On February 18, 2025, the U.S. District Court for the Eastern District of Texas issued an order staying its previous injunction in *Smith v. U.S. Department of the Treasury*, effectively reinstating FinCEN's authority to enforce beneficial ownership information (BOI) reporting requirements under the Corporate Transparency Act (CTA). As a result, reporting companies are once again required to comply with BOI reporting obligations.

However, recognizing the need for additional time, FinCEN has extended the deadline for most companies by 30 days, making the new due date for initial, updated, or corrected BOI reports March 21, 2025. FinCEN has also announced its intent to revise the BOI reporting rule to reduce regulatory burdens, particularly for lower-risk entities such as small businesses.

Entities previously granted later reporting deadlines (e.g., due to disaster relief extensions) must still adhere to their respective timelines. Reporting remains optional for plaintiffs in *National Small Business United v. Yellen* and its related entities.

For Golenbock's previous alerts on CTA developments, please refer to them here:

U.S. Supreme Court Stays Preliminary Injunction Against Enforcement of CTA: FinCEN Determines CTA Still Currently Not Enforceable (January 27, 2025)

Corporate Transparency Act – Fifth Circuit Reinstates Nationwide Ban (December 27, 2024)

Corporate Transparency Act Revived: Reporting Companies Have Until January 13, 2025, to Submit Initial BOI Reports (December 24, 2024)

Corporate Transparency Act (CTA) Blocked by Federal Court (December 5, 2024)

Corporate Transparency Act: Rules Requiring Privately Held Companies to Report Beneficial Ownership to the U.S. Government (May 10, 2024)

If you have any questions or need further information, please reach out to your contact at Golenbock or one of the following individuals on the Golenbock CTA FinCEN Compliance Committee:

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Reminder – New York Estate Tax Update for 2025

Effective January 1, 2025, the New York estate tax exclusion increased from $6.94 million to $7.16 million. Estates valued under $7.16 million will not owe New York estate tax, while estates valued over $7.16 million will be subject to New York estate tax at rates that range from 3.06% to 16%, depending on the value of the estate.

If your estate falls within the $7–$10 million range, now is the time to review your wills or revocable trusts to ensure you avoid the New York estate tax cliff by including a charitable savings clause.

Understanding New York's Estate Tax "Cliff"

Unlike the federal estate tax, New York's estate tax system includes a "cliff"—meaning estates that exceed the exclusion amount by just a small amount can be taxed on the entire value of the estate, not just the excess. Here's how it works:

- Estates valued at or below $7,160,000 (the 2025 exclusion amount) owe no New York estate tax.
- Estates valued greater than $7,160,000 but less than $7,518,000, pay estate tax only on the portion exceeding the exemption.
- Estates valued over $7,518,000 "fall off the cliff" and are taxed on the entire estate value—not just the amount exceeding the exemption.

Avoiding the Cliff: The Charitable Savings Clause

One way to mitigate the cliff's impact is to include a charitable savings clause in your estate plan. If you are single, the charitable savings clause will apply at the time of your death. If you are married, the charitable savings clause will apply at the time of the surviving spouse's death.

Sometimes called the "Santa Clause", the charitable savings clause ensures that, if necessary, a bequest to charity

will be made to bring the taxable estate down to the exclusion threshold—thereby eliminating New York estate tax liability. For example:

- If an estate is valued at $7,518,000, it would owe approximately $707,648 of New York estate tax.
- However, by including a charitable bequest of $358,000 (the difference between the taxable estate and the exclusion amount), the estate avoids the tax entirely. Instead of owing $707,648 of New York estate tax, the decedent has made a meaningful charitable bequest of $358,001 and has left an additional $349,647 to the decedent's beneficiaries.

Next Steps

With the new exclusion having taken effect on January 1, this is an ideal time to review your estate plan. If your estate is near the $7.16 million threshold, we recommend discussing charitable planning strategies, including the addition of a charitable savings clause, to ensure your wealth is preserved for your heirs and charitable causes rather than being spent on estate tax.

