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ADVISORY



Update: Fifth Circuit Court of Appeals Reinstates Nationwide Injunction on CTA Reporting Requirements – CTA Enforcement Halted Once Again

December 27, 2024

This Corporate Advisory provides a brief update on recent litigation regarding the Corporate Transparency Act (CTA) and its reporting requirements. It is not intended to, and does not, provide legal, compliance or other advice to any individual or entity. For a general summary of the CTA, please refer to our prior CTA Corporate Advisories from November 8, 2023, and September 17, 2024. Please reach out to your Katten attorney for assistance regarding the application of the CTA to your specific situation.

12/27/2024 UPDATE: On December 26, 2024, the Fifth Circuit of Appeals issued an order that reinstated the nationwide injunction on the CTA's reporting requirements. As of December 26, 2024, Reporting Companies are once again **not required to file their initial Beneficial Ownership Information Reports**. In vacating a motions panel's December 23, 2024 order that put back into effect the CTA's reporting requirements and deadlines, the merits panel of the Fifth Circuit of Appeals stated that "in order to preserve the constitutional status quo while the merits panel considers the parties' weighty substantive arguments, that part of the motions-panel order granting the Government's motion to stay the district court's preliminary injunction enjoining enforcement of the CTA and the Reporting Rule is VACATED." The merits panel of the Fifth Circuit of Appeals has the appeal on an expedited basis. The Fifth Circuit has scheduled oral argument for the case on March 25, 2025. The Department of Justice has filed an appeal to the United States Supreme Court for a stay of the nationwide injunction.

In connection with this order, FinCEN has issued the following statement: "In light of a recent federal court order, 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 order remains in force. However, reporting companies may continue to voluntarily submit beneficial ownership information reports." Your team at Katten Continues to monitor these CTA developments closely.

The full Fifth Circuit Order is available here.

To view the FinCEN Alert, click here.

12/23/2024 UPDATE: On December 23, 2024, the Fifth Circuit of Appeals lifted a preliminary nationwide injunction against enforcement of the Corporate Transparency Act issued by the US District Court of the Eastern District of Texas. The result is that compliance with the CTA is immediately reinstated. After the Fifth Circuit ruling, FinCEN issued an Alert which amended certain filing deadlines. The deadlines for certain non-exempt Reporting Companies have been extended as follows (with the extension date varying by date of creation or registration or other factors noted below):

1. Reporting companies that were created or registered prior to January 1, 2024, have until January 13, 2025, to file their initial beneficial ownership information reports with FinCEN. (These companies would otherwise have been required to report by January 1, 2025.)
2. Reporting companies created or registered in the United States on or after September 4, 2024, that had a filing deadline between December 3, 2024, and December 23, 2024, have until January 13, 2025, to file their initial beneficial ownership information reports with FinCEN.
3. Reporting companies created or registered in the United States on or after December 3, 2024, and on or before December 23, 2024, have an additional 21 days from their original filing deadline to file their initial beneficial ownership information reports with FinCEN.
4. Reporting companies that qualify for disaster relief may have extended deadlines that fall beyond January 13, 2025. These companies should abide by whichever deadline falls later.
5. Reporting companies that are created or registered in the United States on or after January 1, 2025, have 30 days to file their initial beneficial ownership information reports with FinCEN after receiving actual or public notice that their creation or registration is effective.
6. As indicated in the FinCen alert titled "Notice Regarding National Small Business United v. Yellen, No. 5:22-cv-01448 (N.D. Ala.)," Plaintiffs in *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.) — namely, Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association and members of the National Small Business Association (as of March 1, 2024) — are not currently required to report their beneficial ownership information to FinCEN at this time.

The full Fifth Circuit Opinion is available here.

To view the FinCEN Alert, click here.

Breaking News: Federal District Court Halts Corporate Transparency Act Enforcement Nationwide

On December 3, 2024, the US District Court for the Eastern District of Texas granted a nationwide preliminary injunction prohibiting the federal government from enforcing the CTA, its implementing regulations and its reporting deadlines. *See Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, Case No. 4:24-cv-478 (E.D. Tex.).

As a reminder, the CTA requires a Reporting Company to file a report with the US Treasury Department's Financial Crimes Enforcement Network (FinCEN), which contains specified information regarding itself and its beneficial owners. The CTA's implementing regulations provide that each Reporting Company must file its initial FinCEN report (a) by January 1, 2025, in the case of Reporting Companies formed or registered to do business prior to January 1, 2024, (b) within 90 days following formation or registration, in the case of Reporting Companies formed or registered to do business during 2024, and (c) within 30 days following formation or registration, in the case of Reporting Companies formed or registered to do business on or after January 1, 2025.

In the *Texas Top Cop Shop* case, the US District Court Judge Amos L. Mazzant issued a nationwide preliminary injunction preventing the enforcement of the CTA and its reporting requirements, including the compliance deadlines.

Many Reporting Companies who have not filed a FinCEN report to date are questioning the effect of the preliminary injunction. As of December 4, 2024, the CTA's reporting requirements are unenforceable. However, it is important to note that the preliminary injunction only ***temporarily*** enjoins enforcement of the CTA and is subject to appeal and further procedural developments. Whether and when an appeal may be filed, and the timing and outcome of an appeal, are all uncertain. Such developments may happen quickly or without advance notice, and any changes may or may not include an extension to the deadlines specified by the CTA. FinCEN has not yet issued any related statement or guidance in the wake of this nationwide preliminary injunction. A Reporting Company with questions should seek legal counsel regarding CTA compliance. A Reporting Company also should consider any applicable confidentiality obligations if it chooses to file a FinCEN report while the preliminary injunction is in effect. Katten will continue to closely monitor legal developments regarding the CTA.

The full opinion is available here.

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