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PERSPECTIVE

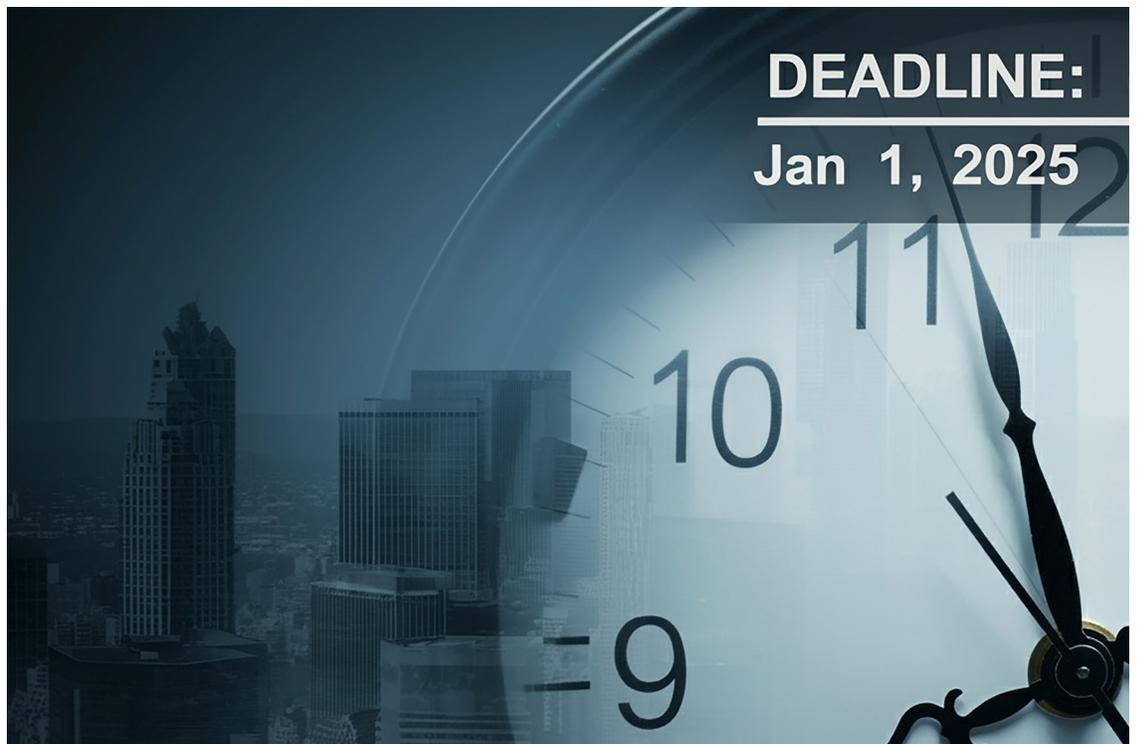
CTA clock is ticking — are you prepared?

By Blair Castellanos

The Corporate Transparency Act (CTA) went into effect Jan. 1, 2024. Its purpose is to combat money laundering and other financial crimes by requiring all nonexempt entities to file a Beneficial Owner Information Report (BOIR) with the U.S. Treasury's Financial Crimes Enforcement Network (FinCEN). These reports identify certain individuals, "Beneficial Owners," with an ownership interest in or exerting substantial control over the entities. For more information about the reporting requirements, please see our blog article *A Clear-Eyed View of the Corporate Transparency Act* located on our website at www.steinbrecherspan.com. Since it came into effect, many entities required to report have had questions and concerns, lawsuits have been filed, and new legislation has been introduced to appeal or limit the CTA.

Information for entities filing a BOIR

Entities established before Jan. 1, 2024, via a filing with the Secretary of State, unless counted among the 23 categories of exempt entities, are required to file their BOIR by Jan. 1, 2025. As of the date of this article, it is estimated that roughly 27 million of the 32 million required entities have yet to file their BOIR reports. Entities formed in 2024 have a 90-day deadline to file, while entities formed after Jan. 1, 2025, will have 30 days. The following is a breakdown of useful information or updates for filing entities.