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On January 23, 2025, the U.S. Supreme Court granted the government’s motion to stay a nationwide preliminary

injunction issued by a federal district court judge in Texas in the case of *Texas Top Cop Shop, Inc. v. McHenry* (formerly, *Texas Top Cop Shop, Inc. v. Garland*). The preliminary injunction prevented the Financial Crimes Enforcement Network (FinCEN) from enforcing the Corporate Transparency Act (CTA) and its requirement that non-exempt businesses report their beneficial ownership information (BOI) to FinCEN. The stay of this preliminary injunction will remain in place pending the decision of the Fifth Circuit Court of Appeals on the constitutionality of the CTA, and subsequent appeal to the U.S. Supreme Court, if accepted.

Despite the U.S. Supreme Court's decision in *Texas Top Cop Shop*, FinCEN's requirements are currently on hold due to a separate injunction issued by another federal district court judge in Texas in the case of *Smith v. U.S. Department of the Treasury*. This stay applies nationwide and the government has not appealed it. That appeal, if filed, would go to the Fifth Circuit as well.

As a result, reporting companies are not currently obligated to file BOI reports with FinCEN. FinCEN confirmed in a publication on its website that despite the Supreme Court ruling staying the nationwide preliminary injunction issued in *Texas Top Cop Shop,* reporting companies are not subject to liability if they fail to file BOI reports while the *Smith* order remains in force. However, reporting companies may continue to voluntarily submit BOI reports.

Given the continued uncertainty regarding when and if the CTA filing deadline will be reinstated, we recommend that non-exempt companies collect all required information and either file BOI reports voluntarily or be prepared to file on short notice.

For Golenbock's previous alerts on CTA developments, please refer to them here:

Corporate Transparency Act – Fifth Circuit Reinstates Nationwide Ban (December 27, 2024)

Corporate Transparency Act Revived: Reporting Companies Have Until January 13, 2025, to Submit Initial BOI Reports (December 24, 2024)

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Dec. 27, 2024 – The holiday wishes of attorneys and accountants have come true! On December 26, 2024, the U.S. Fifth Circuit Court of Appeals (the “Fifth Circuit”) reinstated the nationwide injunction that had been issued earlier in the month by a federal district court judge in Texas, who had ruled the Corporate Transparency Act (“CTA”) unconstitutional. This comes three days after a three-judge panel from the Fifth Circuit lifted the nationwide

injunction. See December 24 Golenbock alert.

As noted in our December 5 Golenbock alert, in the case *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, a Texas federal district court had preliminarily blocked enforcement of the Corporate Transparency Act and its implementing regulations. The order held that companies nationwide did not need to comply with the January 1, 2025, deadline to report their beneficial owners to the Financial Crimes Enforcement Network ("FinCEN").

In the Fifth Circuit's December 26 Order, the court reinstated the injunction "[i]n order to preserve the constitutional status quo while [a different panel of the Fifth Circuit] considers the parties' weighty substantive arguments . . ." in the pending appeal of the district court's preliminary injunction.

Under the CTA, corporations and LLCs were required to report information concerning their beneficial owners to FinCEN, which collects and analyzes information about financial transactions to combat money laundering and other crimes. For more information regarding the CTA, please refer to our May 10, 2024 Golenbock update.

We will continue to monitor FinCEN's developments regarding the CTA.

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Dec. 24, 2024 – On December 23, 2024, a three-judge panel from the U.S. Fifth Circuit Court of Appeals temporarily lifted a nationwide injunction that had been issued earlier in the month by a federal judge in Texas, who had ruled the Corporate Transparency Act ("CTA") unconstitutional.

As noted in our December 5 Golenbock alert, in the case *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, a Texas federal court had preliminarily blocked the Corporate Transparency Act and its implementing regulations. The order held that companies nationwide did not need to comply with the January 1, 2025, deadline to report their beneficial owners to the Financial Crimes Enforcement Network ("FinCEN").

