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Impossible Things: Compliance with the Corporate Transparency Act When Beneficial Owners or Company Applicants Are Nonresponsive

Insight — December 19, 2024

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NOTE: *The current operation of the CTA is in flux. The issue described in this article applies initial and updated beneficial owner information reports ("BOIRs") filed by new (created or registered after 2023) and existing (created or registered before 2024) reporting companies. Under the CTA as implemented by FinCEN, the initial BOIRs of all existing reporting companies were due to be filed by January 1, 2025. Under FinCEN's regulations, new reporting companies have been required to file their initial BOIRs shortly after creation or registration and all reporting companies that have filed an initial BOIR have been required to file updated BOIRs shortly after a change. On December 3, 2024, the United States District Court for the Eastern District of Texas entered a nationwide preliminary injunction enjoining FinCEN's filing requirement for initial or updated BOIRs by new or existing reporting companies until the litigation in that court concerning the constitutionality of the CTA is resolved. In addition, as a result of concerns about issues like the one discussed in this article, many people have urged the delay of the effective date on which existing reporting companies (estimated to be over 32 million organizations) have to file their initial BOIR.*

*As of **December 18, 2024**, the injunction is in effect and no statutory extension has been adopted. But this may change at any time. The injunction is currently being considered by the Fifth Circuit Court of Appeals on an expedited basis, and may be upheld, modified, or revoked at any time. In addition, Congress is currently considering a statutory extension of the date by which existing reporting companies must file their initial BOIR to January 1, 2026. No mortal can predict how this will be resolved but among the alternatives are (1) the injunction will be revoked and no Congressional relief will be adopted, in which case all reporting companies will be required to file initial and updated BOIRs under the current regulatory scheme; (2) the injunction may be upheld, in which case no BOIRs will be required to be filed until the resolution of the case (possibly at the U.S. Supreme Court), or ever, if the ultimate resolution of the case is that the CTA is unconstitutional; or (3) the injunction may be*

revoked but a Congressional extension may be adopted, in which case the initial BOIRs for new organizations and updated BOIRs for any organization having filed an initial BOIR will be governed by the current regulatory scheme, and existing entities will be required to file an initial BOIR by January 1, 2026. Those attempting to comply with the CTA should follow current legislative and judicial developments especially closely, as the filing obligations could profoundly change with little or no notice.

Bid me run, and I will strive with things impossible.

—William Shakespeare, *Julius Caesar*, Act II, Scene 1

The Corporate Transparency Act ("CTA")[1] requires almost every small organization to promptly report information (including copies of certain identifying documents) to the Financial Crimes Enforcement Network ("FinCEN") with respect to itself and its direct and indirect individual principal constituents, and it imposes civil and criminal penalties on the organization and some of its individual constituents for the organization's willful failure to timely file the required information. While it is the organization charged with filing the reports, compliance with the CTA requires the cooperation of the individuals who are listed on the report. What happens if the organization—as a result of the recalcitrance, unavailability, or disagreement of the individuals from whom the information must be obtained[2]—is unable to obtain the required information promptly enough to comply with the requirements of the CTA? While FinCEN is aware of the problem, it has nevertheless decided to resolve it by assuming that it does not exist. This very real problem subjects the organization, as well as the constituents responsible for compliance, to penalties for violations over which they may have no control.

An Entirely Complete BOIR

The CTA requires each organization that is a reporting company ("reporting company")[3] to file a beneficial ownership information report ("BOIR")[4] with FinCEN in accordance with regulations issued by FinCEN. The regulations promulgated by FinCEN (collectively, the "Reporting Rules")[5] mandate that the BOIR contain "true, correct, and complete" information and copies of identifying documents[6] about the reporting company and each individual who is a beneficial owner ("beneficial owner")[7] or a company applicant ("company applicant").[8] The Reporting Rules require that a reporting company file a BOIR ("initial BOIR")[9] shortly after[10] its creation or registration. Further, if and when any of the previously reported information with respect to the reporting company or its beneficial owners (but not company applicants) changes, the reporting company must file an update ("updated BOIR").[11]

Willful failure to comply with these requirements will subject the reporting company and individuals meeting the definition of *senior officer*[12] to civil and criminal penalties.[13] In addition, the CTA permits FinCEN to assess

civil and criminal penalties on any individual who is a beneficial owner or company applicant who prevents the reporting company from filing a complete and accurate BOIR.[14]

As discussed below, FinCEN has assured the public that these rules are not intended to provide a "gotcha" for the tens of millions of reporting companies and their senior officers, beneficial owners, and company applicants subject to these rules, but in its formal guidance, FinCEN has largely described its rules as absolute and intractable—guidance that is especially troubling when considering the penal nature of the CTA.

