CORPORATE TRANSPARENCY ACT (CTA)

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Prior to joining the UNT faculty in 2010, Professor McLeod held the position of Director of Tax Planning and IRS Audits for Lehigh Hanson North America, a major manufacturer of cement, aggregates and other building materials. Her practice included both federal and international tax planning as well as tax controversy. Professor McLeod also spent thirteen years specializing in Tax Planning with the JCPenney Corporation, Inc., and two years with Deloitte & Touche in Dallas. She has served as an expert witness in multi-million dollar cases involving tax litigation and accounting malpractice. Professor McLeod is a past member of the Professional Ethics Committee of the Texas Society of CPAs.

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LEARNING OBJECTIVES

1. Become familiar with recent court cases and Treasury publications affecting individuals and business entities.
2. Acquire a working knowledge of recent changes to IRS procedure.
3. Become conversant of recently issued tax court opinions and their implications to taxpayers.
4. Know the status of upcoming tax legislation and how it might affect clients.

CORPORATE TRANSPARENCY ACT - GENERALLY

- FinCEN will require certain entities created or registered to do business in the US to disclose personal information about their beneficial owners, senior officers and other control persons.
- The information will be maintained in a national, non-public data base for use by governmental authorities.
- Effective January 1, 2024.

CTA – GENERALLY (CONT'D)

- Affected entities must report beneficial ownership information to FinCEN within 90 days of their creation or registration to do business.
- Entities created or registered to do business on or after January 1, 2025 must file initial reports within 30 days of creation or registration.
- Initial reports for entities created or registered to do business before the January 1, 2024 effective date are due by January 1, 2025.

PURPOSE FOR CTA

- The reason for enacting the CTA is to combat the proliferation of anonymous shell companies used by illicit actors for criminal purposes in the U.S.
- This will result in legitimate companies and beneficiaries incurring new administrative burden to comply with the new reporting requirements.

DEFINITION OF "REPORTING COMPANY"

- Domestic Reporting Company - A corporation, LLC or entity created by the filing of a document with a secretary of state or any similar office under the laws of a state or an Indian tribe.
- Foreign Reporting Company - A corporation, LLC or entity formed under the laws of a foreign country that has registered to do business in the U.S. by the filing of a document with a secretary of state or equivalent under the laws of a state or an Indian tribe.

ENTITIES NOT SUBJECT TO THE CTA

- Domestic entities that are not required to file a document with a secretary of state or similar office in order to form are exempt from the CTA.
- Examples of exempt organizations:
  - Sole proprietorships
  - General partnerships
  - Unincorporated associations
  - Common-law trusts
  - Foreign entities

OTHER ENTITIES EXEMPT FROM REPORTING REQ'TS

- Securities reporting issuer
- Governmental authority
- Bank
- Credit union
- Depository institution holding company
- Money services business
- Broker or dealer in securities
- Securities exchange or clearing agency

OTHER ENTITIES EXEMPT FROM REPORTING REQ'TS

- Other Exchange Act registered entity
- Investment company or investment adviser
- Venture capital fund adviser
- Insurance company
- State-licensed insurance producer
- Commodity Exchange Act registered entity
- Accounting firm
- Public utility

OTHER EXEMPT ENTITIES (CONT'D)

- Financial market utility
- Pooled investment vehicle
- Tax-exempt entity
- Entity assisting a tax-exempt entity
- Large operating company
- Subsidiary of certain exempt entities
- Inactive entity

OTHER ENTITIES EXEMPT FROM REPORTING REQUIREMENTS

- "Large operating companies“ - Reporting Companies that directly:
  - employ more than 20 full-time employees in the U.S.,
  - maintain a U.S. operating presence at a physical office (owned or leased) in the U.S., and
  - have filed a federal income tax or information return with the IRS for the previous year demonstrating more than $5 million in gross receipts from U.S. sources.

OTHER EXEMPT ENTITIES (CONT'D)

- Subsidiary Exemption
  - One or more exempt entities must directly or indirectly wholly own or control all of the ownership interests of a subsidiary.
  - However, subsidiaries of pooled investment vehicles and certain other entities are ineligible to use the Subsidiary Exemption.