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First, the BOIR calls for the name and information of the "Company Applicant" - the person who first registered the entity with the applicable Secretary of State. However, most companies filing are unaware that they do not need to include the Company Applicant if the company was established before Jan. 1, 2024. This addresses the issue of entities who are no longer associated with their Company Applicant or when the Company Applicant is no longer alive.

Second, for Beneficial Owners of multiple entities, it is recommended that they obtain a FinCEN ID. A FinCEN ID is a number assigned to an individual after they provide

information and a copy of a government-issued ID to FinCEN. The FinCEN ID can be used in each BOIR in place of re-entering the Beneficial Owner's personal information. This makes updating the BOIRs easier when a new passport or driver's license is issued as the updated information attached to the FinCEN ID will apply to all associated entities. Entities are advised not to wait to start the process of having their Beneficial Owners register for a FinCEN ID and/or collect up-to-date identifying documents.

Third, when filling out the BOIR, an entity can request its own FinCEN ID. This is advised for entities with multiple subsidiaries. The par-

ent company's FinCEN ID can then be used in place of resubmitting the information for each individual Beneficial Owner of the parent company in the subsidiary's BOIR.

Fourth, it is recommended that entities with a complex ownership structure draft a memorandum to keep in their corporate records outlining the process and reasoning used to determine who qualified as a Beneficial Owner as well as a log of their steps in complying with the CTA.

Lastly, entities are encouraged to beware of scammers posing as agents to file BOIRs in order to gain access to the government-issued identification of the Beneficial Owners.

Pending lawsuits

There have been myriad lawsuits filed regarding the CTA. Only two of these cases have resulted in judgments so far:

1. *NSBU v. Yellen*

In *National Small Business United v. Yellen*, a decision was rendered on March 1, 2024, regarding the constitutionality of the CTA. *Nat'l Small Bus. United v. Yellen*, 721 F. Supp. 3d 1260 (N.D. Ala. 2024). National Small Business United (NSBU) brought the suit alleging that the CTA was unconstitutional on various grounds. The court ruled that the plaintiffs were not required to file their BOIRs because the CTA exceeds Congressional authority over foreign affairs and national security, under the Constitution's Commerce Clause and over the ability to levy taxes. However, the ruling only applies to the members of NSBU as of March 1, 2024. The decision of the lower court has been appealed to the 11th Circuit Court of Appeals and is still pending.

2. *Firestone v. Yellen*

This matter involved a demand for a preliminary injunction against the enforcement of the CTA, again on the grounds that the act is unconstitutional. *Firestone v. Yellen*, No. 3:24-CV-1034-SI, 2024 WL 4250192 (D. Or. Sept. 20, 2024). The Court denied the request for a preliminary injunction on the basis that the plaintiffs had not shown a reasonable likelihood of success on the merits and issued a lengthy opinion demonstrating its reasoning. The court reasoned that the CTA is legitimate under the Constitution granting Congress the ability to regulate commerce and under the necessary and proper clause.

There are over 12 other pending CTA related cases which are being closely monitored by legal experts.

Proposed legislation

As of this writing, there have been several bills introduced in Congress that would affect the CTA. Among the proposed bills are the "Protecting Small Business Information Act of

2023" (H.R. 4035), which proposed that the effective date of FinCEN's final CTA rules be delayed until after it is certified that all of FinCEN's final rules have been issued; and the "Protect Small Business and Prevent Illicit Financial Activity Act" (H.R. 5119) which proposed that reporting companies existing prior to Jan. 1, 2024 have two (2) years to file their BOIR and would extend the future filing or updating deadline of 30 days to 90 days. In addition, the Secretary of the Treasury received a letter in April 2024 from the American Institute of CPAs (AICPA) and certain state CPA societies requesting a BOIR filing extension until one year after the conclusion of all court cases related to *NSBU v. Yellen* (discussed above). The letter is available at <https://us.aicpa.org/content/dam/aicpa/advocacy/tax/downloadabledocuments/2024/2024-fincen-boi-delay-enforcement-aicpa-state-cpa-societies-final.pdf>. However, the Secretary of the Treasury has indi-

cated that the filing of a BOIR is not burdensome and that the current time-frame for filing is adequate.

For filing questions, entities can contact FinCEN via their online portal or should consult legal counsel.

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