In a regulatory release dated September 29, 2023,[15] FinCEN published a document titled "Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information Reports" ("2023 Notice").[16] Therein, FinCEN, based upon what it described as a "significant number of commenters" who were "uniformly critical" of any provision that would allow reporting companies to file reports indicating that information about a beneficial owner was "unknown," declined to adopt "unknown checkboxes" that would allow organizations to file partially completed BOIRs and thereby give FinCEN notice of the organization's inability to obtain the beneficial ownership information ("BOI") required to complete the BOIR.[17]

In the 2023 Notice, FinCEN acknowledged that reporting companies "could face difficulties in obtaining information promptly," but having consulted with "behavioral scientists at the General Services Administration, technology experts at the Department of the Treasury, and various others throughout the U.S. Government (USG) who have expertise around these issues," FinCEN stated:

> The consultations highlighted potential, though not inevitable, pitfalls in not providing an explanatory mechanism in the BOIR Form when a filer is unable to obtain certain required information. This might inadvertently discourage reporting companies from filing in a timely manner (or filing at all) because they do not have sufficient information. It may also incentivize reporting companies to file meaningless or untruthful information in certain fields to make a deadline. These difficulties also have the potential to significantly increase the volume of inquiries to FinCEN's Contact Center from reporting companies that seek clarification of the filing requirements when they are unable to obtain BOI.[18]

In other words, FinCEN acknowledged that some reporting companies will not be able to comply with the system as it currently exists.

Mindful of this, the 2023 Notice proposed a potential alternative option ("drop-down option") that would allow reporting companies to temporarily supply the BOI that they have available and the reasons why they are temporarily unable to provide BOI with respect to some beneficial owners (this would not be available with respect to the provisions of the BOIR applicable to the reporting company itself or the company applicants), thereby providing current BOI that is available. The drop-down option

would not excuse the reporting companies of their reporting obligations, and the BOIR would not be considered complete until the missing BOI has been submitted. The drop-down option is still unimplemented.

Thus, it is clear that, under the current regime, both FinCEN and the supporters of the BOIR form do not wish the BOIR to be filed unless it is entirely complete. This is reflected in the 2023 Notice and the current BOIR reporting form, which precludes indicating that any BOI is unavailable.[19]

Notwithstanding this position, in response to another common situation in which a BOIR may not be timely filed as a result of circumstances beyond the control of the reporting company—that is, when the reporting company has not received its taxpayer identification number ("TIN")—FinCEN in its Frequently Asked Questions ("FAQs")[20] expressly provides that the BOIR should not be filed until the TIN is obtained but that the reporting company would be advised to document its reasonable efforts to obtain the TIN.[21]

The Horns of the Dilemma

It is impossible to comply with current BOIR reporting requirements if the reporting company is unable to obtain the necessary BOI from a beneficial owner or company applicant. The horns of this dilemma[22] are to not file and in so doing breach the filing deadlines or, in the alternative, to file an incomplete report in opposition to the requirement to not only file a complete report but also to certify it to be true and complete.[23] So, which (if either) of the following is a better alternative?

1. Filing a BOIR that is not entirely true, correct, and complete (perhaps attempting to provide additional notification as to the BOI that is not included)
2. Following the procedure established in FAQ G.3 with respect to TINs discussed above—that is, delaying the filing of the BOIR until the necessary BOI is provided while documenting the reasonable efforts to obtain the same from the beneficial owner at issue[24]

As to the additional notification, we have heard suggestions about various ways in which reporting companies might use additional communications with FinCEN to address the missing BOI:

1. through use of a pdf filing with an additional explanation attached;
2. through a notice to FinCEN via its email or telephonic helpline[25] or the chat function;[26] or
3. by preparing a notice and uploading it at one of the "identifying document image" portals[27] in lieu of an image of an identifying document.

