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December 30, 2024

Corporate Transparency Act: Court Swiftly Reimposes Injunction Against Enforcement



As reported in our recent [Update](#), the U.S. District Court for the Eastern District of Texas issued a nationwide preliminary injunction against enforcement of the beneficial ownership information reporting requirements of the Corporate Transparency Act (CTA) on December 3, 2024. The U.S. Department of the Treasury, Financial Crimes Enforcement Network (FinCEN) appealed that injunction to the U.S. Court of Appeals for the Fifth Circuit shortly thereafter. In an [unpublished *per curiam* opinion](#) issued on December 23, the Fifth Circuit stayed the injunction, reinstating the CTA and, critically, reimposing the January 1, 2025, deadline for entities formed prior to January 1, 2024 (Pre-2024 Entities) to file their CTA reports.

Only hours after the Fifth Circuit announced its decision, [FinCEN issued an alert](#) titled “Updates to Beneficial Ownership Information Reporting Deadlines-Beneficial Ownership Information Reporting Requirements Now in Effect, with Deadline Extensions,” giving a reprieve from the holiday deadline of January 1. Pre-2024 Entities were to have until January 13 to file their CTA reports and FinCEN provided similar delay timelines for new formations or registrations that occurred or had CTA reporting deadlines during the pendency of the injunction.

Only three days later, on December 26, another Fifth Circuit panel [vacated](#) the December 23 ruling that lifted the injunction. *Thus, CTA reporting companies are now—once again—NOT required to file beneficial ownership information with FinCEN unless and until the injunction is stayed or otherwise lifted.*

For more background on the injunction, please see our December 11 Update [here](#). For more details regarding the CTA’s reporting requirements, see our prior publications regarding [the CTA as a whole](#), [a mid-year status update](#), [New York’s corporate transparency law](#), and [our Compliance Collective CLE webinar](#), among [other publications](#) discussing application of specific CTA exemptions or ambiguities.

What Does This Mean?

The CTA is currently unenforceable again as to all entities that are required to report beneficial ownership information under the implementing regulations. On December 27, FinCEN has issued a statement confirming that reporting companies have no obligation to comply with the CTA “for as long as [the injunction] remains in force and reaffirming that reporting companies may continue to voluntarily submit beneficial ownership information.” *But this is unlikely to be the last word on the CTA over the next few weeks.*

Companies choosing not to make voluntary submissions should stay apprised of the status of the CTA and potential future orders lifting the injunction and reimposing CTA filing deadlines. Importantly, if the injunction is lifted again, there is no guarantee that FinCEN will issue further delays beyond the January 13 extension already offered.

What Comes Next?

The Fifth Circuit appeal has been expedited but the briefing schedule extends through the end of February 2025, suggesting the appellate court will not issue a final ruling until the spring. FinCEN is likely to request an expedited review of this decision and/or appeal to the Supreme Court of the United States, possibly with an eye toward maintaining the January 13 deadline, or shortly thereafter, due to the upcoming change in the presidential administration.

Notably, the December 26 order suggests that the merits panel on the Fifth Circuit disagreed with the Fifth Circuit motions panel on the constitutionality issue, with the merits panel believing that the constitutional challenge to the CTA will succeed on the merits. But - as evidenced by the disparate decisions on this issue that have already been issued by multiple federal district courts and now divergent decisions of different panels within the same appellate court—it is clear that the ultimate constitutionality of the CTA is highly controversial and extremely unlikely to be fully and finally settled in the next few weeks.

It bears noting that, while some have hoped for a longer delay or potential retraction of the CTA to be imposed through legislation, this does not seem likely in the very near term. There was a prior proposal to include a one-year delay for CTA filings on behalf of existing entities in a federal government spending bill that was subject to intense political controversy, but that delay was stripped from the final version of the bill that was signed into law by President Biden on Saturday, December 21. It currently appears that there is no pending legislation that would offer a delay of CTA compliance obligations.

Finally, the incoming presidential administration has not provided any insights into how it may address the CTA. The administration may choose to continue to defend the CTA in the pending appeals or, alternatively, may choose to abandon the pending appeals. The incoming administration may also consider recommending legislative or regulatory fixes to the CTA to address the constitutional issues that led to these rulings currently being appealed. In addition, some of the state corporate transparency laws, which were similar to the CTA, such as the New York LLC Transparency Act that will go into effect in 2026, may also be targeted and subjected to similar constitutional and other legal challenges.

Key Takeaways

In the short term, considering the fast-shifting landscape, companies should be prepared to report by the January 13 deadline as the injunction could be lifted once again and there is no guarantee that FinCEN will issue a further delay. In the longer term, we should expect lengthy litigation over the constitutionality of the CTA—and potentially further activity in the political branches, as well.

Companies that may have CTA reporting obligations should continue seeking advice and gathering information to ensure they are prepared to meet the fast-approaching possible filing deadline. But companies wary of making voluntary filings (for instance, those that have beneficial owners who object to their information being shared voluntarily) may wish to hold off filing their beneficial ownership reports unless and until the injunction is lifted once again.

Please reach out to your Perkins Coie team with any questions or for support in relation to CTA compliance.

Authors

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