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Corporate Transparency Act activity and updates - by Dawn Bauman

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The Corporate Transparency Act is still the law for community associations and compliance of filing Beneficial Ownership Information (BOI) will need to be completed by December 31, 2024. There is a lot of activity in the courts, active legislation in Congress, regulatory guidance from the Federal agency FinCEN and a CAI Federal Amicus Brief.

The Courts

On March 1st, the 3rd Circuit Federal Court in Alabama ruled the Corporate Transparency Act as unconstitutional because it exceeds Congress' authority. The plaintiffs in the case are a small business owner and the National Small Business Association (NSBA). The defendant is The Department of Treasury. The Department of Treasury announced immediately that the court ruling applies to the NSBA and the members as of March 1st. In other words, and importantly, the corporate transparency act still applies to community associations. As expected, the Department of Treasury appealed the court ruling and asked the court to expedite the appeal.

There are additional lawsuits that have been filed by other organizations that are pending. These lawsuits, as we've told members of Congress and the Department of Treasury, have created chaos and confusion. Nonetheless, community associations must comply by December 31, 2024.

Congress

There are two pieces of legislation in Congress that, if passed before the end of the session, will help community associations.

DELAY: S. 3625, the Senate Companion bill to H.R. 5119 that passed the House of Representatives 400-1 is still in play. CAI continues to meet with the Senate Democrats on the Senate Banking Committee to urge them to hear Senator Scott's bill that will provide delay of implementation of the Beneficial Ownership Information filing by one year. The Senate Republicans are willing to pass this bill, but Senate Democrats haven't been willing to budge.

REPEAL: The House is frustrated by the Senate's lack of movement, so they introduced another bill, H.R. 8147 that will repeal the Corporate Transparency Act. This bill is a Republican dominated bill in the House.

Department of Treasury Financial Crimes Enforcement Network (FinCEN)

CAI met with FinCEN, the Financial Network under the Department of Treasury in mid-April to discuss the exemption request for community associations that was sent to the Department of Treasury in December 2023. The FinCEN staff attending the meeting let CAI stakeholders know that no exemptions are being considered at this time.

The Department of Treasury has received numerous requests from different groups requesting an exemption. We were told by the FinCEN staff that no additional exemptions have been authorized or approved by FinCEN. The staff believes Congress made the exemptions in the ACT extensive, 22 exemptions, and FinCEN is willing to "let things play out" with these extensive exemptions without

approving additional exemptions.

The staff at FinCEN made it clear that they are charged with carrying out the policy requirements of the ACT and that is exactly what they intend to do.

CAI Federal Amicus Brief

On May 20th, CAI filed an amicus brief in the United States Court of Appeals for the 11th Circuit in National Small Business United d/b/the National Small Business Association, et al., v. Janet Yellen, in her official capacity as Secretary of the Treasury, et al., challenging the constitutionality of the Corporate Transparency Act. CAI's amicus brief was filed in support of the district court's finding that the act was unconstitutional.

The amicus also highlights the negative impacts the Act will have on the community association industry and illustrates that the Act's reach is impermissibly broad. The Corporate Transparency Act is intended to improve the detection of certain suspicious activities carried out by business entities such as money laundering and terrorist financing. CAI supports that goal but does not believe the act should apply to local, volunteer-driven, nonprofit organizations that exist with the primary purpose of maintaining communities and providing services to residents.

The Bottom Line

As of now, most community associations must comply and be prepared to file by December 31, 2024, unless you qualify on an exemption or are otherwise not incorporated in a manner that requires compliance.

While CAI recognizes the many challenges related to these requirements, including the sharing of personal information in a government database, the burden on volunteer board members, and the exposure to criminal penalties and fines, the one piece of positive news is that the administrative filing process for boards is straightforward. Board members can obtain their own FinCEN number (like a tax ID number), and provide it to an individual (board member, management, attorney, consultant, the board's chosen agent) to prepare the entire filing for the association.

For more information on the Corporate Transparency Act and updates visit www.caionline.org

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