

GIBSON DUNN



Anti-Money Laundering Update

December 24, 2024

CTA Update: CTA Enforceable Again After Fifth Circuit Stays District Court's Injunction but FinCEN Provides Extension to January 13, 2025 for Most Reporting Entities

The U.S. Court of Appeals for the Fifth Circuit has granted a stay pending appeal of a recent district court order that preliminarily enjoined enforcement of the Corporate Transparency Act (CTA).^[1]

*The stay renders the district court's order ineffective while the government appeals it. FinCEN responded the same day providing an extension of the reporting deadline for most reporting companies until **January 13, 2025**.^[2] Therefore, the CTA is enforceable but with new timelines, more fully set out below. Please note that certain reporting deadlines were not explicitly extended, and in parsing FinCEN's release it appears that the filing deadline for entities newly created or registered between September 24 and December 2, 2024 remains set at 90 days from such entity's formation.*

An update on case developments since our December 16, 2024 Client Alert can be found immediately below. For additional background information, please refer to the remainder of this Client Alert or our Client Alerts issued on [December 5](#), [December 9](#), and [December 16, 2024](#).

On December 13, the Department of Justice, on behalf of the Financial Crimes Enforcement Network (FinCEN), filed a motion in the Fifth Circuit asking that court to stay the district court's nationwide preliminary injunction against enforcement of the CTA, pending appeal of that order.[\[3\]](#)

On December 23, the Fifth Circuit granted the government's request and stayed the district court's order pending appeal.[\[4\]](#) The Fifth Circuit panel consisted of Judges Stewart, Haynes, and Higginson. Judge Haynes joined the order in part and disagreed in part, noting her agreement that a nationwide injunction was inappropriate but that she would deny the stay pending appeal with respect to the parties.[\[5\]](#)

The panel agreed with the government that it was likely to succeed on the merits of its appeal because, in its view, the CTA falls within the scope of Congress's power under the Commerce Clause: The CTA "regulates anonymous ownership and operation of businesses"—"part of an economic class of activities that have a substantial effect on interstate commerce."[\[6\]](#) Moreover, the court credited the government's argument that a facial challenge to the CTA was unlikely to succeed because the Act "at least operates constitutionally when it requires that corporations engaged in business operations affecting interstate commerce disclose their beneficial owner and applicant information."[\[7\]](#)

Turning to the other factors that courts consider when evaluating stay requests, the panel concluded that the government demonstrated irreparable harm because it was enjoined from effectuating a statute enacted by Congress, and the equities weighed in favor of a stay because companies' reporting costs would be minimal compared to the government's interest in combatting financial crime and protecting national security.[\[8\]](#) It also noted that although the injunction would be lifted shortly before the January 1, 2025 reporting deadline, businesses have had nearly four years since the CTA's enactment and one year since FinCEN announced the reporting deadline to prepare.[\[9\]](#)

Late on December 23, 2024, FinCEN announced that it "recognizes that reporting companies may need additional time to comply given the period when the preliminary injunction had been in effect" and so has extended the reporting deadlines for most companies to January 13, 2025.

Additionally, on December 24, 2024, the plaintiffs filed an emergency petition for rehearing *en banc*, which is currently pending.[\[10\]](#) The plaintiffs are asking the *en banc* Fifth Circuit to act on that petition by January 6, 2024, and the plaintiffs indicated that they may also seek relief in the U.S. Supreme Court prior to January 13, 2024.[\[11\]](#)

What the Stay Means for Entities Subject to the CTA

Now that the district court's order has been stayed, the CTA and FinCEN's beneficial ownership information (BOI) Reporting Rule are enforceable again. Based on FinCEN's reporting extensions on December 23, the following are the operative Reporting Rule deadlines for non-exempt reporting companies as noted in the FinCEN announcement[\[12\]](#):

Category	New Reporting Deadline	Original Reporting Deadline
Entities created or registered prior to 2024	January 13, 2025	January 1, 2025
Entities created or registered between January 1 and September 3, 2024	The original 90-day reporting deadline for these entities had already passed as of the district court's December 3, 2024 stay order. FinCEN did not extend the original reporting deadline for these entities.	
Entities created or registered between September 4 and 24, 2024 (referred to by FinCEN as entities created or registered "on or after September 4, 2024 that had a filing deadline between December 3, 2024 and December 23, 2024")	January 13, 2025	90 days from creation or registration
Entities created or registered between September 24 and December 2, 2024 ^[13]	90 days from creation or registration (no extension provided)	90 days from creation or registration
Entities created or registered between December 3 and 23, 2024	21 days after the original reporting deadline	90 days from creation or registration
Entities created or registered between December 24 and 31, 2024	90 days from creation or registration (no extension provided)	90 days from creation or registration
Entities created or registered on or after January 1, 2025	30 days from creation or registration (no extension provided)	30 days from creation or registration
Entities that qualify for disaster relief extensions	For any entity that qualifies for a disaster relief extension, FinCEN has provided that the later of January 13, 2025 and the original reporting deadline (as extended pursuant to disaster relief) will apply.	

