

## Update on CTA: How to Handle Beneficial Ownership Information Report Filings

January 14, 2025

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### *Update as of February 20, 2025:*

*On January 23, 2025, the U.S. Supreme Court stayed the nationwide preliminary injunction reinstated on December 26, 2024, by the U.S. Court of Appeals for the Fifth Circuit in the Texas Top Cop Shop case. The preliminary injunction had prevented enforcement of the Corporate Transparency Act (CTA) by the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of Treasury. However, due to separate nationwide preliminary injunction issued on January 7, 2025, by the District Court for the Eastern District of Texas in the Smith v. U.S. Department of the Treasury case, enforcement of the CTA remained blocked.*

*On February 17, 2025, the District Court in the Smith v. U.S. Department of the Treasury case stayed its own preliminary injunction in response to a motion by the government requesting the stay pending a decision on the government's substantive appeal of the preliminary relief granted. In staying its preliminary injunction, the court relied on the Supreme Court's decision in the Texas Top Cop Shop case. As a result, the CTA is once again enforceable by FinCEN.*

*On February 19, 2025, FinCEN posted new filing guidance and filing deadline information on its website ([Beneficial Ownership Information Reporting | FinCEN.gov](#)). FinCEN advised that the new deadline for the vast majority of reporting companies to file an initial, updated and/or corrected beneficial ownership information report is now March 21, 2025. FinCEN stated that they will also provide an update before then of any further modification of this deadline, recognizing that reporting companies may need additional time to comply with their CTA reporting obligations once this update is provided.*

*The new filing deadline could be subject to further adjustment by FinCEN or enforcement of the CTA could again be enjoined by preliminary or permanent injunctive relief arising out of one of the several CTA litigations in progress across the country. Additionally, there is traction in Congress to at least extend the initial reporting deadline for reporting companies formed before 2024 to January 1, 2026. However, as there is no guarantee that enforcement of the CTA will again be enjoined or its filing deadlines extended before the new deadline, reporting companies may well determine that the prudent course of action at this time is to proceed with their CTA filings, recognizing that circumstances could once again change on short or no notice.*

*As the situation may further change on little or no notice, please check back here or get in touch with your Carter Ledyard lawyer to stay current with future developments and how they may affect you.*

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Pending a Supreme Court decision (*Garland v. Texas Top Cop Shop*), beneficial ownership information report ("BOIR") filings under the Corporate Transparency Act ("CTA") are not required as of today, although the Financial Crimes Enforcement Network ("FinCEN") continues to accept voluntary filings. The Department of Justice, on behalf of the Treasury, has requested that the Supreme Court decide whether to resume enforcement pending an ongoing appeal in the Fifth Circuit.

Daily court developments affect filing deadlines and the enforceability of the CTA, but the more prudent step at this point for reporting companies who have not yet filed their initial BOIRs is to proceed with their filings.

Determining whether a BOIR must be filed for an entity involves a two-step process. First, determine if the entity is a corporation, LLC, or other entity created by the filing of a document with a Secretary of State or similar office in the U.S., or formed under the law of a foreign country and registered to do business by the filing of a document with a Secretary of State or similar office in the U.S. If so, the entity is a reporting company and subject to the CTA. The second step is to determine if the reporting company is one of the 23 types of entities that are exempt from having to file a BOIR. Set forth below are the exemptions that are available under the CTA and the regulations issued by the FinCEN. Anyone owning, managing, or advising entities should review these exemptions in case one may be available under the relevant circumstances.

**Exemptions\*** from the Requirement to File a BOIR:

*\*These are summaries of the exemptions only. Please contact one of our attorneys if you have any questions about whether your entity is exempt under any of these categories.*

