KRIEG DEVAULT

Insights

The CTA – It's Back!

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By: Travis D. Lovett and Thomas M. Abrams

The CTA bounces back again. On February 18, 2025, the U.S. District Court for the Eastern District of Texas in *Smith, et al. v. U.S. Department of the Treasury, et al.,* 6:24-cv-00336 (E.D. Tex.) granted the Department of Justice's motion to *stay* an injunction that previously paused the effect of the Corporate Transparency Act ("CTA") on a nationwide basis. Pending the outcome of the ongoing litigation in *Smith* and other cases, the CTA is back in effect. A reporting company (unless it received an extension) now must file its initial Beneficial Owner Information ("BOI") report no later than **March 21, 2025**.

To refresh, the CTA requires most small businesses, unless exempt, to file a BOI report with the Department of Treasury's Financial Crimes Enforcement Network (commonly known as "FinCEN"). Businesses subject to the CTA are known as "reporting companies." Reporting companies must file a BOI report with FinCEN to disclose "beneficial owners," which includes any individual owning or controlling 25% or more ownership interest or exercising "substantial control" over a reporting company, or both. A reporting company must report each beneficial owner's name, date of birth, residential address; and a copy of their photo ID (e.g., a state-issued driver's license). As an alternative to providing this personal information, beneficial owners can obtain a FinCEN ID number at FinCEN's website – available here – to be used in lieu of the listed information. We have found that a FinCEN ID number can make it easier to complete the BOI report and can save clients' time, especially when multiple reporting companies involve the same beneficial owners.

Reporting companies formed after January 1, 2024 also must report the "company applicant," which is the individual who filed or files the documentation to form the company and, if more than one individual is involved, the individual who oversees the filing of documentation to form the company.

For more information regarding the reporting requirements and general information about the CTA, please **see our prior Alert here**.

It is no secret that many businesses feel burdened by the CTA. The CTA has been widely criticized for many reasons, but particularly, many businesses perceive the CTA as government overreach. Some have speculated that the 2025 presidential transition might lead to the federal government abandoning its defense of the CTA's constitutionality in lawsuits across the country. As of this Alert, the federal government continues to support the CTA.

However, in a February 18, 2025 FinCEN Notice following the stay issued in *Smith*, FinCEN stated that, "in keeping with Treasury's commitment to reducing regulatory burden on businesses," FinCEN will use the 30-day period preceding the March 21, 2025 deadline to "assess its options to further modify deadlines, while prioritizing reporting for those entities that pose the most significant national security risks." In the same release, FinCEN acknowledged the administrative burden borne by reporting companies and stated its intent to

initiate a process during 2025 to revise obligations for “lower-risk entities.” Reading these tea leaves, FinCEN seems likely to make further adjustments to the reporting requirements, deadlines, or both.

Additionally, Congress has proposed legislation (HR 736, “Protect Small Businesses from Excessive Paperwork Act of 2025”) that would extend the reporting deadline for companies formed before 2024 to January 1, 2026. This bill passed the House of Representatives and will now go to the Senate. However, reporting companies should not operate under any assumption that Congress will enact changes to the CTA before the approaching March 21, 2025 deadline.

In summary, based on the District Court’s latest decision in *Smith* and the Notice from FinCEN:

- Most existing reporting companies must file BOI reports by March 21, 2025 if they haven’t already.
- Reporting companies with a reporting deadline after March 21, 2025, will remain subject to their later reporting deadline.
- Leading up to the March 21, 2025 deadline, FinCEN will consider further changes to the deadline.
- If the deadline is changed again, FinCEN will publish an update.
- Reporting for companies with greater national security implications will be prioritized by FinCEN, and FinCEN will consider revising the obligations of lower-risk entities.
- Enforcement of the CTA remains enjoined for the parties to *National Small Business United v. Yellen*, including the members of the National Small Business Association as of March 1, 2024.

Krieg DeVault’s CTA Working Group continues to monitor and communicate developments based on updates published by FinCEN and the various courts overseeing CTA litigation. For assistance with initiating or proceeding with a BOI filing, to determine whether your business is a reporting company, or with other questions related to the CTA, please contact Robert A. Greising, Travis D. Lovett, Jacob W. O’ Donnell, Thomas M. Abrams, Robert C. Ansani or any member of our Business, Acquisitions and Securities Practice.

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