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Corporate Insights: The Corporate Transparency Act – FinCEN Filing Reminders and Legal Updates

BY CHRISTOPHER R. ROCK • MARCH 28, 2024

The Corporate Transparency Act (the “CTA”) became effective on January 1, 2024. In March 2024, a U.S. District Court from the Northern District of Alabama held that the CTA was unconstitutional [*Nat'l Small Business United et. al., v. Yellen*, Case No. 5:22-cv-1448 (N.D. Ala. 2024)]. As a brief refresher, the CTA was enacted primarily as an anti-money laundering measure to curtail the anonymity provided by shell companies. The CTA applies to so-called “reporting companies,” which encompasses most businesses with 20 or fewer full-time employees and less than \$5 million in revenues. Under the CTA, individuals who own 25% or more of the reporting company or exercise substantial control over the company (defined as “beneficial owners”) are required to file Beneficial Ownership Information (“BOI”) with the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury. Critics of the CTA, including the plaintiffs in *National Small Business United*, claim the CTA is overly expansive and places a disproportionate burden on small businesses, introducing significant compliance costs. The District Court in Alabama ultimately ruled in favor of the plaintiffs, reasoning that “[the CTA] cannot be justified as an exercise of Congress’ enumerated powers.”

Importantly, while FinCEN has announced it will currently comply with the court’s order, it has [issued a notice in response to the District Court’s ruling](#) indicating its position that the ruling is narrow in scope and applies only to the named plaintiffs in the subject court case. In the notice, FinCEN states that “[o]ther than the particular individuals and entities subject to the court’s injunction...reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN’s regulations.” FinCEN also confirmed that the Department of Justice filed a Notice of Appeal of the court’s decision on March 11, 2024.

Practically speaking, despite the District Court’s ruling that the CTA is unconstitutional, given the limited application of the court’s decision and the pending appeal, companies should continue adhering to the obligations required under the CTA. Certain filing deadlines are quickly approaching. Notably, reporting companies formed after January 1, 2024, must file their BOI reports with FinCEN no later than 90 days following formation. Thus, for example, reporting companies formed on January 2, 2024, must file by April 1, 2024. Companies formed before January 1, 2024, must file by January 1, 2025.