Proskauer

Evolving Transparency – New CTA Proposals

October 3, 2023

As the effective date of the US federal Corporate Transparency Act approaches, FinCEN continues to develop its rules almost on a daily basis. Within the past few days, the Financial Crimes Enforcement Network ("FinCEN") published notice of proposals aimed to clarify and ease compliance with certain aspects of the regulations promulgated under the Corporate Transparency Act. The Corporate Transparency Act requires certain entities ("reporting companies") to report to FinCEN information about their beneficial owners and company applicants, and is intended to help prevent and combat money laundering, terrorist financing, tax fraud and other illicit activity.[1] The Beneficial Ownership Reporting Rule (the "BOI Rule"), promulgated by FinCEN in September of 2022, establishes who are reporting companies and their beneficial owners and company applicants, as well as what information is required to be reported about these entities and individuals.

On September 28, 2023, FinCEN published a Notice of Proposed Rulemaking to amend the BOI Rule to extend the period for certain entities to file an initial beneficial ownership report (a "BOI Report"). The proposal would give reporting entities created or registered on or after January 1, 2024, but before January 1, 2025, 90 days to file a BOI Report. The BOI Rule currently requires all such entities to file reports within 30 days of notice of the reporting company's creation or registration.

FinCEN is proposing to extend the filing deadline for these entities to allow additional time to navigate the new rules. FinCEN recognizes that reporting companies will need time to navigate whether they are a reporting company or qualify for an exemption and, if required to file a BOI Report, determine who is a beneficial owner or company applicant and collect the necessary information. As these regulations are new, it may take some time to resolve questions that may arise in the course of making these determinations. Extending the deadline will also allow FinCEN to better manage the expected volume of inquiries with respect to the new rules.

The proposal would not change the January 1, 2025 filing deadline for reporting companies created or registered before January 1, 2024, or the 30-day filing deadline for any reporting companies created on or after January 1, 2025. Comments on this proposal may be submitted on or before October 30, 2023.

Additionally, on September 29, 2023, the Department of the Treasury, on behalf of FinCEN, published notice seeking comments from market participants with respect to certain aspects of the BOI Rule. FinCEN had originally proposed that the form of BOI Report allow for reporting companies to indicate that certain information about their beneficial owners or company applicants was unknown. Commenters suggested that this might lead reporting companies to believe this information is optional. FinCEN now proposes to require all information about an entity's beneficial owners and company applicants (where required) be included in the BOI Report for the BOI Report to be submitted. Reporting entities will not be able to submit an incomplete report. FinCEN also proposed an alternative implementation of the BOI Rule that would allow for drop-down boxes to indicate why certain information about a beneficial owner or company applicant might not be available. These drop-down options might include "Cannot Contact BO," "BO Unresponsive" and "BO Refused to Provide." This alternative implementation will be considered in the months after the BOI Rule is effective based on feedback from reporting entities and those utilizing the information in the BOI Report database. FinCEN notes that even if the alternative implementation is adopted, reporting entities will need to report all required information to be in compliance with the BOI Rule. The comment period for this proposal will be open for 30 days.

[1] For more information on the Corporate Transparency Act and the information required to be included in the Beneficial Ownership Report, please see our client alert, *Shining a Light on the Corporate Transparency Act: FinCEN's Rules for Beneficial Ownership Reporting*

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