FinCEN Finalizes Reporting Extension Rule Without More Relief

Posted on Nov. 29, 2023

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Treasury has finalized its rule providing a 90-day deadline to report beneficial ownership information (BOI) for entities created or registered in 2024, but it has refused calls to take the relief further.

The Financial Crimes Enforcement Network moved quickly with the finalization of its reporting deadline extension rule, which was released on November 29. It comes a mere two months after the proposal of the rule, which pushed the deadline for the filing of initial reports for companies created or registered in 2024 from 30 days to 90 days. Companies created or registered in 2025 or later still have only 30 days to submit their initial BOI reports under both the proposed rule and final rule. Entities created or registered before 2024 have until 2025 to file their initial BOI reports.

The rule relates to the Corporate Transparency Act, and reporting is necessary for both domestic and foreign companies. Reporting requires information such as names, addresses, and identifying numbers from the reporting entity, the beneficial owner, and the company applicant. FinCEN has estimated that in 2024 there will be 32.6 million reporting companies.

Practitioners welcomed the extension when it was proposed in September but argued that it may not go far enough for structures that are not straightforward.

The final rule notes that FinCEN received 50 comments on its proposed rule, many of which supported it because it would give small businesses more time to comply with a new reporting requirement. However, other comments suggested increasing the deadline to 120 days, making the extension applicable to all newly created or registered entities, or aligning it with the reporting company's tax filing deadline. As the preamble to the final rule explains, however, FinCEN did not believe additional relief was necessary.

"FinCEN believes the additional published guidance, the availability of the contact center FinCEN is preparing that will allow members of the public to contact FinCEN with questions concerning BOI reporting, and the 90-day timeframe will provide members of the general public with sufficient time, awareness, and opportunity to consult third parties (such as CPAs or attorneys) as the BOI regulatory framework is first implemented. It will also provide both those third parties and the general public with guidance and other information to assist in providing advice and making decisions," the preamble states.

The final regs decline to allow an extension to the end of the year, as this could result in disparate treatment for companies registered in January 2024 and those registered much later in 2024. FinCEN also rejected aligning the extension with tax return deadlines because that would delay reporting by many months in some circumstances and potentially "create significant discrepancies" between companies. The delay would also risk making the reporting information out-of-date, the preamble argues.

"Preserving the utility of the database to the greatest extent possible dictates that an extension of the filing deadline should be only as long as needed to provide meaningful relief in the first year that the BOI reporting framework is in effect," the preamble states.

Likewise, the final regs decline to apply the 90-day reporting deadline to all companies created after January 1, 2024, as the recentness of the reporting regime in 2024 is what makes the longer deadline appropriate in that year. The preamble argues that familiarity should grow after 2024, including through FinCEN's outreach strategy, and that the 30-day time frame should be sufficient then.

Although FinCEN refused calls for greater relief in its final rule, the preamble provides a modest indication that it is not forever wedded to its position. According to the preamble, FinCEN will monitor BOI reporting deadline compliance for a few years and consider whether it needs to adjust its time frame for newly created or registered reporting companies.

Robert Russell of Rutan & Tucker LLP said the 90-day deadline for early 2024 filers is appreciated since practitioners have yet to see a draft FinCEN form or the process for obtaining identification numbers, which would take time.

"Practically, we may institute a tighter internal deadline for clients needing to file," Russell said. "As accountants filing tax returns know all too well, [if] you give a client a deadline, the information will come in close to the deadline. The best time to get this [Corporate Transparency Act] information from the client is during the entity formation process. If you tell a client the deadline is 90 days, you may be chasing them down on day 89."

Severiano E. Ortiz of MNF Legal LLC said the final rule came out as expected. He also noted that in response to comments related to financial institutions obtaining customer consent and accessing the BOI database, FinCEN reiterated that it would be crafting separate rules on the issue.

"I think this latter concern — although directed toward the relationship between the BOI and [customer due diligence] — may be important and possibly influence whether FinCEN will also provide some sort of customer notice if it agrees to share data with foreign governments through qualified requests — the idea being that not all governments can be trusted and FinCEN should at least provide the beneficial owner an opportunity to argue against approving such a request, or at least become aware that the foreign government is receiving such information," Ortiz said.