DEFINITION OF BENEFICIAL OWNER

- Beneficial owner is an individual who, directly or indirectly:
  - exercises “substantial control" over a reporting company; or
  - owns or controls at least 25 percent of the ownership interests of a reporting company.

SUBSTANTIAL CONTROL TEST

- Indicators of Substantial Control:
  - Senior Officer (President, CEO, COO, CFO, General Counsel or any other officer who performs similar functions).
  - Appointment or removal authority of a senior officer or majority of Board of Directors.
  - Important decision-maker over important business, financial or structural decisions.
  - Any other form of substantial control.

SUBSTANTIAL CONTROL TEST (CONT'D)

- Equity ownership not necessary under this test.
- All individuals who exercise substantial control over an entity should be identified and reported.

25% OWNERSHIP TEST

There are three parts to analyzing whether the 25% ownership tests are met:

1. Ownership Interest: equity, stock, voting rights, capital or profits interests, convertible instrument, options and other ownership mechanisms.
2. Ownership or Control of Ownership Interest: Any contract, arrangement, understanding, relationship or otherwise, such as through direct or indirect ownership, debt, joint ownership, nominee, trust, or owning or controlling intermediate entity that owns/controls reporting company.

25% OWNERSHIP TEST

3. Calculation: Determine whether an individual directly or indirectly owns or controls 25 percent of the ownership interest (by reference to actual or deemed voting power, value, capital and profits interests.

EXCEPTIONS TO BENEFICIAL OWNERS

- The following individuals are not considered "beneficial owners" for purposes of the CTA:
  - A minor child
  - Nominee, intermediary, custodian, agent
  - Employee (other than Senior Officer)
  - Inheritor, such as a future interest through a right of inheritance
  - Creditor

COMPANY APPLICANTS

- A Company Applicant is an individual involved with the formation or registration of a Reporting Company.
- A Reporting Company formed on or after Jan. 1, 2024 (but not before), is required to report at least one Company Applicant, and at most two.
- Category 1: The individual who directly filed the document that created a Domestic Reporting Company or that first registered a Foreign Reporting Company with a secretary of state or similar office.

COMPANY APPLICANTS (CONT'D)

- Category 2: The individual who was primarily responsible for directing or controlling the filing of the creation or registration document, provided more than one individual was involved in the filing. Consider who makes decisions on the filing of the document, such as the document's content, how it is managed and when and where the filing occurs.

INITIAL REPORTING OBLIGATIONS OF A REPORTING COMPANY

- For reporting companies created or registered before Jan. 1, 2024, information must be provided about:
  - Itself
  - Beneficial Owners
  - But not Company Applicants

INITIAL REPORTING (CONT'D)

- For reporting companies created or registered on or after Jan. 1, 2024, information must be provided about:
  - Itself
  - Beneficial Owners
  - Company Applicants

INITIAL REPORT INFORMATION ITEMS

- For reporting companies, the following information must be included:
  - Full legal name
  - Trade name or DBA
  - Current address (principal place of business in U.S., or primary U.S. location if the company's principal place of business is not in the U.S.)
  - Jurisdiction of formation
- For a foreign company, additional information is required:
  - State/tribal jurisdiction of first registration
  - Foreign tax ID if no U.S. ID.

INITIAL REPORT INFORMATION ITEMS (CONT'D)

- The following information is required for beneficial owners:
  - Full legal name
  - Date of birth
  - Residential address
  - Unique ID number and issuing jurisdiction
  - A current U.S. passport, state driver's license, or ID issued by a state or local government or an Indian tribe
  - A foreign passport if none of the IDs above.

INITIAL REPORT INFORMATION ITEMS (CONT'D)

- For company applicant, use same information as for a beneficial owner, but use individual's business address.
- FinCEN will issue a unique ID number upon request.
- The unique number can be used by a reporting company in lieu of the personal identifiable information (PII).
- Individuals with FinCEN Identifiers are required to update FinCEN of any change in PII within 30 calendar days after a change occurs.

