

CLIENT ALERT

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FinCEN Appeals Order Enjoining Corporate Transparency Act by Mark R. High

By now, you are probably familiar with the Corporate Transparency Act (the CTA). Dickinson Wright has reviewed this topic several times, most comprehensively [here](#). The CTA, which was adopted in 2021 and became effective as of January 1, 2024, is aimed at combatting international money laundering. It requires millions of companies to report information about their Beneficial Owners, i.e., those who ultimately own or control a company, to the Financial Crimes Enforcement Network (FinCEN) of the U.S. Department of the Treasury.

This month, however, several developments have disrupted what was already looking to be a challenging process. First, on March 1, 2024, a United States District Court in Alabama issued an opinion which held that the CTA is unconstitutional. [Nat'l Small Business United et. al., v. Yellen](#), Case No. 5:22-cv-1448 (N.D. Ala. 2024). The Court concluded that the CTA "exceeds the Constitution's limits on the legislative branch and lacks a sufficient nexus to any enumerated power to be a necessary or proper means of achieving Congress' policy goals . . ." The Court's order, however, "permanently" enjoined enforcing the CTA against only the plaintiffs in that case.

On March 4, FinCEN posted a [Notice](#) responding to the Alabama ruling. In it, FinCEN stated that it would not "currently" enforce the CTA against National Small Business United, d/b/a the National Small Business Association (NSBA), as well as the NSBA members as of March 1, 2024. Unstated, but apparent is that FinCEN believes the CTA remains in effect for everyone else.

On March 5, NSBA issued a [press release](#) stating, "FinCEN should immediately reverse course and suspend enforcement of the CTA for all until these issues are finally resolved." It appears unlikely that FinCEN will respond to NSBA's demand.

Some commentators had speculated that FinCEN might accept this ruling, narrowly tailored as it is, and move on. That possibility was put to rest on March 11 when FinCEN filed a Notice of Appeal with the Eleventh Circuit Court of Appeals. This will leave the CTA's validity up in the air, at least into the early summer. Any subsequent appeal to the United States Supreme Court would further extend the uncertainty. It remains to be seen whether any copycat suits will be filed to challenge the CTA.

For now, companies should continue to monitor this topic. Entities existing before December 31, 2023, which face a filing deadline currently set at December 31, 2024, may wait for a

couple of months and see what develops. The CTA's initial 90-day filing deadline for companies formed in 2024, however, is fast approaching, with any companies formed early in January facing a deadline early in April. There are severe penalties possible for non-compliant Reporting Companies. Companies that have been formed in 2024 by persons other than covered NSBA members should continue to observe that 90-day deadline.

We are periodically reviewing specific CTA topics. For a discussion of how tax-exempt and other nonprofit entities are affected by the CTA, [click here](#).

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