

# The CTA Reporting Deadline Is Coming: Recent Developments and Next Steps

September 26, 2024

It appears a new item must soon be added to the list of life's certainties: "death, taxes and the CTA."

Effective January 1, 2024, the Corporate Transparency Act ("CTA") requires many entities to report information about their beneficial owners, senior officers and other control persons to the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN").<sup>1</sup>

Pre-existing entities are not grandfathered, and the **January 1, 2025** initial reporting deadline for reporting entities created or registered to do business in the United States before January 1, 2024 is rapidly approaching.

We summarize below certain legal developments, recent FinCEN guidance on disregarded and dissolved entities and important reporting deadlines.

## LEGAL DEVELOPMENTS

Despite legal challenges at both the judicial and legislative levels, the CTA does not appear to be going away, at least before the initial reporting deadline for pre-existing entities in January.

Various lawsuits challenging the constitutionality of the CTA have been brought.<sup>2</sup> Foremost among these is *National Small Business United v. Yellen*, a case in which the

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<sup>1</sup> *Beneficial Ownership Information Reporting Requirements*, 87 Fed. Reg. 59498 (Sept. 30, 2022); 31 CFR 1010.380. We have written extensively about the CTA. See, e.g., Debevoise In Depth, FinCEN Finalizes Landmark Beneficial Ownership Reporting Rule (Oct. 5, 2022), available [here](#); Debevoise Update, FinCEN's Beneficial Ownership Reporting Rule Takes Effect January 1, 2024: Recap and Recent Developments (Dec. 1, 2023), available [here](#).

<sup>2</sup> See, e.g., *William Boyle v. Janet Yellen, et al.*, No. 2:24-cv-00081-LEW (D. Me. Mar. 15, 2024); *Small Business Association of Michigan, et al. v. Yellen, et al.*, No. 1:24-cv-00314-RJJ-

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U.S. District Court for the Northern District of Alabama held the CTA unconstitutional on March 1, 2024.<sup>3</sup> The federal government appealed this decision, and the U.S. Court of Appeals for the Eleventh Circuit will hear oral arguments on September 27, 2024.

The plaintiffs in the case faced a new obstacle when, following a Supreme Court decision this summer in unrelated litigation, *Moody v. NetChoice* (“*NetChoice*”), the Eleventh Circuit requested supplemental briefing from the parties on whether the Alabama District Court erred in not holding the *National Small Business United* plaintiffs to their burden of showing that there are no constitutional applications of the CTA, as set out in the *NetChoice* opinion.<sup>4</sup> In their brief, the plaintiffs’ main argument was that *NetChoice* does not apply to their case. It is difficult to measure whether a court would find this argument persuasive, but the additional inquiry casts doubt on whether the Eleventh Circuit will uphold the Alabama District Court decision.

Currently, the scope of the decision by the Alabama District Court in *National Small Business United* is narrow, relieving only the specific plaintiffs in that case as opposed to striking down the CTA as a whole. Thus, even an Eleventh Circuit opinion upholding the District Court’s decision would not offer wholesale relief from the CTA, although it may open the path for such relief in a future decision. In any case, a decision by the Eleventh Circuit is not likely before year end.

Legislative measures that could impact implementation of the CTA also have been proposed, including measures that would repeal the CTA altogether<sup>5</sup> or extend reporting deadlines.<sup>6</sup> It is unclear, however, whether any of these measures may be enacted before January 1, 2025.

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SJB (W.D. Mich. Mar. 26, 2024); *Black Economic Council of Massachusetts, Inc., et al. v. Janet Yellen, et al.*, No. 1:24-cv-11411-PBS (D. Mass. May 29, 2024).

<sup>3</sup> *National Small Business United, d/b/a the National Small Business Association, et al. v. Janet Yellen, in her official capacity as Sec’y of the Treasury, et al.*, No. 5:22-CV-1448-LCB (N.D. Ala. Mar. 1, 2024); Debevoise Debrief, Corporate Transparency Act Ruled Unconstitutional, but Scope of Judgment Is Limited (Mar. 5, 2024), available [here](#).

<sup>4</sup> Supplemental Brief for Appellees, *National Small Business United, d/b/a the National Small Business Association, Isaac Winkles v. U.S. Dept. of Treasury, et al.*, No. 24-10736 at 1 (11th Cir. Sept. 4, 2024).

<sup>5</sup> Repealing Big Brother Overreach Act, H.R. 8147, 118th Cong. (2024), available [here](#); Repealing Big Brother Overreach Act, S. 4297, 118th Cong. (2024), available [here](#).

