

September 10, 2024

BRANN & ISAACSON CLIENT ALERT

Corporate Transparency Act Update

As the summer winds down and fall quickly approaches, we wanted to reach out with an update and reminder about the impending Corporate Transparency Act deadlines. As discussed in previous alerts, all “reporting companies” [any entity created by filing a document with the Secretary of State’s Office] in existence as of December 31, 2023 need to file a beneficial ownership information (BOI) report on or before January 1, 2025. A beneficial owner is any individual who, directly or indirectly, either (1) exercises substantial control over a reporting company or (2) owns or controls at least 25 percent of the ownership interests of a reporting company. For any entities formed during 2024, a BOI report must be filed within 90 days of formation of the entity—and for entities formed during 2025 and beyond, that timeline shrinks down to 30 days. Of course, there are exemptions from the reporting requirement that may apply to various entities (namely, large business and inactive entities), which we have covered in previous alerts.

The update here concerns the status of the validity of the Corporate Transparency Act. Several lawsuits are currently pending, which have challenged the validity of the Corporate Transparency Act on various constitutional grounds. Notably, one of these cases (but, thus far, only one) has reached a decision: a case out of federal court in Alabama concluded with the trial court declaring the Corporate Transparency Act unconstitutional and issuing an injunction against its enforcement. While this may seem like news that alleviates the need to comply, there are two caveats: 1) FinCEN has already filed a Notice of Appeal, and it remains to be seen how the Court of Appeals will rule, and 2) the injunction only applies to the specific plaintiffs in that case—meaning, if you were not a party to that lawsuit, you must still comply with the Corporate Transparency Act, despite the Alabama court’s ruling. It remains to be seen how the various

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lawsuits will play out. It is possible that the Corporate Transparency Act will be struck down on a national level. Until then, however, plans should be made to comply.

The other relevant aspect to keep in mind as deadlines approach is the enforcement of the Corporate Transparency Act through prosecution. As you may know, violations can have serious penalties:

- A. Civil penalties of up to \$500 for each day of violation;
- B. Criminal penalties of up to \$10,000 in fines; and
- C. Imprisonment for up to two years.

It is possible that, while the legal challenges continue to work themselves out, FinCEN will take a more relaxed approach to enforcing via prosecution. In other contexts, similarly situated federal agencies have sometimes released guidance that they would not prosecute until after the legal challenges are settled. Here, however, FinCEN has issued no such guidance. So, while the FinCEN Director has made statements that their focus would be “education and outreach,” it is still very possible that FinCEN could begin prosecuting violations of the Corporate Transparency Act. In July, however, the FinCEN Director made a more pointed comment about enforcement: that it would be focused on “willful” violations—not aimed at mistakes or erroneous violations of the Corporate Transparency Act. This is another reason it is all the more important to ensure compliance is achieved, but also some peace of mind that minor mistakes are not likely to be met with huge prosecution efforts.

In sum, while there is some chance of the Corporate Transparency Act being struck down or lenience in prosecution, the current state of affairs leads to the conclusion that compliance will be necessary. As the deadlines approach, we would be happy to assist in your compliance with the Corporate Transparency Act.

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