The efficacy of any of these approaches in communicating with FinCEN is uncertain. On the one hand, the reporting company may profess that it has done all it can and has afforded FinCEN with not only all the available BOI but also (presumably) evidence of its efforts to collect the missing BOI. That assessment must, however, be balanced against FinCEN's rejection of an option to file an incomplete report to the effect that the filing of a BOIR that is not true, correct, and complete is not acceptable. Perhaps rendering these additional notification options unavailable is that an

incomplete filing would contradict the statement required to complete the filing: “I further certify, on behalf of the reporting company, that the BOI contained in this BOIR is true, correct, and complete.”[28]

This is unfortunate because the alternative discussed in the 2023 Notice—allowing a filing with an opportunity to provide notification of the BOI not supplied—would be similar to the method used by the Internal Revenue Service in permitting notification of inconsistent positions (Form 8082) and would provide FinCEN with notification of the BOI not supplied in a manner that would clearly associate the absence of the BOI with the BOIR to which it applies.

It is worth noting in this context that in many business organizations, particularly those organized before the CTA was adopted, the organization may have no legal right to demand BOI from its beneficial owners and company applicants in general and especially those individuals who are indirect beneficial owners.[29] As discussed below, the CTA as interpreted in the Reporting Rules imposes criminal and civil penalties on those beneficial owners and company applicants who fail to provide their BOI and documentation, but, in a catch-22 for the twenty-first century, it is FinCEN, not the reporting company, that can assess those penalties—and it is FinCEN that has explicitly denied the reporting companies any way for to communicate those individuals' failures to it.

The CTA includes both civil and criminal penalties,[30] and as a penal statute it should be strictly construed and construed with lenity.[31] In its public pronouncements, FinCEN has indicated that it is mindful of the penalties and will not apply them arbitrarily.[32] As noted above, while the CTA requires filing by the reporting company and imposes civil and criminal penalties on persons who willfully provide false information or fail to provide information to FinCEN, the Reporting Rules interpret the civil and criminal penalties as applying to beneficial owners and company applicants who fail to provide their BOI and documentation to the reporting company.[33] Even in the absence of the rule of statutory construction, it is difficult to understand how failing to take an action that, as noted in the 2023 Notice, is impossible to accomplish could be categorized as a *willful* violation.[34]

Less-Than-Perfect Choices

Of the two realistic options available to FinCEN discussed above—(i) providing a method, whether in the form of a drop-down option or otherwise, to inform FinCEN of unattainable BOI (as discussed in the 2023 Notice); or (ii) deferring the obligation to file the BOIR until the filer believes it has all of the BOI necessary (as provided for TINs in FAQ G.3), in either case including a requirement that the reporting company diligently pursue obtaining the missing BOI—it would appear that the most useful would be for FinCEN to adopt a program similar to that described in the 2023 Notice, with an orderly regimen for filing and notifying FinCEN of the problem (and potentially identifying recalcitrant owners for FinCEN to contact). Unless and until FinCEN provides a workable alternative that takes account of the real problems faced by real reporting companies, however, probably the better approach is for the reporting company to continue with well-

documented efforts to collect the required BOI and to defer filing the BOIR until it is satisfied that the information in the BOIR is “true, correct, and complete,” rather than to file a BOIR known to be less than “true, correct, and complete.”[35]