<sup>6</sup> Protect Small Business and Prevent Illicit Financial Activity Act, H.R. 5119, 118th Cong. (2024), available [here](#); Protect Small Business and Prevent Illicit Financial Activity Act, S. 3625, 118th Cong. (2024), available [here](#); To amend section 5336 of title 31, United States Code, to provide existing small businesses with an additional year to file beneficial ownership information, and for other purposes, H.R. 9278, 118th Cong. (2024), available

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Thus, organizations should prepare to file initial beneficial ownership reports for any reporting companies by year end.

### RECENT FINCEN GUIDANCE ON DISREGARDED ENTITIES AND REPORTING BY DISSOLVED ENTITIES

FinCEN has issued extensive guidance on CTA compliance in the form of frequently asked questions (“FAQs”), some of which are more helpful than others.

During the summer, FinCEN helpfully clarified that an entity that is disregarded for tax purposes is not required to obtain a unique employer identification number (“EIN”) to meet the CTA’s reporting obligations so long as it has an alternative. FinCEN explained that, if a disregarded entity does not have its own EIN, it can use the EIN of a U.S. parent or, if the disregarded entity is a single member limited liability company or otherwise has only one owner, it can use the social security number or individual taxpayer identification number of that individual.<sup>7</sup>

Less helpfully, FinCEN stated in recent guidance that entities in existence at any time during 2024 must file beneficial ownership reports even if they cease to exist before the applicable reporting deadline.<sup>8</sup>

Under this guidance, any pre-existing legal entity that was not exempt from CTA reporting and did not “entirely complete the process of formally and irrevocably dissolving” before January 1, 2024 must file a beneficial ownership report by January 1, 2025, even if it ceased to exist before this deadline. Similarly, any entity that was created or registered to do business in the United States in 2024 and ceased to exist before its 90-day initial reporting deadline will nonetheless be expected to have filed a beneficial

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[here](#); S.Amdt.2831 to S.4638, 118th Cong. (2024), *available* [here](#) (proposed amendment to the National Defense Authorization Act for Fiscal Year 2025 to include relief from the CTA for one year).

<sup>7</sup> FinCEN, *Beneficial Ownership Information: Frequently Asked Questions*, FAQ F.13, *available* [here](#). If the disregarded entity is owned by another disregarded entity or a chain of disregarded entities, the disregarded entity can report the number of the first entity up the line with a tax identification number. Foreign reporting companies without a U.S. tax identification number should use the number provided by the foreign jurisdiction (with the name of such jurisdiction).

<sup>8</sup> FAQ C.13; *see also* FAQs C.14, C.15.

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ownership report with FinCEN within the 90 days following its date of formation or registration.<sup>9</sup>

On September 10, 2024, FinCEN provided details on how an entity that no longer exists may be expected to file. The “beneficial owners” of a dissolved entity should be reported based on the beneficial ownership information that was “accurate as of the moment prior to the reporting company ceasing to exist,” and the beneficial ownership report can be filed by “[a]nyone whom a reporting company authorizes to act on its behalf—such as an employee, owner, or third-party service provider.”<sup>10</sup>

### REPORTING DEADLINES

As noted above, reporting obligations under the CTA took effect on January 1, 2024. Reporting companies created or registered to do business in the United States this year have had 90 days from the date of formation or registration to submit their initial reports. Pre-existing entities must report beneficial ownership information by January 1, 2025, unless exempt, and newly created or registered entities starting next year will have only 30 days to file.

At a July 9, 2024 hearing of the House Financial Services Committee, Treasury Secretary Janet Yellen indicated that only about 2.7 million beneficial ownership information filings had been received by FinCEN, as compared to the estimated 32 million businesses that the Treasury Department believes are due to file by January 1, 2025.<sup>11</sup> Yet Secretary Yellen asserted in response to questions during the hearing that a delay in the reporting deadline for pre-existing entities was not warranted.

### TAKEAWAYS

With the initial reporting deadline for pre-existing entities just a little more than three months away and no relief from the CTA in sight, organizations should move forward in implementing compliance measures. This should include (i) assessing the legal

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<sup>9</sup> Reporting companies created or registered to do business in 2025 or later, no matter how quickly they cease to exist thereafter, also must report beneficial ownership information to FinCEN; such a report would be due within 30 days of the company’s formation or registration.

<sup>10</sup> FAQ G.4; FAQ C.15.

<sup>11</sup> House Financial Services Committee, “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System” (Jul. 9, 2024), available [here](#).

entities in their organizational structures, (ii) considering the availability of exemptions and (iii) preparing reports for any entities with a reporting obligation, including obtaining necessary personal information for the individuals who will need to be reported.

In addition, with the initial reporting time frame for new entities shortening to 30 days in 2025, organizations should implement processes to ensure that beneficial ownership reporting obligations are considered and addressed in connection with the new entity formation process.

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Please do not hesitate to contact us with any questions.



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