

Client Alert

Providing Strategic Legal Guidance to the Financial Services Industry



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Corporate Transparency Act: Entities That No Longer Exist May Need to File BOI Reports According to New FinCEN FAQs

Since January 1, 2024, when the Corporate Transparency Act's ("CTA") beneficial ownership reporting requirements became effective, a key issue has been whether companies that meet the requirements of a "reporting company" are required to file their beneficial ownership information ("BOI") report even if they cease to exist before the reporting deadline. On July 8, 2024, the U.S. Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued new FAQs clarifying its position that such reporting companies under the CTA are nonetheless subject to the BOI filing requirements, unless they ceased to exist as legal entities prior to January 1, 2024. This client alert outlines the various scenarios covered in FinCEN's new FAQs in which a reporting company may be required to file its BOI report, even if the company no longer exists.

BACKGROUND

The CTA and its implementing regulations require reporting companies formed or registered to conduct business in the United States report BOI to FinCEN. Most U.S. companies, and many non-U.S. entities formed or registered in the United States, meet the definition of a "reporting company" under the CTA, unless they are subject to one of the exemptions. Beneficial owners are individuals who, directly or indirectly, either exercise substantial control over a reporting company or own or control at least 25 percent of the ownership interests of a reporting company.

Under the CTA, entities formed before January 1, 2024 have a reporting deadline of January 1, 2025, and entities created after January 1, 2024 must file "within 90 calendar days after receiving actual or public notice that [the] company's creation or registration is effective, whichever is



earlier.” Entities created on or after January 1, 2025 are required to report their BOI within 30 calendar days after receiving actual or public notice that their creation or registration is effective.

In addition to FAQs, FinCEN has published [instructions](#) for reporting companies on BOI reporting, a [Small Entity Compliance Guide](#), and other [reference materials](#) on the CTA and BOI rule.

APPLICABLE FAQs

FAQ C.13 clarifies that a company “is not required to report its beneficial ownership information to FinCEN if it ceased to exist as a legal entity before January 1, 2024.” FinCEN takes the view that if a company “ceased to exist as a legal entity before the beneficial ownership information reporting requirements became effective January 1, 2024,” then it was “never subject to the reporting requirements and thus is not required to report its beneficial ownership information to FinCEN.”

If a reporting company “continued to exist as a legal entity for any period of time on or after January 1, 2024,” then FinCEN requires it “to report its beneficial ownership information,” regardless of whether the company “had wound up its affairs and ceased conducting business before January 1, 2024.” The same is true for a reporting company “created or registered on or after January 1, 2024” that subsequently ceased to exist, regardless of whether it “ceased to exist before its initial beneficial ownership information report was due.”

As to determining when a company ceases to exist as a legal entity, FAQ C.13 points to “the law of the jurisdiction in which the company was created or registered.” The FAQ thus clarifies that entities must be “formally and irrevocably” dissolved prior to 2024 to avoid the BOI reporting requirement. If the company ceased operations, but was not formally dissolved, then it must file its BOI report.

FAQ C.14 reiterates that a reporting company registered or formed in 2024 or later that then ceases to exist as a legal entity before its initial BOI report is due is still required to submit its initial BOI report. If that entity subsequently ceases to exist, however, there is “no requirement for the reporting company to file an additional report with FinCEN noting that the company has ceased to exist.”

CONCLUSION

FinCEN’s guidance clarifies significant questions that have been raised since the BOI reporting requirements went effective. Companies that are inactive (but do not qualify for the inactive entity reporting company exemption) and/or ceased to exist should carefully assess whether they have a BOI reporting obligation based on when they were created and when and how they were dissolved. King & Spalding continues to monitor FinCEN’s guidance on CTA compliance and is available to consult on reporting questions.



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