PENALTIES FOR NONCOMPLIANCE

- Civil Penalties: $500 per day in civil monetary penalties (no maximum amount).
- Criminal Penalties. $10,000 fine, imprisonment for no more than two years, or both.

PENALTIES FOR NONCOMPLIANCE

- Penalties may apply to reporting company and/or responsible individual upon failure to properly report.
- There can be both civil and criminal penalties for:
  - the willful failure to report,
  - the willful failure to update beneficial ownership information
  - willful failure to correct inaccurate beneficial ownership information.

DUE DATES ON REPORTING BENEFICIAL OWNERSHIP INFORMATION TO FINCEN

Date of Entity Creation	Report Deadline
Before January 1, 2024	January 1, 2025
January 1- December 31, 2024	Within 90 days of notice of creation/registration
On or after January 1, 2025	Within 30 days

UPDATES TO BENEFICIAL OWNERSHIP

- Beneficial ownership information filings must be updated if a change in reported information occurs or if a reporting company knows or should know about an error.
- Updated reports are due within 30 days of when a change occurs or an error is discovered.

ACCESS TO BENEFICIAL OWNERSHIP INFORMATION

- The CTA proposed access rule would require FinCEN to maintain reported beneficial ownership information in a secure, non-public database for use by national security, intelligence and law enforcement agencies, federal functional regulators and financial institutions.
- FinCEN will issue a unique identifying number (“FinCEN ID”) to an individual or entity following submission of specified information to FinCEN.

BENEFICIAL OWNER IDENTIFIERS

- The new November 8, 2023 rule provides that a reporting company may report another entity's FinCEN ID and full legal name in lieu of the required information for beneficial owners of the reporting company if:
  - The other entity has obtained a FinCEN ID and provided that FinCEN ID to the reporting company;
  - An individual is or may be a beneficial owner of the reporting; and
  - The beneficial owners of the other entity and of the reporting company are the same individuals.

STATE RESPONSE TO CTA

- New York and California will publish the legal names and current business addresses of true owners in searchable, online databases maintained by the secretaries of state.
- Massachusetts will classify the information as a public record subject to public records requests but seek to s to publish in the future the collected information in an online database.

IRS FAQS – BENEFICIAL OWNERSHIP

- IRS provided in its Beneficial Ownership Information Reporting FAQs an updated 28-page Q&A related to beneficial ownership.
- This will bring clarification for the new FinCen rules taking effect in 2024.

SHOULD FILLING OUT A BENEFICIAL OWNERSHIP INFORMATION FORM BE DONE BY:

A. Accountants/CPAs
B. Lawyers
C. Inhouse Personnel
D. By any of the above.

CTA HELD UNCONSTITUTIONAL

NATIONAL SMALL BUSINESS UNITED V. YELLEN

- National Small Business (NSB) challenged the constitutionality of the Beneficial Ownership Information Reporting (BOIR) Rule of the Corporate Transparency Act (CTA or the Act) in Federal District Court (N.D. AL).
- Plaintiffs asserted that highly personal information to be stored in a governmental database for criminal enforcement purposes would violate privacy protections, is unduly burdensome on small companies and infringes on states' powers to govern business.

Source: National Small Business United v. Yellen (Case No. 5:22-cv-1448-LCB).

NSB (CONT'D)

- Plaintiffs sought an immediate injunction against implementation of the CTA and U.S. Department of the Treasury Financial Crimes Enforcement Network (FinCEN) reporting rules.
- The plaintiffs alleged that the CTA's mandatory disclosure requirements exceeded Congress' authority under Article I of the U.S. Constitution and violates the First, Fourth, Fifth, Ninth and Tenth Amendments.

NSB – CONSTITUTIONAL ISSUE

- The first issue argued by the plaintiffs was whether the Constitution gives Congress the power to regulate millions of entities and their stakeholders the moment they obtain a formal corporate status from a State.
- The court rejected the government's position that mandatory obligations imposed on companies to identify their "beneficial owners" and "company applicants" and other personal identifiable information were constitutionally supported by Congress' broad powers to oversee foreign affairs and national security, regulate commerce, and impose taxes and related regulations.