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1. *See* 31 U.S.C. § 5336. For a review of the CTA generally, see Larry E. Ribstein, Robert R. Keatinge & Thomas E. Rutledge, Ribstein and Keatinge on Limited Liability Companies, at ch. 4A (Nov. 2024). ↑
2. It is important to recognize that it is the reporting company, and not the affected individual, that will make the determination that the affected individual is a beneficial owner and, if applicable, a company applicant. *See* Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg., *infra* note 5, at 59514 (“The fundamental premise of the CTA is that the reporting company is responsible for identifying and reporting its beneficial owners and applicants.”(citing 31 U.S.C.A. § 5336(b)(1)(A))); *id*. at 59515 (“Given that the CTA places the responsibility on reporting companies to identify their beneficial owners, . . .”); FinCEN FAQ K.4 (Dec. 12, 2023). This is a two-edged sword. Initially, an individual not advised that they are, as to a particular reporting company, a beneficial owner should have no exposure for not being included in that company's BOIR. But then a reporting company's determination that an individual is a beneficial owner is arguably final and conclusive (presuming that it was made in good faith) as to that person, and they are obligated to provide either their identifying information or FinCEN ID. There is no mechanism by which a person may object to FinCEN or another body that “I don't care what they say—I'm not a beneficial owner.” ↑
3. *See* 31 U.S.C. § 5336(a). ↑
4. *See id.* § 5336(b)(1); *see also* 31 C.F.R. § 1010.380(b) (effective Jan. 1, 2024). ↑
5. *See* 31 C.F.R. § 1010.380 (effective Jan. 1, 2024). The reporting regulations appear at 31 C.F.R. §§ 1010.380(a)(1) et seq. The “final” beneficial ownership reporting regulations were released in Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498 (Sept. 30, 2022). The final rules followed from a notice

of proposed rulemaking, Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69920 (Dec. 8, 2021), which itself followed from the advance notice of proposed rulemaking set forth in Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 17557 (Apr. 5, 2021). Those "final" regulations related to certain due dates amended by Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024, 88 Fed. Reg. 66730 (Sept. 28, 2023), supplemented as to the use of FinCEN identifiers by the release of Use of FinCEN Identifiers for Reporting Beneficial Ownership Information of Entities, 88 Fed. Reg. 76995 (Nov. 8, 2023), and expanded as to the exemption for public utilities (31 C.F.R. § 1010.380(c)(2)(xvi)) in Update of the Public Utility Exemption Under the Beneficial Ownership Information Reporting Rules, 89 Fed. Reg. 83782 (Oct. 18, 2024) (collectively, "Reporting Rules"). ↑

6. *See* 31 C.F.R. § 1010.380(b) ("Each [BOIR] shall be filed with FinCEN in the form and manner that FinCEN shall prescribe in the forms and instructions for such report or application, *and each person filing such report or application shall certify that the report or application is true, correct, and complete*." (emphasis added)). ↑
7. *See* 31 U.S.C. § 5336(b)(3); 31 C.F.R. § 1010.380(d). ↑
8. *See* 31 U.S.C. § 5336(b)(2) (describing this individual simply as "applicant"); 31 C.F.R. § 1010.380(e). ↑
9. *See* 31 U.S.C. §§ 5336(b)(1)(A), (B), (C); *see also* 31 C.F.R. § 1010.380(e). ↑
10. *See* 31 U.S.C. § 5336(b)(1)(A) (providing that each reporting company created after the effective date of FinCEN regulations shall file an initial BOIR). As originally adopted, 31 C.F.R. § 1010.380(a)(1) required entities formed or registered on or after January 1, 2024, to file their initial BOIRs within thirty calendar days of creation or registration; and any entity created or registered before January 1, 2024, to file its initial BOIR no later than January 1, 2025. This rule was amended by RIN 1506-AB62, Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024, 88 Fed. Reg. at 66732, to extend the BOIR filing deadline from thirty days to ninety days for entities created or registered on or after January 1, 2024, and before January 1, 2025. Effective for organizations created or registered on or after January 1, 2025, the initial BOIR is due within thirty days of formation. ↑
11. *See* 31 U.S.C. § 5336(b)(1)(D); 31 C.F.R. § 1010.380(a)(2). If, post-filing, it is determined that any submitted information was inaccurate, a corrected report may be filed. If the information concerning the company applicant changes, no updated BOIR need be filed. *See* 31 C.F.R. § 1010.380(a)(2). ↑
12. *See* 31 C.F.R. § 1010.380(f)(8). This term does not appear in the CTA. ↑
13. *See* 31 U.S.C. § 5336(h)(1); 31 C.F.R. § 1010.380(g) (discussed

below). ↑

14. 31 U.S.C. § 5336(h)(1); 31 C.F.R. § 1010.380(g). ↑
15. This release postdated the release of the Reporting Rules by just more than a year and predated the initial effective date of the Reporting Rules by just more than three months. ↑
16. *See* Agency Information Collection Activities; Submission for OMB Review; Comment Request; Beneficial Ownership Information Reports, 88 Fed. Reg. 67443 (Sept. 29, 2023). ↑
17. *See id.* at 67444:

