

MEMO# 35952

December 12, 2024

US District Court for the Eastern District of Texas Issues Preliminary Nationwide Injunction Against Enforcement of Corporate Transparency Act

[35952]

December 12, 2024

TO: ICI Members SUBJECTS: Anti-Money Laundering
Compliance RE: US District Court for the Eastern District of Texas Issues Preliminary
Nationwide Injunction Against Enforcement of Corporate Transparency Act

Background

The Corporate Transparency Act (CTA), enacted in 2021 and effective January 1, 2024, requires certain entities to file reports with the Financial Crimes Enforcement Network (FinCEN) identifying their beneficial owners, among other information. FinCEN adopted a rule in September 2022^[1] (the "Reporting Rule") to implement this requirement, specifying who must file beneficial ownership information reports ("BOI Reports") and what information must be reported. Under the Reporting Rule, any reporting company^[2] created or registered before January 1, 2024 must file a BOI Report by January 1, 2025, any reporting company created or registered after January 1, 2024 but before January 1, 2025 must file a BOI Report within 90 days of creation or registration,^[3] and any reporting company created or registered after January 1, 2025 must file within 30 days of creation or registration.

Preliminary Nationwide Injunction

On December 3, the US District Court for the Eastern District of Texas (the "Court") issued a preliminary injunction blocking enforcement of the CTA nationwide and staying the January 1st, 2025 Reporting Rule deadline.^[4] In granting the injunction, the Court found that "the CTA appears likely unconstitutional," stating that "the Government is unable to provide the Court with any tenable theory that the CTA falls within Congress's power." Although this is the second US District Court to find that the CTA is likely unconstitutional, this is the first court to grant an injunction against the CTA that applies nationwide.^[5]

DOJ Appeal and FinCEN Statement

On December 5, the Department of Justice appealed the injunction to the US Court of Appeals for the Fifth Circuit.

Following the Court's ruling and the government's notice of appeal, FinCEN issued a statement^[6] on its website confirming that reporting companies are not required to report their beneficial ownership information to FinCEN under the CTA and the Reporting Rule, as long as the current, nationwide injunction of the CTA remains in effect. FinCEN stated on its website:

"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."

ICI will continue to monitor for further developments.

Erica Evans
Assistant General Counsel

Kelly O'Donnell
Director, Transfer Agency and Operations

Notes

^[1] Beneficial Ownership Information Reporting Requirements, FinCEN, 87 Fed. Reg. 59498 (Sept. 30, 2022).

^[2] "Reporting company" is defined by the Reporting Rule to mean either a domestic reporting company or a foreign reporting company, unless the entity falls into one of twenty-three enumerated exemptions. The term "domestic reporting company" means any entity that is: (A) A corporation; (B) A limited liability company; or (C) Created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe. The term "foreign reporting company" means any entity that is: (A) A corporation, limited liability company, or other entity; (B) Formed under the law of a foreign country; and (C) Registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe. Registered investment companies and registered investment advisers are exempt from the definition of "reporting companies."

^[3] See Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024, FinCEN, 88 Fed. Reg. 83499 (Nov. 30, 2023).

^[4] Texas Top Cop Shop, Inc. et al. v. Garland, et al., No. 4:24-cv-00478 (E.D. Tex. Dec. 3, 2024).

^[5] See Nat'l Small Business United v. Yellen, 721 F. Supp. 3d 1260 (N.D. Ala. 2024) (permanently enjoining enforcement of the CTA against the specific plaintiffs in that case).

^[6] "Alert: Impact of Ongoing Litigation - Deadline Stay - Voluntary Submission Only," FinCEN, available at <https://fincen.gov/boi> (last accessed Dec. 11, 2024).

Copyright © by the Investment Company Institute. All rights reserved. Information may be abridged and therefore incomplete. Communications from the Institute do not constitute, and should not be considered a substitute for, legal advice.