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Insights

Time Quickly Running Out: Important Reminders about the Corporate Transparency Act

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Time is running out for your business to comply with the Corporate Transparency Act ("CTA"). If your business is subject to the CTA and it does not comply, severe penalties could be imposed against the company and those who should have reported their beneficial interests.

The CTA requires most small businesses to file a Beneficial Ownership Information ("BOI") report with the United States Department of Treasury, specifically the Financial Crimes Enforcement Network ("FinCEN").

With the information provided in a BOI report, the federal government hopes that it will be better able to combat bad actors that use the disguise of 'legitimate businesses' to foster their criminal activities, such as money laundering for terrorist activity, human trafficking and other financial criminal acts.

To avoid penalties, companies that existed before 2024 must make the required filing by December 31, 2024, and those formed in 2024 must file within 90 days of formation. Often, it can take some time to gather the information necessary for the required filing. Those businesses that have delayed determining if they are subject to the CTA should address this now before the last grains of sand run out.

A reporting company, in its BOI report, will disclose personal information about its owners and individuals who exercise substantial control over that entity. A reporting company created in or after 2024 must also report information about the individuals that file the documentation to form the company and the individual that oversees this filing if more than one individual is involved. For more information regarding the reporting requirements and the scope of information that must be included in a BOI report, please see our prior **Alert**.

Some businesses may qualify for one of the 23 exemptions from the CTA's requirements. The 23 exemptions mostly apply to businesses that are heavily regulated, such as banks and other financial institutions, public companies, large operating businesses and their subsidiaries, and tax-exempt organizations.

Even if your business stopped doing business in 2024, whether it dissolved or lost its customers, it must still file its initial BOI report. FinCEN recently issued guidance that confirms a reporting company that existed at any period of time in 2024 must still file its BOI report to FinCEN. This holds true even for companies that had wound up their affairs and stopped conducting business before January 1, 2024, or started the process in 2024 and will be completely dissolved before its BOI report is due.

Regarding the penalties for noncompliance, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to the current level of nearly $600 for each day that the violation continues. A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to $10,000. Potential violations include willfully failing to file a BOI report, willfully filing false information, or willfully failing to correct or update previously reported beneficial

ownership information. A reporting company must file an updated report within 30 days to update information that has changed or was previously reported inaccurately. Note that both an individual and the reporting company can be held liable. For example, a senior officer who willfully does not file an updated BOI report when information changes about the reporting company could potentially be held liable.

To better avoid and prevent personal and entity liability, reporting companies should examine their governing documents (e.g., operating agreements, partnership agreements, shareholder agreements or bylaws) and ensure mechanisms are in place to accomplish the following:

- For the company to identify the individuals that need to be disclosed in its BOI report. These individuals include the "Beneficial Owners," which are individuals who own 25% or more equity in the company or exercise substantial control over the company, or both.
- For the company to solicit and obtain accurate and complete information from the Beneficial Owners and updates to that information.
- For the company's determination that it is a reporting company under the CTA and who within the company qualifies as a Beneficial Owner to be binding on the owners if made in good faith by the company.
- For each owner to indemnify the company and the other owners from any and all damages and losses sustained by it or them arising out of or in connection with such owner's failure to provide the information the company needs to comply with the BOI reporting requirements.

We previously issued an **Alert** about the CTA being ruled unconstitutional by the U.S. District Court for the Northern District of Alabama (the "Court") in an opinion issued on March 1, 2024. However, the Court did not issue a national injunction. Rather, it only enjoined the government from applying the CTA to the plaintiffs, one of which was the National Small Business Association. The CTA currently remains in effect for all other businesses that are not members of the National Small Business Association (as of March 1, 2024). The appeal of this case was recently argued before the Eleventh Circuit Court of Appeals; timing of an opinion being issued has not been established. Since the Court's ruling in Alabama, the District Court for the District of Oregon, on September 20, 2024, denied a motion for a preliminary injunction enjoining the enforcement of the CTA and opined that the plaintiff's claim that the CTA is unconstitutional is unlikely to succeed on the merits. The Oregon case sends a signal that the CTA is likely to remain active through the remainder of the year.

Tight deadlines and FinCEN's evolving guidance regarding the BOI reporting requirements together with steep penalties for noncompliance have made many business owners nervous about the CTA. It is critical that business owners assess their governance structures and install procedures to comply with the CTA. For those companies that have deferred the filing process, time keeps getting tighter. Krieg DeVault's CTA Working Group can help you comply with the BOI reporting requirements. If you have any questions regarding the CTA or obligations to comply with the BOI reporting requirements, please contact **Robert A. Greising**, **Travis D. Lovett**, **Jacob W. O' Donnell** or any member of our **Business, Acquisitions and Securities Practice**.

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