> Consistent with the requirements of the PRA, FinCEN carefully considered the comments received in response to the 60-day notice that proposed the BOIR Form for public comment. Notably, commenters were uniformly critical of the checkboxes that would allow a reporting company to indicate if certain information about a beneficial owner or company applicant is "unknown," or if the reporting company is unable to identify information about a beneficial owner or company applicant. Commenters referred to these checkboxes as the "unknown checkboxes." A significant number of these comments expressed concern that the checkboxes would incorrectly suggest to filers that it is optional to report required information, and that reporting companies need not conduct a diligent inquiry to comply with their reporting obligations. These commenters requested that FinCEN remove all such checkboxes.
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> In response to the comments, FinCEN is pursuing a revised approach to the BOIR Form that will not contain unknown checkboxes. This approach will consist of a first implementation [that] will be used starting January 1, 2024, and a potential alternative implementation, which may be adopted [at] a later date following feedback from filers, law enforcement agencies, and other key stakeholders. In the first implementation, it will require every field to be completed (i.e., have responses entered in text boxes), and the BOIR Form can only be submitted once each required field has been filled out. Any field left blank, whether intentionally or accidentally, will prevent the filer from submitting their BOIR Form. It is our hope that filers will find the filing process to be seamless, users of the database will determine that the information collected is accurate, and all stakeholders, including law enforcement, will find this implementation to be sufficiently straightforward, transparent, and efficient. Throughout the months after this approach is implemented, FinCEN will seek continual feedback from filers and database users.

See also Letter from the Independent Community Bankers of America to FinCEN (Oct. 30, 2023) (approving FinCEN's removal of all "unknown checkboxes" from its BOIR form and stating, "ICBA appreciates FinCEN's careful consideration to remove all 29 'unknown' checkboxes. In its new approach, FinCEN will require every field to be completed (i.e., have responses entered in text boxes), and the BOIR form can only be submitted once each required field has been filled out. Any field left blank, whether intentionally or accidentally, will prevent the filer from submitting their BOIR form. ICBA fully supports this new approach and believes the spirit of the CTA would be fulfilled under this process."); *ICBA: Additional Beneficial Ownership Reporting Changes Needed*, Indep. Cmty. Bankers of Am. (last visited Dec. 11, 2024). ↑

18. 88 Fed. Reg. 67443. "BOI" refers to the personal identifying information that a reporting company must include in its BOIR to identify each company applicant or beneficial owner. *See also* 31 C.F.R. § 1010.380(b)(1)(ii). ↑
19. *See* Fin. Crimes Enf't Network, Beneficial Ownership Information Report: Filing Instructions (Jan. 2024) (stating, at page 3, that the information on the BOIR must be "true, correct, and complete"; at page 6, that "BOIRs must be complete before they can be filed with FinCEN. FinCEN will not accept a BOIR if any items marked with a red asterisk (*) are blank"; and, at page 9, that the terms *none*, *not applicable*, and *unknown* may not be used on the BOIR form). ↑
20. *Beneficial Ownership Information: Frequently Asked Questions*, Fin. Crimes Enf't Network (last visited Dec. 11, 2024). ↑
21. *See* FinCEN FAQ G.3 (July 24, 2024):

    > A reporting company must report its tax identification number when reporting beneficial ownership information to FinCEN and, indeed, will be unable to submit its BOI report without including a tax identification number. In such circumstances, in addition to making all reasonable efforts to file its BOI report in a timely manner (including requesting all necessary information as early as practicable), the reporting company should file its report as soon as it receives its EIN. As a best practice, the reporting company may consider retaining documentation associated with its efforts to comply with the BOI reporting requirements in a timely manner. ↑

22. *See Be on the Horns of a Dilemma*, Cambridge Dictionary (last visited Dec. 12, 2024) ("to be unable to decide which of two things to do because either could have bad results"). ↑
23. *See* 31 C.F.R. § 1010.380(b) (effective Jan. 1, 2024). ↑
24. What would be those reasonable efforts is a topic beyond the scope of this discussion, and will necessarily depend upon the nature of the beneficial owner. The communications to a corporation or an LLC that is an owner of the reporting company

will be different from the communications to a distant relative who by inheritance is an owner. ↑