1. **Securities Reporting Issuer:** an issuer of securities registered under, or filing periodical or supplementary information under the Securities Exchange Act of 1934;
2. **Governmental Authority:** an entity that is established under the laws of, and exercises governmental authority on behalf of, the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States;
3. **Bank:** a bank, as defined in: (A) Sec. 3 of the Federal Deposit Insurance Act, (B) Sec. 2(a) of the Investment Company Act of 1940, or (C) Sec. 202(a) of the Investment Advisers Act of 1940;
4. **Credit Union:** Federal or State credit union as defined in Section 101 of the Federal Credit Union Act);
5. **Depository Institution Holding Company:** any bank holding company as defined in the Bank Holding Company Act or any savings and loan holding company as defined in the Home Owners Loan Act;
6. **Money Transmitter Business:** money transmitter business registered with FinCEN under 31 USC 5330 or 31 CFR 1022.380;
7. **Broker or Dealer in Securities:** broker dealer registered under the Securities Exchange Act of 1934;
8. **Securities Exchange or Clearing Agency:** an exchange or clearing agency registered under section 6 or 17A of the Securities Exchange Act of 1934;
9. **Other Exchange Act Registered Entity:** an entity other than as described in Exemption 1, 7 or 8;
10. **Investment Company or Investment Adviser:** an investment company or adviser as defined in the Investment Company or Investment Advisers Act and registered with the SEC;

11. **Venture Capital Adviser Exemption:** investment adviser as described in the Investment Advisers Act which has filed Item 10, Schedule A and Schedule B of Part 1A of Form ADV with the SEC;
12. **Insurance Company:** as defined under the Investment Company Act;
13. **State-Licensed Insurance Producer:** authorized by a State and subject to supervision by the insurance commissioner or similar State agency and which has an operating presence at a physical office in the United States;
14. **Commodity Exchange Act Registered Entity:** registered under the Commodity Exchange Act or the Commodities Future Trading Commission as a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, commodity trading advisor, retail foreign exchange dealer;
15. **Public Accounting Firm:** any public accounting firm registered in accordance with Section 102 of the Sarbanes Oxley Act;
16. **Public Utility:** regulated public utility under 26 USC 7701(a)(33)(A) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States;
17. **Financial Market Utility:** as designated by the Financial Stability Oversight Council;
18. **Pooled Investment Vehicle:** *must be operated or advised by a bank, credit union, broker or dealer in securities, investment company or investment advisor or venture capital fund adviser*, as each term is described in exemptions above;
19. **Tax-Exempt Entity:** (A) an organization that is described in Sec. 501(c) of the Internal Revenue Code of 1986 (determined without regard to Sec. 508(a) of the Code) and exempt from tax under Sec. 501(a) of the Code (and such organization shall be considered to continue to be described as a tax-exempt entity for the 180-day period beginning on the date of the loss of such tax-exempt status), (B) a political organization, as defined in Sec. 527(e)(1) of the Code, that is exempt from tax under Sec. 527(a) of the Code, or (C) a trust described in paragraph (1) or (2) of Sec. 4947(a) of the Code;
20. **Entity Assisting a Tax-Exempt Entity:** an entity which (A) operates exclusively to provide financial assistance to, or to hold governance rights over, any tax-exempt entity described in exemption 19, (B) is a United States person; (C) is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence as defined in the Immigration and Nationality Act and (D) derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence;
21. **Large Operating Company** an entity that has (A) 20 full time employees employed in the United States, (B) an operating presence at a physical office within the United States, (C) filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5 million in gross receipts or sales, (D) reported greater than \$5 million as gross receipts or sales (net of returns and allowances), (E) has gross receipts or sales greater than \$5 million even when gross receipts or sales from sources outside the United States, as determined under Federal income tax principle, are excluded from the entity's amount of gross receipts or sales;
22. **Entity controlled or wholly owned directly or indirectly by entities described above** in the following exemptions: 1-5, 7-17, 19 or 21;
23. **Inactive Entity:** an entity which (A) was in existence prior to January 1, 2020; (B) is not engaged in active business; (C) is not owned by a foreign person (either directly, indirectly, wholly or partially); (D) has not experienced any change in ownership in the

preceding 12 months; (E) has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding 12 months; and (F) the entity does not hold any kind or type of assets, whether in the United States or abroad, including any ownership interests in any corporation, limited liability company or other similar entity.

Note that Exemptions 21-23 are exemptions of general application.

For those clients who want our assistance with their CTA filings, we will continue to coordinate CTA filings through CSC, a corporate service company.

The best option for reporting companies to have their initial CTA filings in a timely manner is to file directly through the FinCEN website: [Beneficial Ownership Information Reporting | FinCEN.gov](#).

If you have questions about the online filing process, we have a paralegal who can assist with those questions with our lawyers helping with any more substantive questions.

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The above advisory was written by Guy P. Lander, Austin D. Keyes and Marianne T. Bellucci. Please contact them for any questions.

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