<u>NSB</u> - PLENARY POWER TO CONDUCT FOREIGN AFFAIRS

- The government argued the disclosure of BOI is "vital" to U.S. national security interests; assists national security, intelligence and law enforcement in countering money laundering, the financing of terrorism and other illicit activities.
- The court was unpersuaded noting that the government was interjecting itself into domestic/internal policy, where Congress' powers are limited. Observing that the CTA requires disclosure of BOI for entities that "incorporate" under state law, the court held that had Congress had exceeded its enumerated powers.

NSB - PLENARY POWER (CONT'D)

- The court found that the CTA converted an "astonishing amount" of traditionally state power into a matter for federal enforcement, and would constitute a substantial extension of federal police power.
- The court ruled that the CTA was therefore not necessary or proper to carry out Congress' foreign affairs powers.

NSB – COMMERCE CLAUSE

- The government argued that the CTA was a valid exercise of Congress' power under the Commerce Clause because the CTA regulates the *channels*, the *instrumentalities*, and *activities* that have a substantial effect on interstate and foreign commerce.
- The court disagreed, finding that the plain text of the CTA did not regulate commerce, commercial or economic activity.“ While some of the reporting companies who would have to disclose beneficial information under the CTA may indeed engage in interstate or foreign commerce, that is not sufficient to sustain the Act under the Commerce Clause.

NSB - TAXING POWER AND NECESSARY & PROPER CLAUSE

- The court rejected the government's argument that the CTA is justified by Congress' taxing power and the Necessary and Proper Clause.
- The government contended that the collection of the information was necessary for the proper reporting of taxable income.
- The court held that it would be a substantial expansion of federal taxing power to permit Congress to collect "useful" data and allowing tax-enforcement officials access to that data.

NSB - CONCLUSION

- Having concluded that Congress exceeded its enumerated powers in enacting the CTA, the court did not ultimately address constitutionality under the 1st, 4th and 5th Amendments.
- The court therefore permanently enjoined the government from enforcing the CTA.
- The U.S. Department of the Treasury likely will appeal the court's order and ask for a stay pending appeal.

FINCEN RESPONSE TO NSB

- FinCEN responded to the court's ruling in a March 4, 2024, press release, noting that it would comply with the court's order.
- While FinCEN stated it would not enforce the CTA against NSB, et. al., as of March 1, the date of the ruling.
- FinCEN implies in its press release that they have continuing authority to enforce the law against anyone else not a party to the suit.
- All other parties may still have a reporting requirement under the CTA, barring further developments or guidance.

Source: https://www.fincen.gov/news/news-releases/notice-regarding-national-small-business-united-v-yellen-no-522-cv-01448-nd-ala

WHAT IS NEXT?

- The DOJ has filed its appeal.
- FinCEN issued a notice announcing that it will not enforce the BOI requirements against the plaintiffs — the National Small Business Association (NSBA) and its 65,000 members.
- Other lawsuits have been filed, including one by the Small Business Association of Michigan, which has 32,000 members.

WHAT IS NEXT (CONT'D)

- It is possible that other parties may file similar lawsuits in other federal courts alleging the unconstitutionality of the Act.
- The NSB decision could have an impact on states such as California, Massachusetts and Maryland presently contemplating adopting CTAs requirements.

- Source: https://www.journalofaccountancy.com/news/2024/apr/aicpa-boi-ruling-confuses-businesses-enforcement-should-be-delayed.html?utm_source=mnl:cpal&utm_medium=email&utm_campaign=09Apr2024

AICPA RESPONSE

AICPA ASKING FOR SUSPENSION

- The AICPA and over 50 state CPA societies have written to the Treasury secretary and the director of the Financial Crimes Enforcement Network (FinCEN) asking that enforcement of beneficial ownership information (BOI) reporting requirements be suspended until one year after court cases have been resolved.
- "We are still concerned that small businesses will be caught off guard with the new filing requirement and failure to file could result in steep civil and criminal penalties," said the letter, dated April 3, and sent to Treasury Secretary Janet Yellen and FinCEN Director Andrea Gacki.