Under the CTA, corporations and LLCs were required to report information concerning their beneficial owners to FinCEN, which collects and analyzes information about financial transactions to combat money laundering and other crimes.

With the order lifted, covered corporate entities are once again required to disclose the identities of their real beneficial owners to FinCEN with some extensions to file reports:

Company Formation or Registration Date	BOI Report Submission Deadline
On or before December 31, 2023	January 13, 2025

In 2024	Within 90 days of receiving notice of creation or registration.
On or after September 4, 2024, with initial deadlines between December 3–23, 2024	Extended to January 13, 2025
From December 3–23, 2024	Extended by 21 days from the original deadline.
On or after January 1, 2025	Within 30 days of receiving notice of creation or registration.

We will continue to monitor FinCEN's developments regarding the CTA. For more information regarding the CTA, including what companies need to report and how to identify beneficial owners, please refer to our May 10, 2024 Golenbock update.

If you have any questions or need further information, please reach out to your contact at GEAB&P or one of the following individuals on the GEAB&P CTA FinCEN Compliance Committee:

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The CTA, which took effect on January 1, 2024, requires certain privately held entities to report specified information about their beneficial owners to the federal government's Financial Crimes Enforcement Network (FinCEN). The principal purpose of the CTA is to facilitate enforcement of laws intended to prevent money laundering and financing of terrorist activities by identifying those engaged in such activities.

On December 3, 2024, a Texas federal court preliminarily blocked the Corporate Transparency Act ("CTA") and its implementing regulations. The order states that companies nationwide do not need to comply with the January 1, 2025, deadline to report their beneficial owners to the Financial Crimes Enforcement Network.

The judge determined that the CTA and its implementing rules are "likely" unconstitutional for purposes of a preliminary injunction. The court did not make an affirmative finding that the CTA and its implementing rules are contrary to law, or that they amount to a violation of the Constitution.

The decision will almost certainly be appealed, and enforcement could resume if the court's order is overturned. Adding to the uncertainty, the incoming Trump administration could take several steps to limit or halt the enforcement of the CTA administratively, including working with Congress to repeal or amend the CTA. This would require legislative action, which may depend on the composition of Congress.

Recommended Steps For Businesses

Businesses should evaluate their next steps regarding compliance with the CTA in view of how far along they are in the compliance process.

Businesses That Have Filed With FinCEN: No immediate action is required at this stage. We recommend that these businesses stay updated on litigation outcomes and any policy shifts under the next administration.

Businesses That Have Obtained FinCEN Identifiers For Each Of Their Beneficial Owners But Have Not Filed With FinCEN: If the injunction is overturned on appeal, businesses may need to act quickly to meet the new reporting deadline. If all Beneficial Ownership Information has already been reported to FinCEN to obtain the FinCEN

Identifiers, there is no apparent drawback to proceeding with the filing.

Businesses That Have Not Obtained FinCEN Identifiers For Each Of Their Beneficial Owners And Have Not Filed With FinCEN: Delayed filing may be beneficial as no business is currently required to comply with the CTA. However, since the CTA's enforceability could be reinstated, having compliance mechanisms in place will help mitigate risks.

For more information on the CTA and the BOI Reporting Requirements, please click here for our previous alert.

We will continue to monitor developments regarding the CTA.

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It has come to our attention that some businesses lack sufficiently comprehensive cybercrime insurance coverage, leaving them unnecessarily exposed to cybercrime losses for which they assume they are insured.

What is Cybercrime?

Cybercrime is a serious and increasing threat for individuals and businesses large and small. Cybercrime is any illegal activity that uses a computer, network, or networked device to fraudulently obtain funds from a victim, the victim's bank, or funds intended for the victim. A common example is the compromise or interception of business email or a business computer, which lacks adequate authentication measures, by which criminals gain access to a legitimate business or personal computer or email account and then use the information gained to send fictitious messages that appear to come from a known, legitimate source. For example, the hacker may direct funds transfers from the victim's bank to their own account or manipulate invoices or messages to direct vendors or banks to pay funds into the hacker's account instead of the victim's account.

