October 30, 2023

Policy Division
Financial Crimes Enforcement Network
(Docket Number FINCEN-2023-014
OMB Control Number 1506-0076)
www.regulations.gov

RE: Comments to FinCEN on Beneficial Ownership Information Reporting Deadline Extension Notice of Proposed Rulemaking (Docket Number FINCEN-2023-014; OMB Control Number 1506-0076)

Dear Sir or Madam:

The Texas Society of Certified Public Accountants (TXCPA) is a nonprofit, voluntary professional organization representing more than 28,000 members. The TXCPA Federal Tax Policy Committee appreciates the opportunity to comment on the Financial Crimes Enforcement Network (FinCEN) Notice of Proposed Rulemaking Docket Number FINCEN-2023-014, OMB Control Number 1506-0076.

Introduction

We support the objective of FinCEN to combat money laundering and terrorist financing, particularly in the time of heightened risks to the U.S. and its allies. However, the notice of proposed rulemaking that proposes to extend the filing deadline for certain Beneficial Ownership Information (BOI) reports needs changes for the system to work as intended. Also, publishing this notice with a comment period that is due Oct. 30 makes it difficult for most practitioners to review and comment when they were busy with extended tax returns. We hope that if FinCEN receives substantial comments, it will re-propose the regulations rather than proceeding to final regulations. This will provide an opportunity to improve the proposed regulations with more time for additional thoughtful comments.

Proposed Filing Deadline Extension for Certain Reporting Companies is Inadequate

FinCEN proposes to extend the period for certain reporting companies to file initial BOI reports. Under this proposed amendment to the Reporting Rule, reporting companies created or registered on or after Jan. 1, 2024, and before Jan. 1, 2025, would have 90 days to submit their BOI reports instead of 30 days. Reporting companies created on or after Jan. 1, 2025, would continue to be required to submit their initial BOI reports within 30 days of creation or registration.

Aside from the issue of the adequacy of 30 days to file, we note that at least in Texas if a filing is made on "Day 1," the Secretary of State may not issue notice of approval of the formation of an entity until perhaps "Day 30," but the effective date of the filing is Day 1. We are not clear as to when the FinCEN filing date requirement starts – is it Day 1 when the filing is made, Day 30 when the filing is approved or a later date when approval is received?

We are aware that FinCEN's recently published Small Entity Compliance Guide provides limited guidance, but many questions remain unanswered that can and should be addressed through a notice-and-comment process, all of which requires more time to properly do so. If the proposed regulation is re-proposed, there may be an opportunity to take into consideration how (or whether) states will notify taxpayers of this obligation, other items that may need to be coordinated with states and other issues that should be addressed.

On that point, we note that the NPRM states that "FinCEN is developing simple, easy-to-read guidance and educational materials such as frequently asked questions (FAQs), videos, infographics and compliance guides to help reporting companies comply with the new rules." We applaud this effort, but we also caution Treasury and FinCEN to comply with the *Administrative Procedure Act* to the extent that the agencies issue any rules or definitions that impose affirmative obligations on taxpayers. For example, should Treasury and FinCEN develop a standard for resolving the filing date ambiguity highlighted above, we would expect the proposal to be issued in proposed form subject to the typical notice-and-comment dialogue available to interested stakeholders before such a standard would be enforceable.

We are also concerned with all the start dates for any required BOI filing given the lack of any disclosure of forms to be filed, the absence of any meaningful Treasury or FinCEN outreach to affected citizens (or even to the majority of CPAs and attorneys), and the minimal training available to professionals – including CPAs – who may want to advise and assist affected citizens, etc. We understand from the content of a FinCEN webinar that the government may be relying on the various secretaries of state to communicate this requirement. We seriously doubt these entities will assume that burden and, in any event, the responsibility should not fall on state agencies to advise regarding federal rules.

We also understand that FinCEN may be relying on CPAs to help disseminate this information. Noting that we have seen estimates of more than 32 million entities subject to this required BOI reporting, we have doubts as to the number of those entities that are clients of CPAs, even if CPAs were to accept the responsibility without any requirement to do so, as many CPAs have not been specifically engaged by their clients to perform BOI reporting. CPAs may only see many of their clients once a year for tax compliance, which may not be enough to help clients comply with the BOI reporting requirements. For this and perhaps many other reasons, we view this entire program rollout by Treasury and FinCEN as potentially disastrous for many unsuspecting law-abiding citizens.

We strongly suggest that the filing deadline for all entities be delayed one year until 2025 and that the 90-day deadline for new entities should be made permanent. Similarly, the time for reporting subsequent events should be at least 90 days and more properly the maximum statutorily permissible period. Small business owners do not have the resources to comply with such complex regulations in such a short time frame. Since there is no size exemption for small businesses, even very small, single owner LLCs treated as disregarded for federal income tax purposes would have to report. The rate of non-compliance based on the current absence of an extensive public information program is likely to be very high and the resulting punitive exposure for these small business owners will be extreme.

Conclusion

As discussed above, we suggest the filing deadline for all entities be delayed one year until 2025, the 90-day deadline for new entities be made permanent and the time for reporting subsequent events be extended to at least 90 days and more properly the maximum statutorily permissible period.

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One of the expressed goals of the TXCPA is to speak on behalf of its members when such action is in the best interest of its constituency and serves the cause of the CPAs of Texas, as well as the public interest. TXCPA has established a Federal Tax Policy Committee to represent those interests on tax-related matters. The committee also has discretion to comment on reporting and disclosure requirements under Title 31 of the U.S. Code of Federal Regulations. The committee has been authorized by the TXCPA Leadership Council to submit comments on such matters of interest to the committee membership. The views expressed herein have not been approved by the Leadership Council or Board of Directors and, therefore, should not be construed as representing the view or policies of the TXCPA.

We would be pleased to further discuss this issue with you or your staff. Please feel free to contact me at 214-749-2462 or at dcolmenero@meadowscollier.com or TXCPA Staff Liaison Patty Wyatt at 817-656-5100 or pwyatt@tx.cpa.

Sincerely,

David E. Colmenero, CPA, J.D., LL.M.
Chair, Federal Tax Policy Committee
Texas Society of Certified Public Accountants

Principal responsibility for drafting these comments was exercised by David E. Colmenero, CPA, J.D., LL.M.; Kenneth Horwitz, CPA, J.D., LL.M.; and Leo Unzeitig, CPA, J.D.

cc: Andrea Gacki, Director, Financial Crimes Enforcement Network
The Honorable Janet Yellen, Secretary of the Treasury