

Corporate Transparency Act Update

Friday, December 1, 2023

Take-Away: The hoped for delay in the Corporate Transparency Act (CTA) reporting requirements will not occur in light of the November 8 Treasury Department Release. Treasury clearly intends to maintain the existing FinCEN filing deadlines. Moreover, it will require strict compliance with the CTA's Final Regulations.

Background: We have covered the CTA enough in prior missives that I will skip the FinCEN filing requirements and the key filing dates and the CTA's complex (if not bewildering) *beneficial owner* disclosure rules. Some of the changes or clarifications with regard to FinCEN reporting derived from the recent Treasury Notice follow.

Filing Deadline: For existing *reporting entities* the FinCEN filing deadline is still midnight on New Year's Day, 2025.

FinCEN Identifier: The Notice clarified a few things, including when another *reporting entity's* FinCEN identifier can be used, e.g., a subsidiary of another corporation. The Final Regulations issued on September 30, 2022 did not finalize the use of another's entity's FinCEN identifier. The Notice now provides that a *reporting entity* may report another entity's FinCEN identifier and its full legal name in lieu of the detailed information that is required under the Regulations. [31 CFR 1010.380(b)(1) "which requires a *reporting entity* to file its full legal name, as well as any 'doing business as' name, the complete current primary street address of the *reporting entity*, its EINs, beneficial owner information, and controlling entity information."

Fictional Names: The Notice confirms that the exact corporate name of a *reporting entity* must be filed, not a prevalent fictitious name, also with all other names that are used by the *reporting entity*, or any other related entity, regardless of whether such names have been formally filed with the Secretary of State or with the Federal Patent and Trademark Office.

Applicants: The *applicant* who actually files to form the *reporting entity*, i.e., the attorney who files the Articles of Incorporation or the Articles of Organization with the State of Michigan, needs to register, but he/she will not thereafter have to provide a change of circumstance information if and when he/she moves, changes his/her driver's license, or otherwise changes their name. This applies only to the *applicant* who actually filed to create the *reporting entity*. The owners and controlling individuals of the *reporting entity* will still have to update changes to their personal address and driver's license or passport within 30 days; the failure to timely file the updated information triggers a \$500 penalty.

Death of Owner: When an individual dies, the successor owners of that individual's *reporting entity* interest will be required to register with FinCEN within 30 days of receiving title. This is actually good news. It means that there could be significant time delay in which to comply with the FinCEN reporting obligation when assets are held under a probate estate or a revocable Trust that becomes irrevocable on the settlor's death. But this 'receiving title' 'trigger' can also cause some hardship or confusion for those successor owners who inherit through survivorship, or when the law immediately vests ownership of the inherited *reporting entity* interest, e.g., a TOD beneficiary arrangement; or, a partnership interest that passes directly to a designated beneficiary. It may be safest to simply report to FinCEN within 30 days of the owner's death, particularly when title is held in a revocable Trust which provides for the funding of separate Trusts such as a credit shelter Trust, or a QTIP Trust, or to any other 'continuing' Trust.

Minors: Minors are exempt from CTA filings. However, a responsible party will have to file on the minor's behalf. Once the minor attains the age of majority the FinCEN filing will have to be amended to reflect the former minor as the beneficial owner instead of the adult who had previously filed on the minor's behalf. There is no leniency or excusable neglect safe harbor for the requirement that when the individual attains the age of majority that they must register with FinCEN within 30 days of their emancipation. Age of majority in Michigan is age 18. [in Mississippi, its age 21.] In contrast, with regard to the SECURE Act and its *eligible designated beneficiary* classification, the individual ceases to be a minor when he/she attains the age 21. Consequently, we can expect a lot of young adults

to get erroneous advice when they must file with Treasury- age 18 with FinCEN, but age 21 when they become subject to the 10-year RMD period.

Street Addresses: As previously reported, the CTA does not permit the use of a post office (P.O.) box in lieu of a 'street address.' Treasury confirmed that it will not accept P.O. boxes or addresses that law firms, CPA firms, or other third-parties allow a *reporting entity* to use, unless that is, in fact, the actual 'street address' of the *reporting entity*. Individuals will not be happy to learn that they have to report their home address to the Treasury Department, nor will they take much solace from the fact that all FinCEN submissions are *supposed* to be kept strictly confidential and will not become public. {I'm not holding my breath on that promise!]

Correcting Mistakes: Treasury has confirmed that it will not provide a reasonable cause exemption for errors in filing FinCEN reports. Moreover, Treasury expressly provides that Treasury Department Circular 230 applies only to tax return preparation and not for the purpose of complying with the CTA and its filing requirements. Loosely translated, this may mean though that a tax professional that is involved with an incorrectly filed FinCEN registration may have to go beyond simply recommending that the registration be corrected, to include an affirmative duty to assure that the correction occurs, or to resign from representing the involved persons or *reporting entities*.

Conclusion: As noted, Treasury was asked by several different sources to become a bit more lenient in its interpretation of the CTA and its filing and disclosure requirements. Clearly the Treasury is not inclined to delay either the CTA's filing deadlines or to provide any 'reasonable cause' exceptions to those filing requirements. Leniency is apparently not part of Treasury's lexicon these days.