Insights: Alert

Corporate Transparency Act Enjoined

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REPORTING COMPANIES RELIEVED FROM JANUARY 1, 2025 REPORTING DEADLINE FOR NOW

The United States District Court for the Eastern District of Texas has issued a nationwide preliminary injunction against enforcement of the federal Corporate Transparency Act (CTA), relieving companies from an impending filing deadline for beneficial ownership reports for the time being.[1]

As we have previously reported, the CTA requires most privately held companies organized in the U.S. (including many non-wholly owned or controlled subsidiaries of public companies) and foreign companies that register to do business in a U.S. state to file an online report with the Treasury Department's Financial Crimes Enforcement Network (FinCEN). Among other things, the report must identify any individual who, directly or indirectly, exercises "substantial control" over the company or owns or controls 25% or more of the company. These individuals are called "beneficial owners".

For companies that were formed prior to 2024, their initial beneficial ownership report is due by January 1, 2025. In addition, entities that have filed with FinCEN are required to update their report within 30 days of any change.

Unlike an earlier federal case in Alabama holding the CTA unconstitutional, the preliminary relief afforded by the Texas case is nationwide: ***no company need comply with the CTA while the injunction is in effect.*** The district court expressly stated in its opinion that its injunction was "nationwide" and further ordered that "[e]nforcement of the Reporting Rule . . . is . . . hereby enjoined, and the compliance deadline is stayed . . .. Neither may be enforced, and reporting companies need not comply with the CTA's January 1, 2025, BOI reporting deadline pending further order of the Court."

A preliminary injunction is not a final disposition of the case. Assuming the government continues litigating the case, they could immediately seek a stay of the district court's order from the Fifth Circuit Court of Appeals, which, if granted, could restore the January 1, 2025 beneficial ownership reporting deadline. Although the timing of any such stay could conceivably put companies that are awaiting the outcome of the proceeding before filing their beneficial ownership reports under additional time pressures, we would hope that if a stay is forthcoming from the Fifth Circuit that it would not be entered at the last minute before the January 1 deadline. If the Fifth Circuit declines to stay the injunction, the government could conceivably request the Supreme Court to do so.

It is also possible that FinCEN will issue guidance on the Texas case (in the earlier Alabama case, guidance was issued two days after the court's decision). We will keep you updated on developments.

What Should Companies Do Now?

Our advice for the near term remains the same as conveyed in our most recent publication to clients and friends on the CTA: prepare to file your beneficial ownership reports but hold off on actually filing pending developments in the Texas and Alabama cases. If the preliminary injunction is not stayed, it is increasingly possible that the CTA will never go into effect.

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Please do not hesitate to reach out to any of our principal CTA contacts below, or to your primary Kilpatrick contact for help or further information.

Footnotes

[1] The case is Texas Top Cop Shop, Inc. v. Garland, Civil Action 4:24-CV-478.

Related People

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