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Corporate Transparency – Where Are We Now?

Although it was passed into law in 2021, the Corporate Transparency Act (CTA) has been effective only since January 1, 2024. Last month, however, a federal district court found that the CTA is unconstitutional. The state of New York has also passed and subsequently amended its own transparency act—the New York LLC Transparency Act—and it looks like other states may follow. So what should one make of these corporate transparency laws?

CTA Unconstitutional?

On March 1, a federal district court judge in the Northern District of Alabama declared the CTA unconstitutional in the case *National Small Business United v. Yellen*. The court's ruling, though, applies to only the plaintiffs in that case. Many reporting companies may wish to wait and see how this case is decided on appeal before filing an initial Beneficial Ownership Information Report (BOIR) with the Financial Crimes Enforcement Network (FinCEN), the federal agency charged with CTA enforcement. However, it is unlikely that this case will be resolved before the end of the year, when millions of BOIRs are due for entities formed prior to January 1, 2024. FinCEN has announced that the agency will continue to enforce the obligations of the CTA for all reporting companies that are not covered by the *National Small Business United* decision. There are also other court challenges pending across the country, and likely more will be brought challenging the CTA.

If your entity was a member of the National Small Business United organization prior to March 1 of this year, then the ruling in that case applies to you. If not, FinCEN has indicated its position that the CTA is otherwise still applicable to all other reporting companies. This means that compliance with the CTA is still required within the time periods discussed below. Any approach to BOIR filing should be considered in that context.

CTA Compliance and Timing

For everyone not covered by the *National Small Business United* decision or one of the 23 statutory exemptions from being a reporting company, not much has changed with respect to timing. Reporting companies formed after January 1, 2024, have 90 days from formation in which to file their initial BOIR. That compliance period is already here or has been passed for entities formed at the beginning of this year. Reporting companies formed before January 1, 2024, have until the end of the year to file their initial BOIR.

Reporting companies that have until the end of the year may not feel a great sense of urgency to file at this time. Indeed, as soon as a reporting company files its initial BOIR, the obligation to make update filings to reflect changes in beneficial ownership information arises as well. If changes in beneficial ownership covered by the CTA are visible on the near horizon, it may make sense to hold off on filing until those changes have become manifest, so long as the initial BOIR is made prior to year-end.

One word of caution on taking a "wait and see" approach to reporting, however. FinCEN has estimated that there are some 32 million pre-2024 reporting companies that would need to comply with the CTA sometime this year. Anecdotally, we understand that only about a million of them may have filed so far. That means in the next eight months, more than 30 million entities may need to file a BOIR. Because this is the first time a reporting company is going through this exercise, the effort involved for even a moderately complex corporate structure may be more time-consuming than anticipated. Beneficial owners have to be identified and associated documents or FinCEN indentifiers obtained. It may not be a process to put off until the final few months of the year as the deadline looms. There may be a middle ground between doing nothing now and

filing the initial BOIR as soon as possible. Reporting companies could take the appropriate time now to analyze their situation and begin to identify and fill information gaps so that when the time to file does come later in the year, it will not devolve into a fire drill.

New York and Other States

The state of New York has adopted its own transparency law—the New York LLC Transparency Act (NYLTA). The NYLTA becomes effective on January 1, 2026, and imposes reporting obligations on both domestic New York limited liability companies and foreign (non-New York) limited liability companies that have filed an application for authority to do business in New York. The NYLTA has 23 exemptions, like the CTA, but unlike the CTA, a filing must be made in order to claim an exemption. After the initial filing under the NYLTA, the filing LLC must also make an annual filing that updates or confirms existing information, which includes exemption claims. We will provide more details on the NYLTA as the effective date draws nearer.

New York is not the only state to take up the banner of transparency. California is also considering its own law, and it seems likely that other states will follow suit.

If you need assistance with any CTA-related obligations, please contact your Day Pitney counsel or feel free to contact us at cta@daypitney.com.

Authors

R. Scott Beach
Partner

Greenwich, CT | (203) 862-7824

Stamford, CT | (203) 977-7336

rsbeach@daypitney.com

Brian W. Fischer
Partner

Hartford, CT | (860) 275-0635

bfischer@daypitney.com

David M. Waizer
Partner

Parsippany, NJ | (973) 966-8089

New York, NY | (212) 297-2439

dwaizer@daypitney.com

Lane T. Watson
Partner

Hartford, CT | (860) 275-0355

ltwatson@daypitney.com

Keith H. Bensten
Partner

Boston, MA | (617) 345-4740

kbensten@daypitney.com

Edward F. Krzanowski
Partner

West Hartford, CT | (860) 313-5729

efkrzanowski@daypitney.com

Amy R. Lonergan
Partner

Boston, MA | (617) 345-4613

alonergan@daypitney.com

Michael J. Napoleone
Partner

West Palm Beach, FL | (561) 803-3518

mnapoleone@daypitney.com

Richard D. Sanders
Partner

Parsippany, NJ | (973) 966-8073

rsanders@daypitney.com

Elizabeth J. Sher

Partner and General Counsel

Parsippany, NJ | (973) 966-8214

esher@daypitney.com