Does My Cyber Insurance Protect Me?

To combat the threat of cybercrime, businesses purchase "cyber insurance" policies, which we highly recommend. However, cybercrime policies do not necessarily provide comprehensive coverage and are not always easily understood, even by insurance brokers. Popular cyber insurance policies offer various endorsements to cover different types of cybercrime. One is a "funds transfer fraud" endorsement, but this usually only covers situations where the hacker directs someone *in the business or its financial institution* to transfer funds from an account *in the insured's name*. This is necessary, but insufficient as it generally does not cover the situation where the hacker changes instructions to an insured's vendor and instructs the vendor to pay the invoice by wiring money to the hacker's bank account instead of the insured's. To protect against this type of cybercrime, insurers commonly offer – and businesses need to purchase – a different endorsement for "invoice manipulation." This endorsement differs from the "funds transfer fraud" endorsement, because it generally covers "the release or distribution of any fraudulent invoice or payment instruction to a third party as a direct result of a [cyber]security failure."

Sufficient Coverage

Businesses also need to purchase sufficient overall coverage limits and limits for each endorsement. For example, the limit for "funds transfer fraud" and "invoice manipulation" endorsements should be large enough to cover the largest invoices or series of invoices that the insured is likely to issue. If not, you risk losing the balance of that invoice payment to a hacker. Additionally, you and your broker should check the riders closely, as some cyber insurance policies contain riders that significantly reduce coverage for certain situations, for example, in the event of a ransomware attack.

What Should I Do?

We recommend you review your cyber insurance policy with your broker, ask questions, and confirm that you have coverage for funds transfer fraud *and* invoice manipulation – as well as any other likely cyber threats, and that your policy and endorsement limits are large enough to adequately cover how your business actually functions. Usually, these policies and endorsements are not excessively expensive and offer critical insurance against unfortunately increasingly common cyber threats.

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The use of artificial intelligence (AI) in recruitment and employment decisions might be extremely tempting to employers, saving both money and the countless HR hours devoted to the task when it was an all-human operation. Employers may choose to use these tech tools, but there are pitfalls malingering in AI that might run afoul of anti-discrimination laws. This article will warn about a recent example impacting many employers across numerous industries, as well as recent regulatory and legislative efforts to address this issue.

A recent decision from a federal court in California shows that employers need to be careful to avoid potential discriminatory impact if they use AI in employment decisions. The Equal Employment Opportunity Commission (EEOC) and local lawmakers, including New York City government, are also taking steps to ensure that the adoption of this emerging technology is compliant with anti-discrimination laws.

In *Mobley v. Workday, Inc.*, the United States District Court for the Northern District of California allowed a job applicant's claims under Title VII of the Civil Rights Act and other federal anti-discrimination statutes to proceed against a human resources technology vendor, Workday, Inc. (Workday). The plaintiff, Derek Mobley, alleged that Workday's AI screening tools, which have become common in recruiting circles, discriminated against him and others on the basis of race, age, and disability.

The Court held that Mobley's allegations sufficiently stated a claim against Workday under the theory that Workday was an "agent" of the employers using Workday's AI tools. Based on the allegations in the complaint, Workday provides companies with a platform on the customer/employer's website to collect, process, and screen job applications. Mobley–an African American man over the age of 40, who suffers from anxiety and depression–alleged that he applied to more than 100 positions with companies that use Workday's screening tools, and that his application was denied in every case despite his qualifications. In one case, he was rejected at 1:50 a.m., less than an hour after he submitted the application.

While the plaintiff in this case elected to sue only Workday rather than the prospective employers themselves–presumably a strategic decision given the sheer number of prospective employers involved–the decision has ramifications for employers too. The Court's reliance on a theory of liability that Workday was an agent of the employers indicates that liability for the allegedly discriminatory employment decisions could flow up the chain to the employers that utilized the AI tools, and indeed, much of the Court's analysis addressed Workday and the employers interchangeably.