AICPA (CONT'D)

- "The recent NSBA v. Yellen court case which found the Corporate Transparency Act (CTA) to be unconstitutional has only compounded confusion, with most entities believing they no longer have a filing requirement.
- "Based on these strong concerns, we ask that you suspend all enforcement actions until one year after the conclusion of all court cases related to NSBA v. Yellen, and further believe that FinCEN should take no retroactive enforcement for noncompliance during this time."
- Sue Coffey, AICPA's CEO signed the letter, along with 54 state CPA societies.

FINCEN PROPOSED REQUIREMENTS FOR REAL ESTATE PURCHASES

NOTICE OF PROPOSED RULEMAKING ("NOTICE") - GENERALLY

- FinCEN issued a proposing a new nationwide reporting obligation on Feb. 7, 2024.
- The Notice proposes a new nationwide requirement designed to identify and report the individuals who beneficially own specified entities and trusts acquiring residential real estate for which there is no financing by a financial institution.

NOTICE OF PROPOSED RULEMAKING (CONT'D)

- The obligation to file the reports will be imposed on settlement agents, title insurance agents, escrow agents and attorneys who will have 30 days after the closing to file the report.
- Reportable transfers would include "all cash" and nonfinancial institution-financed purchases (with no dollar threshold), as well as transfers of ownership at no value, where the transfer of which involves a reporting person (e.g., a real estate professional).

NOTICE OF PROPOSED RULEMAKING (CONT'D)

- The Notice describes when a report would be filed, who would file the report, what information would be contained in the report and when a report would be due.
- Excluded are transfers between individuals who are not reporting persons.
- Reporting requirement is designed to combat anonymous laundering of illicit proceeds through the purchase of residential real estate.

PURPOSE FOR THE NEW REPORTING

- Unreported cash sales of U.S. residential real estate could facilitate money laundering and other illicit activity.
- FinCEN is aware that illicit actors often favor transfers or "all cash" sales of residential real estate that avoid scrutiny from financial institutions that have an anti-money laundering requirements.
- Money transferred through financial institutions are subject to the Financing of Terrorism (AML/CFT) program and Suspicious Activity Report (SAR) filing requirements under the Bank Secrecy Act (BSA).

PURPOSE (CONT'D)

- FinCEN have for a number of years exempted persons involved in real estate closings and settlements the BSA regulations.
- FinCen instead has issued a series of time-limited and geographically focused "geographic targeting orders" (GTOs) to the real estate sector in lieu of more comprehensive regulation.

COMPARISON TO CTA REQUIREMENTS

- This proposed rule is a tailored reporting requirement that would capture a particular class of activity that Treasury deems high-risk and that warrants reporting on a transaction-specific basis.
- Certain persons will be required to file and maintain a streamlined version of a Suspicious Activity Report (SAR), referred to here as a "Real Estate Report."
- The reporting person would be determined through a "cascading" approach based on the function performed by the person in the real estate closing and settlement.
- There is also the option to designate a reporting person from among those in the cascade by agreement.

RESIDENTIAL REAL ESTATE GENERAL TARGETING ORDERS (GTOS).

- FinCEN instituted In 2016 the GTOs to address its money laundering concerns.
- The GTOs required title insurance companies to identify and report the true "beneficial owners" behind a legal entity (but not a trust) in "all cash" residential real estate acquisitions that exceeded a certain price.
- The GTOs were a temporary collection measure, time-limited and targeted to select metropolitan areas of the U.S.

GTOs (CONT'D)

- In view of FinCEN's assessment that additional regulation of the U.S. residential real estate sector is warranted, it has proposed a permanent nationwide solution to target nonfinanced purchases of residential real estate by specified entities and trusts.
- The proposal is aimed to combat the anonymization of illicit actors engaged in laundering their ill-gotten gains through nonfinanced purchases of residential real estate and transfers (including gifts) to specified legal entities and trusts.

