**CORPORATE TRANSPARENCY ACT UPDATE**

**FINAL FINCEN RULE**

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**SAEPC**

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**REFRESH:**

CTA enacted January 1, 2021

Latest of a series of attempted legislation over several years (not new, or a surprise); pressure on Congress to bring the United States up to date with the rest of the Globe

Target: Money Laundering and Funding of Terrorism

Enacted as part of the National Defense Authorization Act of 2021

Since it was embedded deep in a Defense Bill, wasn’t, and to this day, isn’t, on the radar of many attorneys, CPAs, Financial Advisors and other planners involved with clients and their entities; most of all – not on the radar of our clients – this impacts everyone in this group, everyone in SAEPC and any planner who forms entities, has formed entities or has clients with entities – so pretty much EVERYONE.

Materials available:

My power point from my June 2022 ACTEC presentation before the Asset Protection Committee in Banff, Alberta; nearly all the information remains on point following issuance of final FinCen Rule.

ACTEC Comments on the Proposed Rule issued in December 2021.

FinCen News Release & Fact Sheet on Final Rule.

FinCen Final Rule, Annotated Form.

Federal Register; official published Final Rule.

A plain English summary of the CTA and its requirements (good for clients) can be found in my October 2022 article in the Desert Leaf (published and circulated the day before release of the Final Rule).

**KEY TERMS**

The key terms remain the same following issuance of the Final Rule:

**REPORTING COMPANY**

INCLUDES DOMESTIC AND FOREIGN

Use of the term “CORPORATE” is misleading; a Domestic Reporting Company includes any corporation, limited liability company or similar entity created by the **filing** of a document with a secretary of state or similar state office or an Indian tribe. Given this definition, a Trust will NOT be a Reporting Company, but many, or most, trusts will be Beneficial Owners about which reporting is required.

A Foreign Reporting Company is a corporation, LLC or other entity formed in a foreign country and registered to do business in a US state or tribal jurisdiction by the filing of a document with a secretary of state or similar state office.

23 Exemptions (most notable discussed below).

**BENEFICIAL OWNER**

Any individual who, directly or indirectly:

-exercises substantial control over a Reporting Company (basically anyone able to make important decisions on behalf of the Reporting Company); or

-owns or controls at least 25 percent of the ownership interests of a reporting company.

Either of these have the potential to cause a trust to be a Beneficial Owner for CTA reporting.

**COMPANY APPLICANT**

Individual who files the document that creates the entity.

Individual who is primarily responsible for directing or controlling the filing by another.

**BOI REPORTS**

Reporting obligation rests with the Reporting Company.

Report identifies the Reporting Company (company name, address, jurisdiction of formation, TIN) and:

For each Beneficial Owner and Company Applicant: Name, birthdate, address (residential) and unique identifying number and issuing jurisdiction (generally a driver’s license including an image of the identifying document).

**EXEMPTIONS**

**REPORTING COMPANY EXEMPTIONS**

23 Listed

Primarily large operating companies (at least 20 employees and 5million revenue) public accounting firms and similar large entities already subject to regulatory reporting such as Sarbanes Oxley……

--note that family offices will often have less than 20 employees even though revenue exceeds the 5 million level

Dormant entities – the definition has NOT been expanded – if the entity has had any ownership change within 12 months, has sent or received at least $1000 in funds in the last 12 months OR has ANY assets, it is NOT an exempt dormant entity…….so shelf entities sitting with a nominal bank account are Reporting Companies.

**NOTE – PROBABLY APPLIES TO YOUR OWN LAW FIRM**

**BENEFICIAL OWNER EXEMPTIONS**

Minor Children

Nominees, Intermediaries, Custodians, Agents

Employees

Inheritance

Creditors

**FINAL RULE/EFFECTIVE DATE/DUE DATES/CHANGES TO PROPOSED RULE**

CTA required issuance of regs/rules within one year and prescribed an effective date of the effective date of Final Regs. That didn’t happen, Proposed Rule issued in December 2021. Voluminous comments were submitted. Final Rule released Sept 29, 2022 and published in the Federal Register on September 30, 2022.

Vast majority of the Proposed Rule adopted as is by the Final Rule.

Notable differences:

Effective Date January 1, 2024.

For entities existing as of January 1, 2024, first report due one year from effective date (so January 1, 2025).

For entities formed on or after January 1, 2024, first report due **30** days from the date of formation (the Proposed Rule had a **14**-day requirement – a whole 16 days of relief provided by the Final Rule).

Due Date for reporting changes remains at 30 days from the date of the change.

The most significant relief provided by the Final Rule – existing entities (now estimated in the Final Rule to be 32 million) will NOT have to include Company Applicant information – newly formed entities will have to include such in its BOI Report.

**NOTES AND THOUGHTS:**

FinCen to develop the Beneficial Ownership Secure System (BOSS) to handle and secure the filings.

Access to the information is to be limited to authorized law enforcement/government entities BUT remember, someone will be generating these reports and, presumably, maintaining a copy in some form – this now becomes another document subject to discovery, whether by Subpoena or otherwise, in a suit.

What notice are you providing to clients? Jan 1, 2024 will get here quickly.

What needs to be included in an engagement agreement to address CTA reporting obligations?

What provisions need to be in an Operating Agreement or Shareholders Agreement to require members to provide the entity, via its manager or Partnership Representative, BOI sufficient to report?

FinCen increased its estimate of the cost to prepare the BOI Report to $85 (up from $50 in the Proposed Rule).

Monetary and criminal penalties remain intact 500/day up to 10,000 – two years imprisonment.

The concept and analysis of willfulness utilized in the FBAR arena will now be applicable to CTA reporting.