In holding that Workday could be held liable as an employer's agent under the anti-discrimination laws, the Court relied on a broad policy argument that allowing "companies to escape liability for hiring decisions by saying that function has been handed over to someone else (or here, artificial intelligence)" would create a "gap" that would cut against the remedial purposes of the anti-discrimination laws. Similarly, the Court held that "[n]othing in the language of the federal anti-discrimination statutes or the case law interpreting those statutes distinguishes between delegating functions to an automated agent versus a live human one," and "[d]rawing an artificial

distinction between software decisionmakers and human decisionmakers would potentially gut anti-discrimination laws in the modern era."

The Court also held that the allegations were sufficient to allege discriminatory impact through the use of the AI screening tools: "The sheer number of rejections and the timing of those decisions, coupled with the [complaint's] allegations that Workday's AI systems rely on biased training data, support a plausible inference that Workday's screening algorithms were automatically rejecting Mobley's applications based on a factor other than his qualifications, such as a protected trait." The Court held that "the rejection emails Mobley allegedly received in the middle of the night" give rise "to a plausible inference that the decision was automated."

While Mobley's claims survived Workday's motion to dismiss based on the alleged discriminatory impact of the AI screening tools, the Court held that he was unable to demonstrate that Workday intended the alleged discrimination, and therefore it dismissed the intentional discrimination claims. The decision paves the way for the case to proceed to discovery, which will likely focus on how the screening algorithm worked, any anti-bias testing that was conducted, and the decisions that the tool made with respect to other applicants in protected classes (after all, Mobley brought the case as a putative class action).

Significantly, the EEOC inserted itself into the *Mobley* case by filing an *amicus curiae* brief in favor of the plaintiff and against Workday. It is plain that the EEOC is proactively monitoring and addressing the involvement of AI in recruiting, hiring, and other employment practices. In fact, the EEOC's Strategic Enforcement Plan for Fiscal Years 2024-2028 states that one of the EEOC's priorities is eliminating discrimination in recruitment and hiring practices that use "technology, including artificial intelligence and machine learning, to target job advertisements, recruit applicants, or make or assist in hiring decisions where such systems intentionally exclude or adversely impact protected groups."

State and local lawmakers are also attempting to get ahead of employers' use of emerging AI technologies. For example, New York City passed a law, with enforcement beginning in July of last year, that prohibits an employer from using an "automated employment decision tool" to screen a candidate or employee for an employment decision unless the employer complies with certain requirements to seek to prevent discriminatory impact, including: audit the tool annually for bias; publish a public summary of the audit; and provide certain notices to applicants and employees who are subject to the screening tool. The New York City law's definition of "automated employment decision tool" ropes in not only delegation of employment decisions to the tool, but also use of the tool

to “substantially assist” the employment decision:

> The term “automated employment decision tool” means any computational process, derived from machine learning, statistical modeling, data analytics, or artificial intelligence, that issues simplified output, including a score, classification, or recommendation, that is used to substantially assist or replace discretionary decision making for making employment decisions that impact natural persons. The term “automated employment decision tool” does not include a tool that does not automate, support, substantially assist or replace discretionary decision-making processes and that does not materially impact natural persons, including, but not limited to, a junk email filter, firewall, antivirus software, calculator, spreadsheet, database, data set, or other compilation of data.

The New York City law requires the bias audit of the AI tool to be conducted by an *independent* auditor – *i.e.*, an individual who does not work for the employer utilizing the tool or the vendor that developed the tool. The law’s implementing regulations have detailed specifications of scores and ratios that must be calculated as part of the bias audit. Notably, the City’s Frequently Asked Questions (FAQ) guidance clarifies that the AI vendor can engage the independent auditor and coordinate the collection of data to conduct the bias audit. One would think that many vendors offering AI employment tools will assume the burden of coordinating the bias audit as part of the selling point for their product. The FAQs emphasize, however, that the law places ultimate responsibility on the employer to ensure that the bias audit was done before using the AI tool.

