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Update on Corporate Transparency Act: FinCEN Responds to CTA Nationwide Injunction; Provides Insight

Greenbaum, Rowe, Smith & Davis LLP Client Alert
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What You Need to Know

- On December 5, 2024, the U.S. Department of Justice, on behalf of the Department of Treasury, appealed a federal court preliminary injunction enjoining enforcement of the CTA to the U.S. Court of Appeals for the Fifth Circuit.
- FinCEN, which is tasked with enforcing the CTA, issued a statement clarifying that reporting companies are not currently required to file beneficial ownership information and are not subject to liability if they fail to do so while the injunction remains in force.
- It is nonetheless prudent for business entities to determine whether their company, corporation, or other entity is a “reporting entity” as defined in the CTA, and to determine their beneficial owners for reporting purposes, as the outcome of the nationwide injunction and pending appeal remain uncertain.

In a **previous Client Alert**, we informed you that a U.S. District Court issued a preliminary injunction on December 3, 2024 enjoining enforcement of the Corporate Transparency Act (CTA) nationwide.

On December 5, 2024, the U.S. Department of Justice, on behalf of the U.S. Department of Treasury, appealed this decision to the U.S. Court of Appeals for the Fifth Circuit. This is the first step to potentially overturn the nationwide injunction and a further step to obtain a final decision regarding the constitutionality of the CTA. There is currently already an appeal in the Eleventh Circuit of a CTA injunction of much more limited scope.

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FinCEN, the Department of Treasury division tasked with enforcing the CTA, issued this statement definitively clarifying its response to the U.S. District Court's nationwide injunction:

"[R]eporting 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."

What This Means

FinCEN is complying with the District Court's order and has stated that there will be **no liability for reporting companies that fail to report by the January 1, 2025 deadline in reliance upon the Court's preliminary injunction.**

Practically speaking, readers of this Alert who have not already considered if the CTA is applicable to their business entities should continue to ascertain whether their company, corporation, or other entity is a "reporting entity" as defined in the CTA. Reporting entities should likewise continue to determine their beneficial owners for reporting purposes. At this time, there is no obligation to report; however, entities may choose to obtain this information in preparedness for a later date if reporting is once again required, especially if there is a limited timeframe within which to comply.

Reporting entities may also choose to report notwithstanding the injunction. The advantage of such reporting is that no matter what the Fifth Circuit decides – or when any final decision is rendered regarding CTA's constitutionality – that entity will already be in compliance with no further action needed.

As noted previously, we are closely monitoring developments regarding the preliminary injunction now on appeal and we will provide pertinent information as it becomes available. Please contact the author of this Alert with any questions regarding the Corporate Transparency Act and the impact of the preliminary injunction on your entity's reporting obligations.

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