

Client Alert



Government Matters & Regulation

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CTA Preliminary, Nationwide Injunction Reinstated; FinCEN Suspends Compliance with CTA; Briefing Schedule on the Merits Established

On December 26, 2024, a three-judge “merits panel” for the U.S. Court of Appeals for the Fifth Circuit vacated the December 23, 2024, order issued by a separate three-judge “motions panel,” which had granted the government’s request to stay the district court’s order preliminarily enjoining the enforcement of the Corporate Transparency Act (“CTA”) and its implementing regulations. This latest order by the appellate court means that the district court’s nationwide injunction is back in effect; thus, compliance with the CTA has been suspended until the Fifth Circuit issues a decision on the merits, or if the en banc Court takes further action resulting in the stay decision being reinstated. Please see our previous client alerts [here](#) and [here](#).

FINCEN’S RESPONSE

In view of the Fifth Circuit’s December 26, 2024, order, the U.S. Treasury Department’s Financial Crimes Enforcement Network (“FinCEN”) stated, on December 27, 2024: “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.”

BACKGROUND

The CTA took effect January 1, 2024, and imposed several reporting requirements, including establishing January 1, 2025, as the deadline for non-exempt companies, i.e., reporting companies created or registered to conduct business in the United States before January 1, 2024, to report beneficial ownership information (“BOI”) to the FinCEN.

- On December 3, 2024, the U.S. District Court for the Eastern District of Texas issued a decision imposing a “nationwide” preliminary injunction against the enforcement of the CTA and its implementing regulations.
- The U.S. government requested a stay of the preliminary injunction, which the district court denied on December 17, 2024.
- The U.S. government appealed, and, on December 23, 2024, the Fifth Circuit’s motions panel granted the government’s emergency motion for a stay pending appeal, and expedited the appeal to the next available oral argument panel.
- Then, FinCEN extended the reporting deadlines to file initial BOI reports, extending certain deadlines to January 13, 2025, or later.¹

UPCOMING LITIGATION DEADLINES

On December 27, 2024, the Fifth Circuit posted the following briefing schedule on the merits of the expedited appeal:

- Appellants’ (U.S. government) brief is due on February 7, 2025
- Appellees’ (Plaintiffs-Appellee) brief is due on February 21, 2025
- Appellants’ (U.S. government) reply brief is due on February 28, 2025

The Fifth Circuit merits panel has scheduled oral argument for March 25, 2025. As we reported, plaintiffs-appellees had filed an emergency petition for rehearing *en banc* on December 24, 2024, seeking to vacate the earlier decision by the motions panel granting the government’s stay request. Although the *en banc* Court had directed the government to respond by December 31, 2024, the merits panel’s latest order effectively moots the issue. That is not likely, however, to be the end of this litigation. We expect the U.S. government to challenge the merits panel’s order and request that the *en banc* Court reinstate the stay.

CONCLUSION

Barring further intervention by the *en banc* Fifth Circuit, the preliminary (nationwide) injunction is back in effect until at least the end of March 2025, when the merits panel is scheduled to hold oral argument. As a result, the enforcement of the CTA and its implementing regulations is currently suspended. Reporting companies may continue to voluntarily submit BOI reports, and FinCEN continues to accept filings on a voluntary basis while the litigation is ongoing. Considering the uncertainty of this litigation, we continue to advise reporting companies to be prepared to file their BOI reports with FinCEN. King & Spalding continues to closely monitor developments that may impact CTA compliance and enforceability, and will continue to issue updated alerts as necessary.

ABOUT KING & SPALDING

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This alert provides a general summary of recent legal developments. It is not intended to be and should not be relied upon as legal advice. In some jurisdictions, this may be considered “Attorney Advertising.”

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¹ See FinCEN alert, *Updates to Beneficial Ownership Information Reporting Deadlines – Beneficial Ownership Information Reporting Requirements Now in Effect, with Deadline Extensions* (December 23, 2024).