

Publications

July 10, 2024 • Updates

FinCEN Publishes Updated FAQs

Entities terminated in 2024 are required to file Corporate Transparency Act beneficial ownership information reports, as are administratively dissolved entities.

The Financial Crimes Enforcement Network (“FinCEN”) recently published updates to its list of Frequently Asked Questions (“FAQs”) to assist entities in complying with the beneficial ownership reporting requirements of the Corporate Transparency Act (“CTA”).

Principal among these updates was FinCEN’s clarifying requirement that business entities terminated in the year 2024 (whether existing prior to 2024 or formed in 2024) are required to file beneficial ownership information reports (BOIR) under the CTA.

This filing requirement also expressly includes BOIR filings for administratively dissolved entities.

Each of these concepts were the subject of debate as to their applicability under the CTA prior to this FAQ release, with some conjecture that terminating an entity’s existence prior to its BOIR filing deadline would alleviate the need to make a BOIR filing – a position now refuted by FinCEN.

As Polsinelli has consistently advised, the obligation to file under the CTA has accrued for all entities in existence in 2024, only the deadline for filing the BOIR has not yet arrived. Entities are advised to file their BOIR prior to consummating their termination process.

The July 8 FAQs also included clarification on beneficial owner disclosure scenarios involving an entity fully or partially owned by an Indian Tribe.

FinCEN expects to publish further guidance in the future. The updated FAQs can be accessed [here](#).

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Several of the updates bear special note:

Related People

- Philip G. Feigen
- Kevin O. Fogle

1. FAQ C. 12. - Reporting Company Status

Do beneficial ownership information reporting requirements apply to companies created or registered before the Corporate Transparency Act was enacted (January 1, 2021)?

FinCEN stated “Yes.” Beneficial ownership information reporting requirements apply to all companies that qualify as “reporting companies”, regardless of when they were created or registered. Companies are not required to report beneficial ownership information to FinCEN if they are exempt or ceased to exist (i.e., are formally terminated with the Secretary of State) as legal entities before January 1, 2024.

2. FAQ C. 13. - Reporting Company Status

Is a company required to report its beneficial ownership information to FinCEN if the company ceased to exist before reporting requirements went into effect on January 1, 2024?

A company is not required to report its beneficial ownership information to FinCEN if it ceased to exist as a legal entity (i.e., was formally terminated with the Secretary of State) before January 1, 2024. This means that the entity entirely completed the process of formally and irrevocably dissolving (i.e., was formally terminated with the Secretary of State). A company that ceased to exist as a legal entity before the beneficial ownership information reporting requirements became effective January 1, 2024, was never subject to the reporting requirements and thus is not required to report its beneficial ownership information to FinCEN.

Although state or Tribal law may vary, a company typically completes the process of formally and irrevocably dissolving by, for example, filing dissolution paperwork with its jurisdiction of creation or registration, 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).

If a reporting company continued to exist as a legal entity for any period of time on or after January 1, 2024 (i.e., did not entirely complete the process of formally and irrevocably dissolving (i.e., terminating) before January 1, 2024), **then it is required to report its beneficial ownership information to FinCEN**, even if the company had wound up its affairs and ceased conducting business before January 1, 2024.

Similarly, **if a reporting company was created or registered on or after January 1, 2024, and subsequently ceased to exist, then it is required to report its beneficial ownership information to FinCEN**—even if it ceased to exist before its initial beneficial ownership information report was due.

A company that is administratively dissolved or suspended—because, for example, it failed to pay a filing fee or comply with certain jurisdictional requirements—**generally does not cease to exist as a legal entity unless the dissolution or suspension becomes permanent**. Until the dissolution becomes permanent, such a company is required to report its beneficial ownership information to FinCEN.

3. FAQ C. 14. - Reporting Company Status

If a reporting company created or registered in 2024 or later winds up its affairs and ceases to exist before its initial BOI report is due to FinCEN, is the company still

required to submit that initial report?

FinCEN stated “Yes.” **Reporting companies created or registered in 2024 must report their beneficial ownership information to FinCEN within 90 days of receiving actual or public notice of creation or registration.** Reporting companies created or registered in 2025 or later must report their beneficial ownership information to FinCEN within 30 days of receiving actual or public notice of creation or registration. **These obligations remain applicable to reporting companies that cease to exist as legal entities—meaning wound up their affairs, ceased conducting business, and entirely completed the process of formally and irrevocably dissolving—before their initial beneficial ownership reports are due.**

It bears note that, if a reporting company files an initial beneficial ownership information report and then ceases to exist, then there is no requirement for the reporting company to file an additional report with FinCEN noting that the company has ceased to exist.

4. FAQ D. 17. - Beneficial Owner

Who should an entity fully or partially owned by an Indian Tribe report as its beneficial owner(s)?

An Indian Tribe is not an individual, and thus should not be reported as an entity's beneficial owner, even if it exercises substantial control over an entity or owns or controls 25 percent or more of the entity's ownership interests. However, entities in which Tribes have ownership interests may still have to report one or more individuals as beneficial owners in certain circumstances.

Entity Is a Tribal Governmental Authority. An entity is not a reporting company—and thus does not need to report beneficial ownership information at all—if it is a “governmental authority,” meaning an entity that is (1) established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States, and that (2) exercises governmental authority on behalf of the United States or any such Indian Tribe, State, or political subdivision. This category includes tribally chartered corporations and state-chartered Tribal entities if those corporations or entities exercise governmental authority on a Tribe's behalf.

Entity's Ownership Interests Are Controlled or Wholly Owned by a Tribal Governmental Authority. A subsidiary of a Tribal governmental authority is likewise exempt from BOI reporting requirements if its ownership interests are **entirely controlled or wholly owned** by the Tribal governmental authority.

Entity Is Partially Owned by a Tribe (and Is Not Exempt). A non-exempt entity partially owned by an Indian Tribe should report as beneficial owners all individuals exercising substantial control over it, **including individuals who are exercising substantial control on behalf of an Indian Tribe or its governmental authority.** The entity should also report any individuals who directly or indirectly own or control at least 25 percent or more of the ownership interests of the reporting company. (However, if any of these individuals own or control these ownership interests exclusively through an exempt entity or a combination of exempt entities, then the reporting company may report the name(s) of the exempt entity or entities in lieu of the individual beneficial owner.)