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ISSUE ALERTS

FEDERAL COURT HOLDS THE CORPORATE TRANSPARENCY ACT UNCONSTITUTIONAL, BUT OTHERS STILL SHOULD COMPLY

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By: William P. Matthews and Sarah Buchanan

On Friday, March 1, 2024, a Federal District Court in the Northern District of Alabama, Northeastern Division, ruled that the Corporate Transparency Act ("CTA") is unconstitutional in the case *National Small Business United, d/b/a the National Small Business Assoc. v. Yellen*.

The CTA, which went into effect Jan. 1, 2024, is a federal law that requires certain "reporting companies" to electronically file a report identifying the entity and its beneficial owner(s) to the Financial Crimes Enforcement Network ("FinCEN"). The CTA is estimated to impact more than 32 million businesses in the United States.

The federal judge in *Yellen* held the CTA unconstitutional because it "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's policy goals."

The ruling enjoined FinCEN from enforcing the CTA or collecting beneficial owner reports against only the plaintiffs in the case. FinCEN released a notice on March 4, 2024, that it will not enforce the CTA against the plaintiffs in *Yellen*, including members of the National Business Association as of March 1, 2024, for as long as the court's order remains in effect. View the notice here.

As the ruling in *Yellen* is limited to the plaintiffs in that case, new and existing entities should still plan to comply with the CTA's beneficial ownership reporting requirements.

- Entities forming in 2024 still need to file a Beneficial Ownership Information ("BOI") Report with FinCEN within 90 days of formation.
- Entities that were formed prior to Jan. 1, 2024, continue to have until Jan. 1, 2025, to file their BOI Reports.

- Entities that have already reported should continue to report updates to their BOI Reports to FinCEN within 30 days of such change.

The court's ruling is expected to be appealed. Foulston will continue to monitor the status of the Corporate Transparency Act.

UPDATE:

On Monday, March 11, 2024, the U.S. Department of Justice filed a notice of appeal of the U.S. District Court for the Northern District of Alabama's decision to the U.S. Court of Appeals for the Eleventh Circuit. View the updated notice here.

FOR MORE INFORMATION

If you have questions or want more information regarding the Corporate Transparency Act and its possible effects on your business entity, contact your legal counsel. If you do not have regular counsel for such matters, Foulston Siefkin LLP would welcome the opportunity to work with you to meet your specific business needs, including assistance in filing beneficial owner reports with FinCEN. For more information, contact Bill Matthews at 316.276.6371 or bmatthews@foulston.com. For more information on the firm, please visit our website at www.foulston.com.

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