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# December 2024 CTA Update

December 12, 2024

**Seyfarth Shaw LLP**

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# Panelists



**Justice Barber**  
Partner, Atlanta



**Tricia Macaluso**  
Partner, Dallas



**Trevor Tullius**  
Partner, Washington, DC

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# What Is the CTA?

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- The Corporate Transparency Act of 2020 (the “CTA”) became effective January 1, 2024.
- The stated purpose of the CTA is to:

*“Protect the U.S. financial system from illicit use and impeding malign actors from abusing legal entities, like shell companies, to conceal proceeds of corrupt and criminal acts.” - FinCEN*

- Simply put, the CTA seeks the disclosure of entity ownership and the prevention of money laundering.
- Filings are made with a federal agency: Financial Crimes Enforcement Network (“FinCEN”).

# Who is Required to Report?

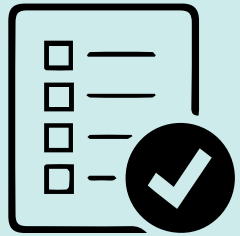
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- “Reporting Companies” – Domestic & Foreign

Unless covered by an exemption, the CTA’s reporting requirements apply to any entity created by, or registered to do business in the United States by, the filing of a document with a Secretary of State (or similar office in the United States).

- Corporations, limited liability companies, limited partnerships, and statutory trusts are generally covered.
- Sole proprietorships, general partnerships, and common law trusts are generally not covered.

# Exemptions: Regulated Entities



There are **23** exemptions. In general, they include many entities that already are subject to substantial federal or state regulation under which beneficial ownership already may be known.

If an entity loses an exemption, it has 30 days to make the required filing.

For example, **regulated entities** that may be exempt include: (i) entities that file reports with the SEC, (ii) government authorities, (iii) banks, (iv) credit unions, (v) money services businesses, (vi) investment advisors, (vii) securities brokers and dealers, (viii) insurance companies, (ix) state-licensed insurance producers, (x) pooled investment vehicles, (xi) public utilities, and (xii) accounting firms.

# Exemptions: Other Notable Exemptions

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- A **large operating company** is an entity that (i) employs more than 20 full time employees in the U.S., (ii) has an operating presence at a physical office in the U.S. that the entity owns or leases, and (iii) has filed federal income tax or information return in the U.S. for the previous year demonstrating more than \$5 Million in gross receipts or sales on IRS form 1120 or other applicable forms, excluding gross receipts or sales from sources outside the U.S.
- **Tax exempt** entities
- **Wholly owned subsidiaries** of certain exempt entities
- An **inactive entity** (narrowly defined)

# Required Filings and Due Dates

	Existing Entities (as of December 31, 2023)	New Entities
Filing Deadline for <b>Initial BOIR</b>	January 1, 2025	90 days for entities formed <u>prior to</u> January 1, 2025  30 days for entities formed <u>on or after</u> January 1, 2025
“Company Applicant” Information		✓
“Beneficial Ownership” Information	✓	✓

- Filing system is online through FinCEN’s website
- **Updated or Corrected reports:** must be filed within 30 days after a change or discovery of inaccuracy of reportable information
- Deadline for Existing Entities who lose exempt status in 2024



# December 3, 2024 – CTA Enjoined Nationwide

## *Texas Top Cop Shop, Inc. et al. v. Merrick Garland, Attorney General of the United States, et al.*

The court's interim measure, implemented in light of the "fast-approaching deadline" less than a month away, aimed to "preserve the constitutional status quo" by halting the enforcement of both the CTA, which the court deemed "likely" unconstitutional, and its reporting deadline. This action was intended to prevent the "substantial" harm that would otherwise befall the plaintiffs and other reporting entities nationwide. To justify the broad scope of the order, U.S. District Judge Amos Mazzant viewed the CTA as a constitutionally flawed product of congressional overreach, considering the resulting constitutional violation to be extensive.

## Financial Crimes Enforcement Network ("FinCEN") Weighs In

**FinCEN is tasked to enforce the CTA reporting requirements and issued the following alert:**

"In light of a recent federal court order, reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports."

**The FinCEN alert goes on further to provide the following:**

"On Tuesday, December 3, 2024, in the case of Texas Top Cop Shop, Inc., et al. v. Garland, et al., No. 4:24-cv-00478 (E.D. Tex.), a federal district court in the Eastern District of Texas, Sherman Division, issued an order granting a nationwide preliminary injunction that: (1) enjoins the CTA, including enforcement of that statute and regulations implementing its beneficial ownership information reporting requirements, and, specifically, (2) stays all deadlines to comply with the CTA's reporting requirements. The Department of Justice, on behalf of the Department of the Treasury, filed a Notice of Appeal on December 5, 2024."

**Stay Prepared**



**Questions?**

