



In the Spotlight: Lawsuit Not Enough to Halt Enforcement of the Corporate Transparency Act

The ruling in *National Small Business United v. Yellen* limits enforcement of the Corporate Transparency Act (CTA) against the parties to this lawsuit, however, the U.S. Treasury Financial Crimes Enforcement Network (FinCEN) has indicated that everyone else is still subject to the compliance requirements of the CTA. How will this affect future compliance for Reporting Companies?

The CTA

On January 1, 2024, the CTA became effective and ushered in new reporting requirements for limited liability companies, corporations, limited partnerships, and other types of entities not exempt from the CTA reporting requirements (referred to as Reporting Company(ies)). The purpose of the CTA is to crackdown on bad actors using anonymously owned companies to stash their illicit gains. Pursuant to the CTA, FinCEN created an online filing system to collect reports disclosing beneficial ownership information (BOI Report(s)) from Reporting Companies. BOI Reports contain personal information about the beneficial owners of a Reporting Company. A Reporting Company's beneficial owners are individuals who:

- (1) exercise "substantial control" over a Reporting Company; or
- (2) own or control 25 percent or more of its ownership interests. Penalties for failure to comply with the reporting requirements include fines and potential jail time.

The Lawsuit

In November 2022, the National Small Business Association (NSBA) and its association member, Isaac Winkles, filed a lawsuit to challenge the constitutionality of the CTA on multiple grounds. On March 1, 2024, the U.S. District Court for the Northern District of Alabama issued a memorandum opinion and final judgment, ruling the CTA unconstitutional because it exceeds Congress' enumerated powers and permanently enjoined the government from enforcing the CTA against the plaintiffs named in the lawsuit.

FinCEN's Response to the Ruling

"The Justice Department, on behalf of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024. While this litigation is ongoing, FinCEN will continue to implement the Corporate Transparency Act as required by Congress, while complying with the court's order. Other than the particular individuals and entities subject to the

court's injunction, as specified below, reporting companies are still required to comply with the law and file beneficial ownership reports as provided in FinCEN's regulations.

FinCEN is complying with the court's order and will continue to comply with the court's order for as long as it remains in effect. As a result, the government is not currently enforcing the Corporate Transparency Act against the plaintiffs in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024). Those individuals and entities are not required to report beneficial ownership information to FinCEN at this time."

Effect on Reporting Companies

As a result of the narrow interpretation of the judgment in the lawsuit, FinCEN's response to the lawsuit, and FinCEN's appeal of the lawsuit, we strongly advise that Reporting Companies and individuals that were not a plaintiff in the lawsuit or members of the NSBA as of March 1, 2024, continue to comply with the reporting requirements of the CTA.

BOI Report Deadlines

Please be mindful that the CTA has specific deadlines for the filing of BOI reports:

- A Reporting Company created or registered to do business before January 1, 2024, will have until January 1, 2025, to file its BOI Report.
- A Reporting Company created or registered on or after January 1, 2024, and before January 1, 2025, will have 90 calendar days after receiving notice of the Reporting Company's creation or registration to file its BOI Report. This 90-calendar day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.
- Reporting Companies created or registered on or after January 1, 2025, will have 30 calendar days from actual or public notice that the company's creation or registration is effective to file their BOI Report.

Additionally, once a Reporting Company files a BOI Report, it has an ongoing obligation to update the BOI Report within 30 days of any changes to the required information contained in the BOI Report. The following changes would have to be reported to FinCEN within 30 days of the change:

- Any change to the information reported for the Reporting Company (i.e., registering a new business name).
- A change in beneficial owners (i.e., appointment of a new CEO, or a change in who owns or controls 25 percent or more of the Reporting Company's ownership interests).

- Any change to a beneficial owner's legal name, home address, or unique identifying number previously provided to FinCEN.

For more information, please contact [Josh Cunningham](#) or view prior AM Law Alert articles on the subject, [here](#).