THOMPSON HINE

Corporate Law Update

December 2024

FinCEN Complying with CTA Preliminary Injunction, Says Filing Requirement Paused

We recently reported on the nationwide preliminary injunction against enforcement of the Corporate Transparency Act (CTA). Following our initial insights, FinCEN issued this 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.*
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> The Corporate Transparency Act (CTA) plays a vital role in protecting the U.S. and international financial systems, as well as people across the country, from illicit finance threats like terrorist financing, drug trafficking, and money laundering. The CTA levels the playing field for tens of millions of law-abiding small businesses across the United States and makes it harder for bad actors to exploit loopholes in order to gain an unfair advantage.
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> On Tuesday, December 3, 2024, in the case of *Texas Top Cop Shop, Inc., et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tex.), a federal district court in the Eastern District of Texas, Sherman Division, issued an order granting a nationwide preliminary injunction that: (1) enjoins the CTA, including enforcement of that statute and regulations implementing its beneficial ownership information reporting requirements, and, specifically, (2) stays all deadlines to comply with the CTA's reporting requirements. The Department of Justice, on behalf of the Department of the Treasury, filed a Notice of Appeal on December 5, 2024.
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> *Texas Top Cop Shop* is only one of several cases in which plaintiffs have challenged the CTA that are pending before courts around the country. Several district courts have denied requests to enjoin the CTA, ruling in favor of the Department of the Treasury. The government continues to believe – consistent with the conclusions of the U.S. District Courts for the Eastern District of Virginia and the District of Oregon – that the CTA is constitutional.
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> While this litigation is ongoing, FinCEN will comply with the order issued by the U.S. District Court for the Eastern District of Texas for as long as it remains in effect. Therefore, reporting companies are not currently required to file their beneficial ownership information with FinCEN and will not be subject to liability if they fail to do so while the preliminary injunction remains in effect. Nevertheless, reporting companies may continue to voluntarily submit beneficial ownership information reports.

As noted in FinCEN's statement, the government has already filed its appeal with the Fifth Circuit Court of Appeals; we cannot predict when any ruling will follow and whether there will be a further appeal to the U.S. Supreme Court.

It is clear that FinCEN is respecting the nationwide preliminary injunction and not requiring filing during any period the injunction is in force. However, notably absent from FinCEN's statement is any comment on a grace period for compliance if the injunction is lifted. Absent an affirmative statement by FinCEN, it seems the compliance requirements and corresponding enforcement would recommence without any extension of the year-end deadline if the injunction is lifted. So, we believe the most conservative approach is to continue to voluntarily comply with the CTA filing deadline as if this injunction were not in place. This puts a filer in the best position if the injunction is unexpectedly lifted prior to year end without an extension of the December 31 deadline. Some may instead choose a "wait and see" approach, but that comes with risks because there is no way to know when, or if, the injunction will be lifted and filing requirements reinstated. Therefore, for those making the business decision to wait and see, it is prudent to continue all preparations related to filing in the event the injunction is lifted and no grace period is offered.

We will continue to monitor this and issue alerts as this situation develops. You can follow additional developments from FinCEN here.

FOR MORE INFORMATION

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