

GIBSON DUNN



Anti-Money Laundering Update

December 9, 2024

U.S. Government Appeals, and FinCEN Issues Guidance About, Nationwide Preliminary Injunction of Corporate Transparency Act Enforcement

On December 5, 2024, the Department of Justice filed a notice of appeal of a recent court ruling that preliminarily enjoined enforcement of the Corporate Transparency Act (CTA) on constitutional grounds. The U.S. Financial Crimes Enforcement Network (FinCEN) also posted a statement to its website regarding the court's ruling and the appeal.

This update briefly describes the appeal, the FinCEN statement, and what they mean for CTA compliance moving forward. FinCEN's statement notes the appeal, confirms that FinCEN will comply with the court's ruling (meaning that companies are not subject to liability for failing to file beneficial ownership information (BOI) reports while the ruling is in effect), and states that companies can continue to submit BOI reports voluntarily.^[1]

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.^[2] A regulation, the Reporting Rule, helps implement the CTA by specifying compliance deadlines—including a 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.^[3]

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.^[4] Unlike another court that had held the CTA unconstitutional,^[5] Judge Mazzant preliminarily enjoined enforcement of the CTA and Reporting Rule nationwide.^[6] 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.^[7]

Government's Response

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.^[8]

FinCEN also posted a statement to its website.^[9] 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.

What the Appeal and Statement Mean for Entities Subject to the CTA

As we previously described,^[10] given the possibility of either the Fifth Circuit or the Supreme Court staying the district court's order pending appeal, reporting entities' legal obligations are subject to change on short notice. If either the Fifth Circuit or Supreme Court stay the district court's order pending appeal, the Reporting Rule will become enforceable again, though FinCEN may adjust the rule's deadlines depending on how long the district court's order remains in effect. It also remains to be seen whether the incoming administration will continue to defend the constitutionality of the CTA or not, although, as a general rule, the Department of Justice typically defends the constitutionality of federal statutes regardless of administration.

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 when, if at all, they need to comply with the Reporting Rule's requirements and to allow for sufficient lead time to prepare BOI reports in advance of any filing deadline that may be re-established (with or without adjustment) in the future.

^[1] A prior alert by Gibson Dunn explaining the court's ruling is available at <https://www.gibsondunn.com/corporate-transparency-act-enforcement-preliminarily-enjoined-nationwide/>.

[2] 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>.

[3] 31 C.F.R. § 1010.380.

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

[5] *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>.

[6] *Id.* at 77.

[7] *Id.* at 78.

[8] *Texas Top Cop Shop, Inc. et al. v. Garland et al.*, No. 4:24-CV-478, Dkts. 32, 34.

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

[10] *Supra* <https://www.gibsondunn.com/corporate-transparency-act-enforcement-preliminarily-enjoined-nationwide/>.

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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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