25. *Need Help? Contact Us*, Fin. Crimes Enf't Network (last visited Dec. 12, 2024). ↑
26. *BOI: Beneficial Ownership Information*, Fin. Crimes Enf't Network (last visited Dec. 12, 2024). ↑
27. Fin. Crimes Enf't Network, OMB No. 1506-0076, Beneficial Ownership Information Report (May 29, 2024), Questions 33 and 51. ↑
28. Although an individual may submit the certification on behalf of a reporting company as its agent, that may be little comfort in a future FinCEN enforcement action. *See also* Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59514 (Sept. 30, 2022):

    > While an individual may file a report on behalf of a reporting company, the reporting company is ultimately responsible for the filing. The same is true of the certification. The reporting company will be required to make the certification, and any individual who files the report as an agent of the reporting company will certify on the reporting company's behalf. ↑

29. It bears noting that neither the CTA nor the Reporting Rules provide for a cause of action by the reporting company against a beneficial owner or company applicant who refuses to provide BOI or who otherwise interferes with the efforts of a reporting company to comply with the law. ↑
30. *See* 31 U.S.C. § 5336(h)(1) (making it unlawful to "(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with subsection (b); or (B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with subsection (b)"); *id.* § 5336(3)(A) (imposing civil and criminal penalties of $500 per day plus fines of not more than $10,000 and imprisonment of not more than two years or both for violating the reporting requirements); *see also* 31 U.S.C. § 5336(h)(6) ("In this subsection, the term 'willfully' means the voluntary, intentional violation of a known legal duty.") The $500 per diem is adjusted for inflation. *See* Federal Civil Monetary Penalties Inflation Adjustment Act of 1990, Pub. L. No. 101-410 (as revised by section 701 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74 (Nov. 2, 2015)). As of this writing, the per diem rate has increased to $591. *See also* FinCEN FAQ K.2 (Apr. 18, 2024). ↑
31. *See* Ladner v. United States, 358 U.S. 169, 79 S. Ct. 209, 3 L. Ed. 2d 199 (1958). ↑
32. *See*, *e.g.*, Andrea Gacki, Dir., Prepared Remarks of FinCEN Director Andrea Gacki During Beneficial Ownership Information Reporting Event in Media, Pennsylvania (Sept. 16, 2024) ("But let me be clear. Small business owners doing their best to comply with

the law should not lose sleep over these new reporting requirements. The CTA penalizes willful violations of the law, and this is where we plan to focus our enforcement actions. It's not a 'gotcha' exercise, and we're not looking to needlessly burden America's thriving small business community."). ↑

33. 31 C.F.R. § 1010.380(g) (effective Jan. 1, 2024):

> Reporting violations. It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section. For purposes of this paragraph (g):
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> a.
>
> i.
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> 1. The term "person" includes any individual, reporting company, or other entity.
> 2. The term "beneficial ownership information" includes any information provided to FinCEN under this section.
> 3. A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section.
> 4. A person fails to report complete or updated beneficial ownership information to FinCEN if, with respect to an entity:
>
> 1. such entity is required, pursuant to title 31, United States Code, section 5336, or its implementing regulations, to report information to FinCEN;
> 2. the reporting company fails to report such information to FinCEN; and
> 3. such person either causes the failure, or is a

senior officer of the entity at the time of the failure. ↑

34. *See supra* note 30. ↑
35. On December 3, 2024, in a case styled *Texas Top Cop Shop, Inc. v. Garland*, a nationwide preliminary injunction was issued against the enforcement of both the CTA and the Reporting Rules. No. 4:24-cv-478, 2024 WL 4953814, 2024 U.S. Dist. LEXIS 218924 (E.D. Tex. Dec. 3, 2024, amended Dec. 5, 2024). That decision is currently on appeal to the U.S. Court of Appeals for the Fifth Circuit as Case No. 24-40792. Whether the preliminary injunction will be affirmed, restricted in its scope, or reversed is as of this date unknown. ↑

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