BENEFITS FROM THE PROPOSAL

- Enhance the ability of FinCEN and law enforcement to investigate and prosecute money laundering through residential real estate.
- Protect U.S. economic and national security from illicit funds that result from drug trafficking, human trafficking, corruption, fraud and other crimes.
- Assist law enforcement to generate leads and support ongoing investigations, prosecutions and asset forfeitures related to money laundering and other crimes.

BENEFITS FROM THE PROPOSAL (CONT'D)

- Identify high-level trends in the abuse of U.S. residential real estate for purpose of money laundering.
- Deter illicit actors form storing money in U.S. residential real estate and distorting prices.

REAL ESTATE REPORT

- A reporting person would be obligated to file a report called a Real Estate Report for reportable transfers of residential real property by a transferor to a transferee entity or transferee trust, identifying and supplying information about the reporting person, the transferor, the residential real property purchased or transferred, the transferee entity or transferee trust, the individual beneficial owners of the transferee, the individual representing the transferee and the payment.

REASON FOR NOTICE

- The Real Estate Report would contain basic, standardized information that FinCEN believes should not be overly burdensome to reporting persons because:
  - the filing would entail no risk-based judgment about when to file and no narrative assessment; and
  - reporting persons would be exempted from the BSA's requirements to establish:
    - AML/CFT programs and
    - the confidentiality provisions of the BSA that apply to SARs (since the triggering criteria for the subject report – a nonfinanced transfer of residential real estate to certain legal entities and trusts – would be known to all parties).

DEFINITION OF REPORTABLE TRANSFER

- A reportable transfer is a transfer of any ownership interest in residential real property to a transferee entity or a transferee trust, with certain exceptions.
- This alert will first address the components of a reportable transfer and then identify and explicate the exceptions, which are crafted to reflect FinCEN's intent to capture only higher-risk transfers.

DEFINITION OF RESIDENTIAL REAL PROPERTY

- The real property must be located in the U.S., and the real property must constitute residential property.
- This includes single-family houses, townhouses, condominiums and cooperatives, as well as apartment buildings designed for one to four families or vacant or unimproved land zoned, or for which a permit has been issued, for the construction of a structure designed principally for occupancy by one to four families.

OWNERSHIP INTEREST IN REAL PROPERTY

- Ownership Interest in Real Property is defined as a deed, stock share, membership, certificate or other contractual agreement evidencing ownership.
- A transfer of an ownership interest encompasses both sales as well as non-sale transfers, such as gifts and transfers to trusts.
- The gratuitous transfer of residential real property to a trust by the settlor or grantor may be reportable (although, there is an exception for transfers occurring as a result of death).
- There is no dollar threshold or exception for transfers above or below a set dollar value.

TRANSFEREE ENTITIES

- A transferee entity encompasses a wide variety of legal vehicles, domestic or foreign, used to own property, such as a limited liability company, an association, a corporation, a partnership or an estate.
- Exclusions - A transferee entity does not include an individual or a transferee trust.
- Nonprofit organizations, unregistered pooled investment vehicles and large operating companies are not exempted.

DEFINITION OF A TRANSFEREE TRUST

- A transferee trust is any legal arrangement created when a settlor or grantor places assets under the control of a trustee for the benefit of beneficiary or for a specified purpose.
- It also includes legal arrangements similar in structure or function to the above, such as a land trust, whether formed under the laws of the United States or a foreign jurisdiction.
- Certain trusts are exempted from the definition of a transferee trust (see below).
- Note: A statutory trust is treated as a transferee entity and not a transferee trust.

EXCEPTIONS TO RESIDENTIAL REAL ESTATE TRANSFERS

- There are six situations that do not have to be reported as a real estate transfer::

1. a grant, transfer or revocation of an easement
2. a transfer resulting from the death of an owner of residential real property (including a transfer under a will to a trust)
3. a transfer incident to divorce or dissolution of a marriage
4. a transfer to a bankruptcy estate

EXCEPTIONS TO TRANSFERS (CONT'D)

4. a transfer that does not involve a reporting person
5. an extension of credit to the transferee that is secured by the transferee residential real property and extended by a financial institution that has both an obligation to maintain an AML/CFT program and an obligation to report suspicious transactions.