Despite the fact that the New York City law has been effective for over a year, we are not aware of any enforcement actions to date, it does not appear that any court has had occasion to interpret the statute, and some observers have commented that the law, while groundbreaking, is all bark and no bite. It remains to be seen whether a case like *Mobley* will spur heightened enforcement activity in this area.

To avoid running afoul of anti-discrimination laws, employers will want to review how AI tools work, and how they are being used. If the decision-making ultimately remains with a human, and the technology is not itself deciding whether to advance the candidate, this may reduce the risk of inadvertent discriminatory impact caused by the technology. If you use AI tools to screen or advance applicants and bypass human review, the *Mobley* decision is a warning that you could be held liable if the AI tools discriminate, even inadvertently. You also need to ensure compliance with any applicable local laws such as New York City's auditing and notice requirements. Whether or not there is an applicable local law, it would be important to confirm that the AI tools are thoroughly tested, and that such testing is appropriately documented, to seek to ensure that the tools are scrutinized for any potential biases. Since some AI tools can continue to "learn" and evolve based on the data fed into them, it would also be important to ensure the tool is continuously monitored over time for compliance with anti-discrimination laws. If you are an employer using an AI tool, you may intend to rely on the software vendor for such testing and monitoring. As such, you may want to seek to protect your company in the vendor contract, such as by requiring the vendor to provide representations and warranties that the AI tool complies with all applicable anti-discrimination laws and regulations, and including an indemnification clause in the event a claim is asserted against your company based on alleged discriminatory impact of the AI tool.

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Earlier this year, the U.S. Federal Trade Commission (FTC) voted 3-2 to ban most provisions in agreements with an employer preventing or limiting future competition by U.S. workers (non-competes), with limited carve-outs and exceptions (the rule).

While the rule was scheduled to come into effect on September 4, 2024, on August 20, 2024 a federal judge in Texas stayed the ban by issuing a nationwide injunction. The court found that the FTC exceeded its statutory authority by banning practices it deems unfair methods of competition through the adoption of arbitrary and capricious rules. The decision stated that the FTC had not justified banning virtually all non-competes, suggesting that the FTC should have targeted specific, harmful non-competes.

In response to the ruling, the FTC has stated that it is "considering an appeal" and that the decision "does not prevent the FTC from addressing [non-competes] through case-by-case enforcement actions."

Other Litigation

Litigation regarding the rule has been moving through the federal court system in other states, including Pennsylvania, where a federal judge declined to issue an injunction. Despite that ruling, the plaintiff in that case recently argued that because a decision on appeal affirming the Texas district court's nationwide injunction would resolve the Pennsylvania case, the Pennsylvania district court should stay the Pennsylvania case pending resolution of the Texas appeal, if any. The FTC argued that the Pennsylvania court should reject the plaintiff's request on a number of grounds and that the judge should render its own considered decision.

In a separate case in Florida, a federal judge entered a preliminary injunction that prohibited the FTC from enforcing the rule, but only as to the challenging plaintiff in the case. The FTC has indicated that it is considering whether to appeal that decision as well.

Potential Impact of the Rule on Employers

The FTC rule, if it comes into effect, would represent a comprehensive ban on new non-competes with all workers, including senior executives. Existing non-competes with senior executives would likely remain in force, although even this is not entirely free from doubt. The ban may also cover certain other employer-protection provisions entered into as part of employment or severance arrangements or as part of M&A transactions if they are so

restrictive that they effectively prevent a worker from getting a new job or starting a business. These provisions include broad confidentiality agreements, certain non-solicitation agreements, and possibly garden-leave arrangements.