Entities that believe they may be subject to the Reporting Rule should closely monitor this matter, and consult with their CTA advisors as necessary, to understand their obligations under the CTA and the Reporting Rule under the new reporting deadlines set out above.

Additional Background

The CTA, enacted in 2021, requires corporations, limited liability companies, and certain other entities created (or, as to non-U.S. entities, registered to do business) in any U.S. state or tribal jurisdiction to file a "BOI" report with FinCEN identifying, among other information, the natural persons who are beneficial owners of the entity.^[14] A regulation, the Reporting Rule, helps implement the CTA by specifying compliance deadlines—including the original January 1, 2025 deadline for companies created or registered to do business in the United States before January 1, 2024—and detailing what information must be reported to FinCEN.^[15]

The December 3, 2024 Ruling

On December 3, 2024, in ruling on a lawsuit challenging the constitutionality of the CTA and Reporting Rule on various grounds, Judge Amos L. Mazzant of the U.S. District Court for the Eastern District of Texas granted plaintiffs' motion for a preliminary injunction.^[16] Unlike another court that

had held the CTA unconstitutional,^[17] Judge Mazzant preliminarily enjoined enforcement of the CTA and Reporting Rule nationwide.^[18] Moreover, the court invoked its power under the Administrative Procedure Act’s stay provision, 5 U.S.C. § 705, to “postpone the effective date of” the Reporting Rule.^[19]

Government’s Initial Response^[20]

On December 5, the Department of Justice, on behalf of the Department of the Treasury, filed a notice of appeal from the court’s opinion and order to the U.S. Court of Appeals for the Fifth Circuit.^[21]

FinCEN also posted a statement to its website.^[22] In sum, FinCEN noted that, because of the court’s order, “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.” FinCEN also noted the appeal filed by the Department of Justice.

^[1] A prior alert by Gibson Dunn explaining the district court’s ruling is available at <https://www.gibsondunn.com/corporate-transparency-act-enforcement-preliminarily-enjoined-nationwide>. See *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkt. 30 (E.D. Tex. Dec. 3, 2024).

^[2] <https://www.fincen.gov/boi>.

^[3] *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, Dkt. 21 (5th Cir. Dec. 13, 2024).

^[4] *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, Dkt. 140-2 (5th Cir. Dec. 23, 2024).

^[5] *Id.* at 2 n.1.

^[6] *Id.* at 3 (quoting *Gonzales v. Raich*, 545 U.S. 1, 17 (2005)).

^[7] *Id.* at 5.

^[8] *Id.* at 5–7.

^[9] *Id.* at 7 n.7.

^[10] *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, Dkt. 143 (5th Cir. Dec. 24, 2024).

^[11] *Texas Top Cop Shop, Inc. v. Garland*, No. 24-40792, Dkt. 142 (5th Cir. Dec. 24, 2024).

^[12] <https://www.fincen.gov/boi>.

[13] FinCEN's notice did not expressly address or provide an extension for entities created or registered between these dates.

[14] See William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. 116-283, Div. F., § 6403 (adding 31 U.S.C. § 5336). Prior alerts by Gibson Dunn explaining the Corporate Transparency Act are available at: <https://www.gibsondunn.com/top-12-developments-in-anti-money-laundering-enforcement-in-2023>; <https://www.gibsondunn.com/the-impact-of-fincens-beneficial-ownership-regulation-on-investment-funds>; <https://www.gibsondunn.com/the-corporate-transparency-act-reminders-and-key-updates-including-fincen-october-3-faqs>.

[15] 31 C.F.R. § 1010.380.

[16] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkt. 30 (E.D. Tex. Dec. 3, 2024).

[17] *Nat'l Small Business United v. Yellen*, 721 F. Supp. 3d 1260 (N.D. Ala. 2024); see <https://www.gibsondunn.com/corporate-transparency-act-declared-unconstitutional-what-it-means-for-you>.

[18] *Id.* at 77.

[19] *Id.* at 78.

[20] See Gibson Dunn's December 9 Client Alert describing the government's initial response to the district court ruling, available at <https://www.gibsondunn.com/us-government-appeals-and-fincen-issues-guidance-about-nationwide-preliminary-injunction-of-corporate-transparency-act-enforcement>.

[21] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkts. 32, 34 (E.D. Tex. Dec. 6, 2024).

[22] <https://fincen.gov/boi>.

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Gibson Dunn has deep experience with issues relating to the Bank Secrecy Act, the Corporate Transparency Act, other AML and sanctions laws and regulations, and challenges to Congressional statutes and administrative regulations.

For assistance navigating white collar or regulatory enforcement issues, please contact the authors, the Gibson Dunn lawyer with whom you usually work, or any leader or member of the firm's Anti-Money Laundering, Administrative Law & Regulatory, Investment Funds, Real Estate, or White Collar Defense & Investigations practice groups.

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