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The Corporate Transparency Act: The Government Appeals Preliminary Injunction. What To Do Now?

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The Corporate Transparency Act (CTA) requires all corporations, limited liability companies, limited partnerships, and many other entities created or registered to do business in any U.S. state to file a beneficial ownership interest report (BOI Report) with the U.S. Financial Crimes Enforcement Network (FinCEN). The BOI Report includes the ultimate beneficial owners of the entity, along with other information about the entity. Subject to the preliminary injunction discussed below, companies and other entities created or registered to do business in the United States before January 1, 2024, must file by January 1, 2025. Companies that were created or first registering to do business in 2024 have 90 days to file, and in 2025 and beyond have 30 days to file.

As previously reported a federal district court in Texas has granted a preliminary injunction against the enforcement of the CTA, staying the deadline for compliance. A preliminary injunction maintains the status quo while the court considers the merits of the case and issues a final ruling. The government has already appealed the decision on the preliminary injunction, which has come as a surprise to some because the appellate court's review of the injunction is based on a heightened "abuse of discretion" standard. This may be an effort by the government to speed up the process because the questions before the court are primarily legal and not factual.

There is a possibility that the CTA will be invalidated. The Fifth Circuit U.S. Court of Appeals has ruled unfavorably to the government in other recent appeals, such as its invalidation of the SEC's corporate buyback rules and its private fund advisor rules. If invalidated, it is unclear whether the new Administration will be motivated to seek review by the Supreme Court.

Although the Texas court's injunction might be reversed in short order, it seems likely that there will be a delay of the compliance deadlines. The government has acknowledged that the current preliminary injunction has stayed any compliance obligation, and it is unclear how long it will take for the appeal to be briefed and for the appellate court to rule on the injunction. The government's acknowledgement of the preliminary injunction did not provide express comfort that it will provide ample time to comply if the injunction is reversed. However, as a practical matter, it seems likely that it will provide additional time to comply with the CTA as a large number of late filings and a negative public reaction are things that the government will want to avoid.

What should filers do now? Particularly if your filing would include sensitive or confidential information, we recommend that you delay the submission until there is a clear filing requirement. Although the filed information does not become generally publicly available, it will be available to federal agencies, such as the IRS and the SEC, certain private financial institutions such as banks and mutual funds (after obtaining your consent), certain foreign governments, and (with court approval) state and local law enforcement. If worried about overall timing, some filers may decide to prepare the filing now, but wait to submit it until there is a clear requirement.

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