In general, the FTC rule would prohibit employers from entering into, enforcing, or attempting to enforce non-compete agreements with workers, including employees, independent contractors, and others. Existing non-compete agreements with "Senior Executives" may still be enforced, but new non-compete agreements could not be entered into after the effective date of the rule. Who qualifies as a "Senior Executive" depends on both salary and decision-making authority.

All other existing non-competes would be unenforceable after the effective date. As currently drafted, the rule would require that, by the effective date, covered employers provide notice to workers who are party to non-competes prohibited under the rule that such non-competes cannot be enforced. Employers would need to specifically rescind existing non-compete clauses and notify affected employees in writing.

Effect of Injunction

The Supreme Court may ultimately hear one or more of the pending cases and issue a decision that clears up the current uncertainty about the rule's enforceability and scope. Until then, however, employers need not take any action, but should be aware of the rule and that, if it does come into effect, it will supersede state law to the extent the state allows conduct that is deemed a method of unfair competition under the rule.

Please feel free to reach out to us with any questions regarding this important evolving issue.

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The Corporate Transparency Act (CTA), which became effective on January 1, 2024, requires many limited liability companies, corporations and other entities created or registered in any state of the United States, as well as foreign limited liability companies registered in any state of the United States, to file a beneficial ownership information report (BOI Report) with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN), unless the entity qualifies for an exemption.

Although the CTA has 23 exemptions, they generally apply to companies already filing reports with the federal government that name beneficial owners, such as publicly traded companies and other entities registered with the Securities and Exchange Commission, or companies in heavily regulated industries such as financial institutions, public utilities, public accounting firms and insurance companies. A "large operating company" exemption, however, applies to privately held companies that are not necessarily already reporting beneficial ownership information or in a regulated industry. The large operating company exemption is discussed in detail below.

Impact on Small Businesses

With certain exceptions, the BOI Report rules apply to businesses that employ 20 or fewer persons in the United States and/or reported gross receipts and sales of $5 million or less on the previous year's federal income tax filings. Reporting companies created or registered to do business in the United States before January 1, 2024 must file their initial BOI Reports by January 1, 2025. Reporting companies created or registered on or after January 1, 2024 have 90 days after receiving notice of their company's creation or registration to file their initial BOI Reports.

Information to be Reported

A. *Information about the reporting company*

- Full legal name, including any trade name or “doing business as” (DBA) name
- Complete current United States address
- State, Tribal or foreign jurisdiction of formation or registration
- IRS Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))

B. *Information about the individuals filing and controlling the filing of the formation or registration document*

Reporting companies created or registered after January 1, 2024 must provide information about the individual that filed the formation or registration document as well as information about the individual that controlled the filing of such document. Each of these individuals are referred to in the CTA as a Company Applicant. A reporting company created or registered after January 1, 2024 must identify at least one, and no more than two, Company Applicants when filing the reporting company’s initial BOI Report. The individual’s full legal name, date of birth, complete current business or residential address and a unique identifying number from an acceptable identification document (such as a driver’s license or a passport), as well as a copy of such identification document, must be furnished. In lieu of an identification document, a Company Applicant may provide a unique identifier assigned by FinCEN.

C. *Information about each Beneficial Owner*

The individual’s full legal name, date of birth, complete current residential address and a unique identifying number from an acceptable identification document (such as a driver’s license or a passport), as well as a copy of such

identification document, must be furnished. In lieu of an identification documentation, a Beneficial Owner may provide a unique identification number assigned by FinCEN.

Beneficial Owners

The BOI Report must identify the reporting company's Beneficial Owners. A "Beneficial Owner" is an individual who, directly or indirectly, either (1) exercises substantial control over the reporting company, or (2) owns or controls at least 25 percent of its ownership interests. An "ownership interest" includes an equity interest in an entity, such as shares of corporate stock of a corporation or a capital or profit interest in a limited liability company or limited partnership; voting rights with respect to an entity; any instrument convertible into any of the foregoing interests; an option or privilege to buy or sell any of the foregoing interests without an obligation to do so; and any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

An individual exercises "substantial control" if they satisfy *any* of the following four factors:

- The individual is a senior officer;
- The individual has authority to appoint or remove certain officers or a majority of directors of the company;
- The individual is an important decision-maker; or
- The individual has any other form of substantial control over the company.

