



The Corporate Transparency Act has been declared unconstitutional by the Alabama District Court; however, FinCEN enforcement against entities that are not parties to that matter will continue absent any further developments.

On March 1, 2024, the U.S. District Court for the Northern District of Alabama declared the Corporate Transparency Act (the “CTA”) unconstitutional and held 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 CTA, effective as of January 1, 2024, requires non-exempt U.S. entities and non-exempt foreign entities registered to do business in the United States to submit beneficial ownership information reports to a confidential nationwide database maintained by the U.S. Department of the Treasury, Financial Crimes Enforcement Network (FinCEN).

In *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), the National Small Business Association (NSBA) and one of its members brought a suit in the U.S. District Court of the Northern District of Alabama challenging the CTA and FinCEN’s reporting rules. While the Court held that the CTA is unconstitutional, its injunction against enforcement applies to only the plaintiffs in this action, including the NSBA.

On March 4, 2024, FinCEN confirmed in a brief notice posted on its website that it will comply with the Court’s order “for as long as it remains in effect,” and is not currently enforcing the CTA against the individually named plaintiff, reporting companies for which he is the beneficial owner or company applicant, the National Small Business Association, and members of the National Small Business Association as of March 1, 2024.

Accordingly, so long as the Court’s injunction remains in effect, any entity that was an NSBA member as of March 1st is protected from enforcement for non-compliance. However, **at least for now, all other reporting companies are still bound by the CTA and should continue to comply with the CTA’s reporting requirements unless otherwise exempt until further notice.**

On March 11, 2024, the government filed a Notice of Appeal of the Northern District Court of Alabama’s decision to the Court of Appeals for the Eleventh Circuit and it’s likely they will also file a request that the injunction be stayed pending the outcome of the appeal which will take a long time to resolve. Furthermore, the decision of the Eleventh Circuit, regardless of who it rules in favor of, will likely be appealed to the Supreme Court.

In the meantime, individuals who own or control multiple entities, some of which are NSBA members, remain responsible to comply with the CTA with respect to those entities which are not members of the NSBA, unless another CTA exemption applies to the non-member entity. Our understanding is that while the majority of NSBA members are entities, some members are individuals who own sole proprietorships.

Uncertainty exists as to whether those individual members remain subject to CTA compliance with respect to other non-exempt entities for which they are considered beneficial owners under the CTA. As a result, we advise, absent further developments, continued compliance with the CTA by such individuals with respect to those other entities which are not members of the NSBA.

GM's CTA Working Group will continue to monitor any developments in this action and provide updates as they arise.



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