

ALERTS

Corporate Transparency Act Update: Government Challenges Nationwide Preliminary Injunction & FinCEN Clarifies That Reports Are Voluntary

December 18, 2024

This *Alert* serves to update clients on the recent legal developments related to the Corporate Transparency Act (“CTA”) and its implementing regulation (31 C.F.R. §1010.380 (“Reporting Rule”)) since our prior *Alert* on Dec. 4, 2024.[1] At this time, none of the recent developments relating to the nationwide preliminary injunction concerning the CTA and the Reporting Rule change our view that filing of beneficial ownership information reports (“BOI Reports”) is voluntary while the nationwide preliminary injunction remains in place. In other words, there is no requirement to submit or update BOI Reports while the nationwide preliminary injunction is in effect. Given the future uncertainty however, we recommend that clients continue to prepare for anticipated BOI Report filings in the event the nationwide preliminary injunction is lifted, stayed or altered.

Since Judge Amos L. Mazzant of the US District Court for the Eastern District of Texas issued a Memorandum Opinion and Order (the “Order”) preliminarily enjoining enforcement of the CTA and Reporting Rule, the US Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) has issued a statement confirming that filing of BOI Reports is voluntary as long as the nationwide preliminary injunction remains in effect. In addition, the government appealed the Order to the US Court of Appeals for the Fifth Circuit, filed a motion requesting that Judge Mazzant stay the Order pending appeal and requested that the Fifth Circuit stay

the Order pending final adjudication of the appeal. We discuss each of these developments below.

FinCEN Statement

On Dec. 7, 2024, FinCEN issued a statement advising that “reporting companies are not currently required to file beneficial ownership information with FinCEN and are not subject to liability if they fail to do so while the [O]rder remains in force.” The statement also advised that “reporting companies may continue to voluntarily submit beneficial ownership information reports.”

Nationwide Preliminary Injunction Updates

On Dec. 5, 2024, the government appealed the Order to the Fifth Circuit. [2] On Dec. 11, 2024, the government filed a motion with Judge Mazzant asking him to stay enforcement of the Order pending the result of the Fifth Circuit appeal. Following briefing from the parties, Judge Mazzant denied the motion to stay on Dec. 17.

On Dec. 13, 2024, the government also filed an emergency motion with the Fifth Circuit seeking a stay of the Order pending appeal. In the Fifth Circuit stay motion, the government requested a ruling no later than Dec. 27, 2024, to ensure that reporting companies “can be made aware of their obligation to comply before January 1, 2025.” On the same day, the Fifth Circuit advised the parties that the opposition to the government’s stay motion is due Dec. 17 and the government’s reply in support of its motion to stay is due Dec. 19. Plaintiff-appellees filed their opposition to the government’s motion on Dec. 17. The Fifth Circuit has not ruled on the government’s stay motion as of the date of this *Alert*.

In both stay motions, the government requested that, at a minimum, the Order should be stayed pending appeal with regard to reporting companies that are not parties to the litigation. In requesting a stay, the government restated its position that the CTA is constitutional. The government also argued that absent a stay, the government’s significant outreach efforts would be negated at a critical juncture for CTA implementation and efforts of the US to fulfill international standards for countering money laundering and terrorist financing would be stymied.

What’s Next?

We will continue to monitor for developments related to this case and whether the Justice Department, the Treasury Department or FinCEN issues any additional guidance in order to assist clients in navigating their CTA obligations. Clients who have not yet filed BOI Reports may refrain from filing BOI Reports until additional guidance is issued by the government or either Judge Mazzant or an appellate court decides whether or not to stay, narrow or limit the nationwide preliminary injunction. Clients who defer filing BOI Reports should nonetheless continue to prepare for anticipated BOI Report filings in the event the preliminary injunction is lifted, stayed or altered.

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For assistance in navigating the CTA's reporting requirements, please contact one of the authors or your attorney at Schulte Roth & Zabel.

[1] For more information, please see our prior *Alert* "Corporate Transparency Act Update: Nationwide Preliminary Injunction Enjoining Enforcement," available here.

[2] *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792 (5th Cir. Dec. 9, 2024).

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