

7 May, 2024

The Honorable Gerald E. Connolly
2265 Rayburn HOB
United States House of Representatives
Washington, D.C. 20515

Re: Corporate Transparency Act

In my capacity as Chair of the Braddock District Council of Community Associations, Inc. (Fairfax County, VA), I am writing to request your assistance as regards the reporting requirement imposed by the Financial Crimes Enforcement Network (FinCEN) under provisions of the Corporate Transparency Act (“CTA”), as amended.

Specifically, we do not understand why community/civic/homeowners’/condo associations, which are typically 501(c)(4) non-profit, social-benefit organizations run by unsalaried, volunteer boards of directors, are included in reporting requirements which the plain language of the statute and FinCEN rules makes clear are directed at for-profit businesses, as that term is generally understood.

For example, the definition of a “beneficial owner” is “is an individual who either directly or indirectly: (1) exercises substantial control over the reporting company, or (2) owns or controls at least 25% of the reporting company’s ownership interests.” FinCEN goes on to define anyone exercising “substantial control as:

- A senior officer (“president, chief financial officer, general counsel, chief executive officer[r], chief operating officer, or any other officer who performs a similar function”)
- An individual with “authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company”
- An “important decision-maker for the reporting company”

The repeated use of commercial business terms is instructive in terms of our argument. This language does not describe community associations. No one person really ‘owns’ the entity or exercises substantial control over such assets as it may own in common (modest bank accounts, perhaps some common property/playground/pool, etc.). In short, a community associations is not a business and therefore does not seem to be the type of entity contemplated by the CTA as a likely money-laundering operation, a point that even FinCEN concedes.

On 1 March, 2024, the United States District Court, Northern District Of Alabama, Northeastern Division, ruled that the CTA was unconstitutional (Case No. 5:22-cv-1448-LCB) and enjoined enforcement of its reporting requirements against the plaintiffs. However, this decision did not relieve all other similar entities from the reporting requirements and the decision is under appeal by the Federal Government. Until the issue is resolved in the courts or by Congress, non-profit community associations such as those comprising the Braddock District Council and even the Braddock District Council itself, are still under the requirement to report to FinCEN by 1 January, 2025. In Braddock District itself, there are over 165 such associations; in Fairfax County, there are several hundred more; in the Commonwealth of Virginia, thousands; and in the fifty states, tens or

perhaps hundreds of thousands, the vast majority of which, it can be presumed, are not even aware of the reporting requirement. It can be argued that such a broadbrush requirement, with its attendant penalties for not reporting, represents a case of unwarranted government overreach, a conclusion reached by the U.S. District Court in the decision cited above.

In light of the foregoing, I request that you use your good offices to press FinCEN on removing the reporting requirement for community associations. If this requires amending the CTA itself (as was done in December, 2023 with H.R.5119 - Protect Small Business and Prevent Illicit Financial Activity Act), then I would ask you to sponsor or support such legislation this year.

Thank you in advance for your consideration of this request.

Yours sincerely,

Robert W. Cosgriff
Chair, Braddock District Council of Community Associations, Inc.

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