownership information with FinCEN. 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 as follows:*

- *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.”*

Subject to any further developments, in light of the Fifth Circuit’s decision and FinCEN’s limited reprieve, reporting companies should gather beneficial ownership information as soon as possible in order to prepare the requisite filings by the updated deadlines.

For additional information or questions related to the CTA, please reach out to a member of the O’Neil Cannon team.

[1] The full alert (and other information related to the CTA and beneficial ownership reporting) is available at <https://fincen.gov/boi>.

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## **CORPORATE TRANSPARENCY ACT INJUNCTION ALERT**

On December 3, 2024, the U.S. District Court for the Eastern District of Texas granted a preliminary, nationwide injunction enjoining the United States federal government from enforcing the Corporate Transparency Act (“CTA”), which includes the reporting of beneficial ownership information (“BOI Report”) to the U.S. Federal Crimes Enforcement Network (“FinCEN”). The court’s reasoning revolved around the constitutionality of the CTA. The immediate impact is that companies are, at least temporarily, no longer required to file a BOI Report with FinCEN. Prior to this temporary injunction, the deadline for companies subject to the CTA filing requirements that formed prior to January 1, 2024 to file a BOI Report with FinCEN was January 1, 2025 (companies subject to the CTA filing requirements that were formed in 2024 previously had to file a BOI Report with FinCEN within 90 days of their formation, and companies subject to the CTA filing requirements that are formed on or after January 1, 2025 would have been required to file a BOI Report within 30 days of their formation).

Although the current injunction is nationwide (meaning all companies subject to the CTA filing requirements no longer have to file a BOI Report), because of the nature of the temporary injunction, it is entirely possible that the United States government may choose to appeal the preliminary injunction to the U.S. Court of Appeals for the Fifth Circuit, or potentially to the United States Supreme Court. If an emergency appeal is filed and heard, it is possible that the injunction will be removed and that all companies subject to the CTA filing requirements will again be required to report with no guarantee of any extension of the applicable deadlines. Additionally, it is also possible that an appeals court could remove the nationwide injunction and only leave it applicable to the specific plaintiffs, similar to the March 2024 ruling issued by the U.S. District Court for the Northern District of Alabama in *NSBA v Yellen*, which enjoined the government from enforcing the CTA against only the specific plaintiffs in that case. Furthermore, as of this writing, FinCEN has not issued a formal response regarding the injunction, which may provide further detail for reporting deadlines or other additional guidance, although FinCEN is currently still accepting BOI Reports. The rapidly approaching deadline coupled with the uncertainty as to whether the government will appeal or not (and if an appeal is made, what the ultimate ruling will be) puts companies in a difficult position to choose between (1) complying with the CTA and filing a BOI Report by the applicable deadline regardless of the injunction, or (2) waiting until a final determination is made and possibly rushing to file by year end. Please note that if you choose to not file a BOI Report for a company required to comply with the CTA and the injunction is lifted, depending on the timing, we may not be able to file your BOI Report by the new deadline unless the deadline is extended.

O'Neil Cannon will continue to monitor for additional developments. For additional information or questions related to the CTA, please reach out to a member of the O'Neil Cannon team.