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Corporate Transparency Act Whiplash 2.0 – the Sequel!

The Strange Twists and Turns, Thus Far, of an Important New Federal Regulatory Requirement

Possibly stranger than (legal) fiction – the Corporate Transparency Act's (CTA) beneficial ownership interest reporting deadlines are now on hold again, indefinitely.

We recently reported to you that the U.S. Fifth Circuit Court of Appeals had issued a stay of the nationwide preliminary injunction on enforcement of the CTA that had been ordered by the U.S. District Court for the Eastern District of Texas in early December (in the ongoing *Texas Top Cop Shop, Inc., et al. v. Garland, et al.* litigation). The appeals court order on December 23 put the original CTA reporting deadlines back into effect, including the looming January 1, 2025, beneficial ownership interest (BOI) reporting deadline for entities formed prior to January 1, 2024. The U.S. Treasury Department's Financial Crimes Enforcement division (FinCEN) followed up the December 23 court order with an announcement that they were extending their January 1, 2025, deadline until January 13, in light of the uncertainty and recent delays caused by the litigation.

The CTA, enacted by federal legislation in 2021, is an anti-money-laundering initiative, and it requires "reporting companies" – primarily corporations, limited liability companies, or similar entities that do not qualify for the specific exemptions under CTA – to disclose identities and other information about the "beneficial owners" of the entities. (These definitions and parameters are described in detail on FinCEN's dedicated CTA website.) In light of the CTA's relatively sweeping scope, it has been the source of extensive planning over the past two years for professional services firms and their clients, in preparation for the now-inapplicable January 1,

2025, deadline. But now, even the new January 13 deadline is on hold. FinCEN has also posted this alert on its CTA website as of December 27:

> *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.*

This latest unexpected development occurred on Thursday, December 26, when a separate panel of the same federal appeals court vacated the court's December 23 order, with the result being that the CTA's reporting requirements are "on hold" again, indefinitely. The latest court order issued on December 26 states that the court's December 23 order was vacated to preserve the "constitutional status quo while the merits panel considers the parties' weighty substantive arguments" on an expedited basis. For now, at least, in the pending *Texas Top Cop Shop, Inc.* litigation, the court has said that briefs are currently due in February 2025, and oral argument has been set for March 25. Undoubtedly, more news and developments about the CTA will continue to unfold as this litigation continues.

What Does this Mean for Reporting Companies?

This new December 26 order means that all reporting requirements and deadlines under the CTA are on hold indefinitely (irrespective of FinCEN's extended deadline of January 13). Unless a different court order (of the Fifth Circuit Appeals Court or, possibly, the U.S. Supreme Court) modifies the new December 26 order, the CTA's reporting deadlines are not subject to enforcement. While it is possible that the government might seek interim relief from the U.S. Supreme Court to reinstate the reporting requirements, our best guess at this point is that this would be a long shot.

Key Takeaway

As of the date we are publishing this guidance, reporting companies are not required to file BOI reports while the nationwide preliminary injunction has been put back into effect under the December 26 order. For our clients that would have otherwise needed to file reports by the January 13 extension (now no longer in effect), we recommend still being prepared to comply with the CTA on an expedited

basis, in the event a court order is issued that reinstates the reporting requirements. The whiplash effect from so many sudden unusual (and last-minute) changes in a relatively complex federal regulatory reporting platform makes it hard to predict what's next.

It is important for our clients that may have reporting requirements to continue monitoring this fluid situation and consult with their Spencer Fane attorneys as to whether voluntary reporting may provide assurance that short-runway deadlines could be timely met if the reporting requirements are reinstated. Our CTA team at Spencer Fane is also continuing to carefully watch what happens and will provide further reports on new developments.

This blog post was drafted by Peter Hartweger, Trace Blankenship, Kelly Mooney, and Leslie Greathouse, attorneys on the firm's Corporate Transparency Act Committee. For more information visit www.spencerfane.com or connect with the Committee at CTACompliance@spencerfane.com.

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