

Publications

October 30, 2024 • Updates

Corporate Transparency Act Filing Obligations for Dissolved Entities

FinCEN has now definitively weighed in on the reporting obligations of dissolved entities. It issued new FAQs on September 10, 2024, clarifying that reporting companies may not use dissolution (or possibly merger activity) to avoid reporting their beneficial ownership information as required by the Corporate Transparency Act (“CTA”). FinCEN clarified that such reporting obligations already have accrued for all reporting companies in existence at any time in 2024, so that while the deadline for making such filings may remain prospective, the filing obligation is not contingent on the reporting company’s ongoing existence.

Reporting companies that intend to dissolve (or presumably merge out of existence) should ensure that they file their initial beneficial ownership reports (BOIRs) with FinCEN prior to dissolving (or ceasing to exist). FinCEN directed companies that were in existence in 2024 but have already ceased to exist to report their information as of the moment before so dissolving or ceasing to exist. Notably, prior FinCEN guidance clarified that senior officers of a reporting company will be held personally accountable for the reporting company’s CTA violations until the company files its initial BOIR.

Need to File a CTA Report. FinCEN issued an updated FAQ clarifying that a reporting company that was created or registered beginning in 2024 and later winds up its affairs and ceases to exist before its initial BOIR filing deadline (*i.e.*, 90 days in 2024 or 30 days starting in 2025) must submit its initial BOIR—no matter how quickly after creation or registration that it ceases to exist. While FinCEN noted in its FAQs that ceasing to exist as a legal entity means winding up affairs, ceasing to conduct business and entirely completing the process of formally and irrevocably dissolving, a conservative interpretation includes merging out of existence under the rubric of “ceasing to exist.” Importantly, FinCEN had clarified in previous FAQs that a reporting company that ceases to exist has no obligation to file an amendment to its previously filed BOIR as a result of subsequently ceasing to exist.

Who Can File a CTA Report for a Company That Will Cease (or Has Ceased) to Exist? FinCEN also issued a new FAQ addressing who may file an initial BOIR on behalf of a reporting company that ceases to exist in 2024 or thereafter. FinCEN clarified that

Related People

- Jeanne R. Solomon
- Erika H. Stinnett

anyone that a reporting company authorizes to act on its behalf (e.g., an employee, senior officer, owner or third-party service provider) may file a BOIR on behalf of the reporting company, even after the reporting company ceases to exist. FinCEN indicated that a reporting company that will cease to exist during its grace period for its initial BOIR filing should make arrangements while it exists to have the report submitted on its behalf, even if the filing does not occur until after the reporting company ceases to exist.

Foreign Company Ceasing to Exist. Another new FAQ notes that a foreign company is not required to report its beneficial ownership information to FinCEN if it ceased to be registered to do business in the United States before January 1, 2024, by entirely completing the process of formally and irrevocably withdrawing its registration(s) to do business in the United States by then (i.e., typically, but not always, by filing withdrawal paperwork with its jurisdiction of registration, receiving written confirmation of withdrawal, paying related taxes or fees, ceasing to conduct any business in the jurisdiction, and winding up its affairs in that jurisdiction). FinCEN clarified its view that a foreign company that has so entirely withdrawn prior to January 1, 2024, was never subject to the CTA's reporting requirements and therefore is not a reporting company and is not thereby required to file a BOIR. Conversely, FinCEN indicated that a foreign reporting company registered to do business in the United States during any period of time in 2024 or thereafter is required to file an initial BOIR, even if it entirely withdraws (or has withdrawn) that registration after January 1, 2025. FinCEN referred to the law of the U.S. jurisdiction of registration as to the specifics of the registration withdrawal and clarified that a company that is administratively suspended from conducting business (e.g., for non-filing of fees or non-compliance with jurisdictional requirements) is still required to file BOIRs until the suspension becomes permanent.

Domestic Company Ceasing to Exist. The new FAQ as to foreign entities withdrawing from doing business in the U.S. partly mirrors a July 8, 2024 FAQ relating to domestic reporting companies, as to whether a company has in fact ceased to exist before 2024 for purposes of CTA reporting requirements, by fully and irrevocably dissolving. That FAQ indicates that (although state or Tribal law may vary), this process typically involves the company filing dissolution paperwork with its jurisdiction of formation, receiving written confirmation of dissolution, paying related taxes or fees, ceasing to conduct any business, and winding up its affairs (e.g., fully liquidating itself and closing all bank accounts).

Beneficial Owners to Report. Finally, FinCEN updated a FAQ as to which beneficial owners are to be reported (which indicated that an initial BOIR should only include the beneficial owners as of the time of the BOIR filing, and with reporting companies notifying FinCEN of subsequent changes to their beneficial ownership through updated, amended reports). This FAQ clarified that if a reporting company was formed in 2024 or thereafter and ceased to exist before the expiration of the initial BOIR filing deadline (i.e., 90 days or 30 days), the reporting company retains a BOIR filing obligation until that filing is made. This filing obligation continues even if no one in fact filed such BOIR before the company ceased to exist. In that instance, the reporting company's senior officers remain obligated to cause the initial BOIR filing to occur, even if it can only be completed post-dissolution. In such an instance, the BOIR filing should report the beneficial ownership information that would have been accurate if the BOIR filing had occurred immediately prior to the dissolution event or the moment prior to the reporting company's ceasing to exist.

Takeaways. FinCEN's FAQ updates provide much-needed clarity as to the CTA filing requirements of companies that dissolve or otherwise cease to exist. Additional and clearer FinCEN guidance as to the interplay between merger activity and its new FAQs also would be helpful.

