

Insights

REPORTING COMPANIES MAY FACE A LAST-MINUTE SCRAMBLE TO COMPLY WITH THE CORPORATE TRANSPARENCY ACT DUE TO ACCELERATED APPELLATE TIMELINE RELATED TO THE PRELIMINARY INJUNCTION

Dec 17, 2024

As the government and interested parties continue to fight over the enforcement of the Corporate Transparency Act's reporting requirements, prudent businesses and reporting companies should be prepared to comply with all reporting requirements by the original January 1, 2025 deadline, as the current schedule for the appeal could potentially have the Fifth Circuit limiting or lifting the injunction just days before the deadline with no guarantee of an extension.

As noted in our prior client alert, on December 3, 2024, a federal district court in Texas issued a nationwide preliminary injunction in *Texas Top Cop Shop, Inc. et al., v. Garland et al.*, enjoining enforcement of the Corporate Transparency Act's reporting requirements. This preliminary injunction came just weeks before the January 1, 2025 initial deadline for reporting companies that were incorporated prior to 2024 to file their Beneficial Ownership Information Reports ("BOI Reports").

On December 5, 2024, the Department of Justice appealed the injunction to the U.S. Court of Appeals for the Fifth Circuit. The Financial Crimes Enforcement Network ("FinCEN") stated in an alert posted to its website that it will comply with the order as long as it remains in effect and further stated that reporting companies will not be subject to liability for failing to submit beneficial ownership information while the preliminary injunction applies. FinCEN stated that reporting companies may still submit their BOI Report voluntarily.

On December 13, 2024, DOJ filed an emergency motion with the Fifth Circuit seeking a stay of the district court's injunction pending appeal. The government proposed a briefing schedule and requested "a ruling on this motion as soon as possible, but in any event no later than December 27, 2024, to ensure that regulated entities can be made aware of their obligation to comply before January 1, 2025."

In response, the Fifth Circuit set an expedited briefing schedule that would have the appeal fully briefed by December 19, 2024. This accelerated timeline may suggest that the Fifth Circuit will issue

a decision by or before December 27, 2024 (the deadline the government requested) or prior to January 1, 2025 (the date the reporting requirements were set to take effect for reporting companies formed prior to 2024). The appellate court could stay the injunction, partially stay (or narrow) the injunction, or deny the stay altogether. Unless the stay is enjoined or narrowed, the nationwide injunction will remain in effect.

If the injunction is stayed or narrowed (such that the reporting requirement kicks back in), it is possible that FinCEN will offer companies a grace period to comply with the reporting requirements, effectively pushing back the year-end deadline. There is precedent for such agency action by FinCEN, but the agency has not indicated whether it will offer such an extension in this case.

Given the uncertainty whether the injunction will remain in place and whether any extension will be offered, reporting companies would be well-advised to continue to prepare to comply with the CTA by the original January 1st deadline.

For advice regarding your obligations under the CTA, please contact your BCLP relationship lawyer or a member of [BCLP's CTA team](#). Please note that BCLP does not provide advice as to the application of the CTA to an entity unless we have been expressly engaged to provide such advice.

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