

Beneficial Ownership Information Reporting Requirements of Corporate Transparency Act Reinstated and Halted Again – For Now

December 30, 2024

In dizzying back-to-back actions during the Christmas holidays, the U.S. Court of Appeals for the Fifth Circuit (the “Fifth Circuit”) first stayed and then reinstated the nationwide preliminary injunction temporarily blocking enforcement of beneficial information reporting requirements of the Corporate Transparency Act (“CTA”). Following these actions, no filings under the CTA are currently required with the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”), including initial beneficial ownership information reports (individually, a “BOIR,” and, collectively, “BOIRs”) for companies created or registered prior to 2024.

Background

The CTA, enacted as an anti-money laundering measure, took effect on January 1, 2024, and requires certain corporations, limited liability companies, limited partnerships, and other entities created or registered in the United States and not otherwise exempt from the CTA’s filing requirements to disclose information about their beneficial owners to FinCEN within specified filing deadlines.

For existing entities – those created or registered before January 1, 2024 – the CTA’s implementing rules set a filing deadline of January 1, 2025. Entities created or registered during calendar year 2024 are required to file within 90 days of the date of creation or registration, and entities created or registered on or after January 1, 2025, are required to file within 30 days of creation or registration.

On December 3, the U.S. District Court for the Eastern District Court of Texas, Sherman Division (the “District Court”), in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.) (“*Texas Top Cop Shop*”), issued a nationwide preliminary injunction enjoining the enforcement of the CTA (31 U.S.C. § 5336) and the reporting rule (31 C.F.R. § 1010.380) issued by FinCEN and staying the compliance deadline under Section 705 of the Administrative Procedure Act throughout the U.S. The District Court found that the CTA is likely unconstitutional because it determined that the CTA goes beyond Congressional powers under the Commerce Clause or the Necessary and Proper Clause of the U.S. Constitution in relation to any enumerated power and concluded that the plaintiffs demonstrated a substantial likelihood of success on the merits of their Tenth Amendment challenge. The nationwide preliminary injunction suspended all BOIR filing deadlines for all reporting companies, including the January 1, 2025 deadline. The government requested a stay of the nationwide preliminary injunction, which the district court denied, and then appealed the nationwide preliminary injunction to the Fifth Circuit, arguing, among other things, that it is an extraordinary remedy that should be stayed pending appeal.

Recent Developments

On December 23, 2024, a three-judge “motions panel” of the Fifth Circuit issued an order (the “Fifth Circuit Motions Panel Stay Order”) granting the government’s emergency motion for a stay of the nationwide preliminary injunction blocking enforcement of the CTA pending appeal. In doing so, the motions panel analyzed a multi-factor test for granting such stays, including whether the government would be irreparably injured absent a stay and whether the government had made a strong showing that it is likely to succeed on the merits. In balancing the equities, the motions panel concluded that the government would likely suffer irreparable harm if it were enjoined from enforcing a statute “enacted by representatives of its people,” while businesses subject to the CTA would suffer minimal harm if required to file a BOIR. The motions panel concluded that the government “is likely to succeed on the merits in defending [the] CTA’s constitutionality.” The Fifth Circuit

Business

Alert

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Motions Panel Stay Order effectively reinstated all CTA filing deadlines for millions of companies created or registered in the United States (other than the plaintiffs covered by a more limited injunction issued by the U.S. District Court for the Northern District of Alabama in *National Small Business United v. Yellen*, which the government appealed to the U.S. Court of Appeals for the Eleventh Circuit) to file BOIRs with FinCEN, including the January 1, 2025 filing deadline for reporting companies that were created or registered before 2024.

Recognizing that reporting companies might need additional time to file their BOIRs given the recent developments in *Texas Top Cop Shop*, FinCEN posted an alert on its website within hours of the Fifth Circuit Motions Panel Stay Order announcing several short extensions, including delaying the filing deadline for pre-2024 reporting companies by 12 days to January 13, 2025, to accommodate entities that may have relied on the injunction.

Late on December 26, 2024, in a highly unusual and unexpected order (the “Fifth Circuit Merits Panel Reinstatement Order”), a “merits panel” of the Fifth Circuit, consisting of different judges than the motions panel, vacated the Fifth Circuit Motions Panel Stay Order and thereby reinstated the nationwide preliminary injunction against enforcement of the CTA. The merits panel stated that it was taking this action “in order to preserve the constitutional status quo while the merits panel considers the parties’ weighty substantive arguments[.]” The Fifth Circuit Merits Panel Reinstatement Order returns the situation to that which existed prior to the Fifth Circuit Motions Panel Stay Order. Thus, pending further court action, all reporting companies are no longer obligated to comply with the CTA’s filing deadlines, including those recently extended by FinCEN.

On December 27, 2024, given the Fifth Circuit Merits Panel Reinstatement Order, FinCEN issued an alert announcing that reporting companies are not currently required to file BOIRs with it and are not subject to liability if they fail to do so while the Fifth Circuit Merits Panel Reinstatement Order remains in force. However, the alert also stated that reporting companies may continue to voluntarily submit BOIRs to FinCEN.

Next Steps

The Fifth Circuit has now scheduled oral argument for March 25, 2025, on the merits of the District Court’s nationwide preliminary injunction. The government could seek emergency reconsideration of the Fifth Circuit Merits Panel Reinstatement Order requesting a decision prior to the March 25, 2025 hearing. Numerous court challenges to the CTA continue to work their way through various federal district and appellate courts, and may ultimately reach the U.S. Supreme Court. In addition, there are efforts in Congress to repeal the CTA.

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While the CTA’s reporting requirements are not currently in effect, the *Texas Top Cop Shop* litigation is ongoing. The government could seek further emergency relief from the Fifth Circuit or the U.S. Supreme Court, which could result in a resumption of the reporting requirements.

Given this uncertainty and the unpredictable path this litigation has taken to date, companies would be prudent to assess whether they are covered by these reporting requirements, and, if required, be prepared to file BOIRs with FinCEN. But for the injunction, the deadline for many companies to submit initial BOIRs would be January 13, 2025, and while FinCEN extended reporting deadlines following the December 23 decision as described above, it is not known whether FinCEN would do so again if the reporting requirements are again reinstated.

The members of Hand Arendall Harrison Sale’s CTA Team continue to monitor closely legal developments relating to the CTA, will provide relevant updates as they become available, and are available to assist with your CTA compliance questions.