- Note: Transfers financed by a private lender or the seller, neither of which has AML/CFT compliance programs and SAR filing obligations, are reportable.

DEFINITION OF REPORTING PERSON

- The obligation to file a Real Estate Report would generally apply to settlement agents, title insurance agents, escrow agents and attorneys.
- Only one real estate business would be a reporting person for any given reportable transfer and required to collect, report to FinCEN and maintain certain transactional information.
- The reporting person would be identified in one of two ways: either by way of aby either a cascading reporting order or a designation agreement.

CASCADING REPORTING ORDER

- The highest real estate professional in the cascade would have the responsibility of filing the Real Estate Report with FinCEN.
- The potential reporting persons would have the responsibility of evaluating the cascade and obligation of filing.
- No requirement to verify that any other potential reporting person in fact filed the Real Estate Filing.

CASCADING REPORTING ORDER (CONT'D)

- First Tier: The reporting obligation is placed upon the settlement agent at the end of the process. If no person prepared the closing document, the reporting obligation would apply to the person who files the deed or transfer document.
- Second Tier: If no First Tier individual, the reporting obligation would then be imposed on the person who underwrites the title insurance policy associated with the real property transfer.

CASCADING REPORTING ORDER (CONT'D)

- Third Tier: If no individuals fall under First or Second Tier, then reporting will be required by the person who disburses the greatest amount of funds in connection with residential real property transfer.
- Fourth Tier: In the event that no person participates in the transfer who comes within the first three tiers of the cascade, the reporting person would be the person who prepares an evaluation of the status of the title.

CASCADING REPORTING ORDER (CONT'D)

- Fifth Tier: If there is no person identified in the first four tiers of the cascade, the reporting obligation would be the preparer of the deed associated with the transfer.

DESIGNATION AGREEMENT

- Individuals who are in the reporting cascade may enter into a written "designation" agreement to obligate another person in the reporting cascade to be the reporting person, regardless of the tiers in which the professional is included.

REPORTABLE INFORMATION

- The primary information to be reported relates to the beneficial owners of a transferee entity or transferee trust acquiring the residential real estate.
- The beneficial owners of a transferee entity are the individuals who would be the beneficial owners of the transferee entity on the date of closing if the transferee entity were a reporting company under the CTA.

REPORTABLE INFORMATION (CONT'D)

- Other identifying information about the reporting person, the transferee entity or transferee trust itself, the individual representing the transferee entity or trust, the transferor and the subject residential real property and the payments.
- Detailed personal identifiable information about the beneficial owners and other individuals and persons involved in the transaction, the residential property and the payments.
- The proposed rule would NOT require reporting persons to report changes to beneficial ownership of a transferee entity or transferee trust on an ongoing basis.

BENEFICIAL OWNER

- The beneficial owner of a transferee trust are the individuals who fall into one or more of the following categories on the date of closing:
  - a trustee of the transferee trust
  - an individual other than a trustee with the authority to dispose of transferee trust assets
  - a beneficiary who is the sole permissible recipient of income and principal from the transferee trust or who has the right to demand a distribution of, or to withdraw, substantially all of the assets of the transferee trust

BENEFICIAL OWNER (CONT'D)

- Beneficial owners (cont'd) :
  - a grantor or settlor who has the right to revoke the transferee trust or otherwise withdraw the assets of the transferee trust, or
  - a beneficial owner of any legal entity or trust that holds one of the aforementioned positions.

FILING THE REPORT

- A reportable transfer is reported by completing a Real Estate Report and collecting and maintaining supporting documentation.
- The Real Estate Report is filed electronically with FinCEN.
- A reporting person is required to file a Real Estate Report no later than 30 calendar days after the closing.

OTHER ISSUES

- A reporting person must maintain a copy of any Real Estate Report and any certifications for five years from the date of filing.
- FinCEN will maintain the Real Estate on one of its BSA secure data bases. The information is accessible by authorized users, such as law enforcement, intelligence and national security but not by the public.
- Effective date - one year from the date the final rule is issued.

QUESTIONS?

THANK YOU!

CONTACT US!

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