The current CTA regulations lack clear criteria for determining "substantial control". Therefore, determining "substantial control" for purposes of the CTA reporting requirements is a highly fact-specific undertaking and

entities should seek legal counsel for precise evaluations regarding “substantial control” and Beneficial Owners. FinCEN is expected to issue additional guidance in the future. However, prior to the issuance of additional guidance, we advise entities filing a BOI Report to be inclusive. There is no penalty for over-reporting Beneficial Owners.

The Large Operating Company Exemption

As noted above, there is an exemption from the reporting rules for “large operating companies”. Generally, an entity may qualify for this exemption if all of the following three conditions are satisfied:

1. *Number of employees*. In general, the entity must have at least 20 full-time employees in the United States. For purposes of the CTA, a full-time employee generally means an individual who is employed an average of at least 30 hours per week or 130 hours per calendar month. Consolidated employee headcounts across affiliated entities are not permitted.

2. *Presence within the United States*. The entity must regularly conduct its business at a physical office owned or leased by the entity within the United States that is physically distinct from the place of business of any other unaffiliated entity.

3. *Gross receipts or sales*. The entity must have filed a Federal income tax return or information return in the United States for the previous year demonstrating at least $5,000,000 in gross receipts or sales, excluding amounts from sources outside the United States. Among other things, this requirement means that newly formed entities cannot qualify for this exemption.

The Subsidiary Exemption

There is also an exemption for subsidiaries of certain exempt entities, including subsidiaries of large operating companies. A subsidiary would qualify for this exemption if its ownership interests are controlled or wholly owned, directly or indirectly, by a large operating company.

Timing

The reporting deadline depends on when the reporting company was established and assuming no exemption applies:

Entity Type	Filing Requirement Date
Domestic company created between January 1, 2024 and December 31, 2024 Foreign company registered to do business in a U.S. state between January 1, 2024 and December 31, 2024	Initial BOI Report is due within 90 calendar days of creation/registration
Domestic company created on or after January 1, 2025 Foreign company registered to do business in a U.S. state on or after January 1, 2025	Initial report is due within 30 calendar days of creation/registration
Domestic company created prior to January 1, 2024 Foreign company registered to do business in a U.S. state prior to January 1, 2024	Initial report is due by January 1, 2025

Penalties

The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information, may result in a civil penalty of up to $591 for each day that the violation continues and/or criminal penalties, including imprisonment, for up to two years and/or a fine of up to $10,000. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.

Legislative Challenges and Updates

Legal challenges to the CTA have commenced, including a lawsuit filed in Alabama. In the case of *National Small Business United v. Yellen*, a federal court ruled on March 1, 2024 that the reporting requirements of the CTA are unconstitutional on the grounds that the CTA exceeds Congress' power under the U.S. Constitution. This decision applies exclusively to the plaintiffs of the case, meaning other entities must still comply with the CTA. The government has since appealed this ruling.

Some states are now passing CTA-like legislation of their own. For example, on March 1, 2024, New York Governor Kathy Hochul signed into law the amended LLC Transparency Act, which will go into effect on January 1, 2026 and will require limited liability companies formed or doing business in New York to file reports disclosing their beneficial ownership information. According to the National Association of Secretaries of State, other jurisdictions, including the District of Columbia, collect ownership and control information regarding businesses either through their articles of incorporation/organization or through periodic reports that businesses must file in their jurisdiction.

FinCEN will continue to provide guidance, information and updates related to the beneficial ownership information reporting requirements. We will continue to monitor FinCEN's developments regarding the CTA.

If you have any questions or need further information, please reach out to your contact at GEAB&P or one of the following individuals on the GEAB&P CTA FinCEN Compliance Committee:

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