

# LEGAL ALERT

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## ANSWERING THE LATEST CTA QUESTIONS FOLLOWING RECENT COURT INJUNCTION

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The Corporate Transparency Act (CTA), which took effect January 1, 2024, imposes an obligation on most privately owned businesses to provide to the Treasury Department's Financial Crimes Enforcement Network (FinCEN) certain personal identification information of those individuals who own and control the reporting companies. These reports are known as Beneficial Ownership Reports, or "BOIRs." The filing deadline for the majority of reporting companies is January 1, 2025.

However, on December 3, 2024, the U.S. District Court for the Eastern District of Texas granted a nationwide preliminary injunction, enjoining the CTA's BOIR requirements and related regulations. The court's order further stays the January 1, 2025, beneficial ownership information reporting deadline. *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-ov-478 (E.D. Texas Dec. 3, 2024).

On December 6, 2024, the Department of Justice appealed the district court's injunction to the Fifth Circuit. The Treasury Department has issued a statement that it will comply with the District Court's order and that until that order is changed, all BOIR filings are voluntary and not mandatory. We will continue to monitor developments, and refer our readers to the FAQs presented below:

### DO REPORTING COMPANIES STILL HAVE A FILING OBLIGATION?

Currently, there is no BOIR filing obligation as enforcement of the CTA has been enjoined. However, clients should continue compiling beneficial ownership information and should be prepared to file expeditiously, if the federal government's appeal is successful. HLP's CTA task force is available to discuss specific client situations.

### CAN REPORTING COMPANIES FILE BOIRS AT THIS TIME?

FinCEN's BOIR filing portal remains available. HLP will, however, only file BOIRs during the injunction period if clients provide affirmative instruction to do so.

### WHAT IF I ALREADY FILED A BOIR?

Filed BOIRs cannot be retracted. It is unclear whether FinCEN will retain information already filed or be required to destroy it. Clients that filed should continue retaining evidence of the filing and a copy of the BOIR as filed.

## AM I REQUIRED TO FILE UPDATES TO A FILED BOIR?

The injunction also negates any requirement to update BOIRs on file with FinCEN.

## WHEN WILL WE KNOW MORE INFORMATION?

We are monitoring the Treasury Department, FinCEN, and Justice Department press releases and court filings. There may be an administrative position or additional FinCEN guidance release that provides more information before the appellate court review, but we do not know for certain when, or if, that will occur.

## WHAT ELSE SHOULD WE KNOW?

Significant ambiguity remains around the CTA that will be resolved by the courts in due course. There is also pending legislation that could repeal or delay the CTA. If it is repealed, the court process is rendered moot. The forthcoming change of administrations in Washington D.C. further complicates these issues, as President Trump vetoed the CTA during his first term, a veto that was ultimately overridden by legislative process.

Therefore, we believe the best approach in most circumstances may be to: (1) determine if the business qualifies as a reporting company and if so, (2) analyze who qualifies as a beneficial owner; (3) gather the necessary BOIR information for each identified beneficial owner; (4) prepare a draft BOIR; and (5) keep the BOIR safe and unfiled until the future of the CTA is clearly resolved. Above all else, do not hesitate to contact your HLP attorney to discuss any concerns you may have regarding the CTA's effect on your business.

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