

FinCEN Clarifies CTA Reporting Requirements for Entities That No Longer Exist

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The material set forth below was developed before the 2024 and 2025 district court injunctions regarding the CTA (which were subsequently stayed and continue to be litigated). As a result, the material set forth below, including filing deadlines, may not be current. Please consult FinCEN's [website](#) for the latest filing due dates and other information regarding the CTA and its requirements.

On July 8, the Financial Crimes Enforcement Network (FinCEN) published three new [Frequently Asked Questions](#) (FAQ), C.12 – C.14, that address beneficial ownership information (BOI) reporting requirements under the Corporate Transparency Act (CTA) for entities that cease to exist. This new guidance indicates a further expansion of the CTA's reporting requirements and may come as a surprise to those following the CTA and its implementation. Businesses should review the FAQs closely and consider the implications.

A BOI Report Must Be Filed for a Nonexempt Reporting Company That Ceases to Exist

In short, FinCEN stated that any nonexempt reporting company that ceases to exist **on or after January 1, 2024**, must file a beneficial ownership report with FinCEN, regardless of whether it ceases to exist prior to the filing deadline for its initial beneficial ownership report. FinCEN described the following scenarios, each of which would require a beneficial ownership report for the applicable company:

1. A nonexempt reporting company began winding up its affairs and dissolving in 2023 but did not complete the process of "formally and irrevocably" dissolving until 2024.
2. A nonexempt reporting company is created or registered in 2024 and ceases to exist as a legal entity within 90 days of receiving actual or public notice of creation or registration.
3. A nonexempt reporting company is created or registered in 2025 and ceases to exist as a legal entity within 30 days of receiving actual or public notice of creation or registration.

In each of these three scenarios, the reporting company would be required to submit a BOI report to FinCEN, even though the entity has wound up its affairs and dissolved by the applicable BIO filing deadline.

Among other situations, FinCEN's recently published guidance will have an impact on entities formed in connection with an M&A transaction. One implication is that entities created to facilitate a merger (so-called

“merger subsidiaries”) would still have to comply with the BOI filing requirements even though they are merged out of existence prior to the deadline for their initial BOI reports. Some practitioners had been of the view that if the merger subsidiary was merged out of existence prior to its filing deadline, no BOI report would be required for such merger subsidiary. However, FinCEN’s guidance clarifies that, as of January 1, 2024, nonexempt, nonsurviving merger subsidiaries must file a BOI report regardless of when they merge out of existence.

FinCEN stated that the general reporting deadlines (which are different depending on when the entity is created or registered) apply to entities that have ceased to exist. Therefore, a nonexempt reporting company that intends to dissolve and cease to exist should consider filing its report prior to its dissolution so that it timely meets its BOI reporting requirements. FinCEN has confirmed that if a nonexempt reporting company files its initial BOI report prior to ceasing to exist, no additional report would need to be filed with FinCEN to notify it that such company has ceased to exist.

FinCEN also clarified that an entity that ceased to exist prior to January 1, 2024, is not required to submit a beneficial ownership report, as it was never subject to the CTA’s reporting requirements. Under FinCEN’s guidance, such entity must have entirely completed the process of formally and irrevocably dissolving under applicable state or Tribal law prior to January 1, 2024, in order for it to avoid the CTA reporting requirements.

Ceasing to Exist

In determining whether an entity has ceased to exist, FinCEN stated that state or Tribal law will control:

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).

...

For specifics on how to determine when a company ceases to exist as a legal entity, consult the law of the jurisdiction in which the company was created or registered. 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.

Businesses and their counsel should therefore review the applicable requirements in determining whether an entity has ceased to exist. In particular, entities that were terminated in late 2023 or early 2024 should be reviewed to confirm the exact timing the entities ceased to exist and whether there are any reporting obligations. Additionally, businesses should continue to monitor any changes in company or beneficial owner information that are required to be reported to FinCEN prior to the entity ceasing to exist.

Additional Questions to Consider

The latest guidance from FinCEN raises certain questions that businesses should consider, including the

following:

1. If a company intends to dissolve and will no longer exist, when should it file its BOI report?

FinCEN's guidance contemplates that a company could file its BOI report prior to completing the dissolution process or after it ceases to exist. We encourage companies to consider filing their BOI reports immediately prior to closing a transaction that will terminate such company's existence (whether by merger, dissolution or otherwise). This would bypass potential complications as to who and what to report for an entity that ceases to exist. However, if there is a delay between an entity's initial BOI report filing and the termination of its existence, there is the potential for changes in circumstances that could lead to additional filing obligations (i.e., updated reports to replace dated information).

2. What point in time should be reflected in the BOI report for an entity that no longer exists?

Generally, BOI reports are required to reflect current information as of the time of filing. If an entity intends to dissolve and files its BOI report prior to ceasing to exist, it should report information that exists at the time of filing. However, if it files the BOI report after it has completed dissolution and no longer exists, FinCEN's guidance is not clear with respect to what information should be reported. Absent additional guidance from FinCEN, a pragmatic approach would be to report the BOI information as of the time immediately before the entity ceased to exist since that would be as close to current information as possible. This assumes that no material time has lapsed between the dissolution and the actual filing of the initial BOI report.

3. Who is authorized to file a report for an entity that no longer exists?

If a BOI report will be filed for an entity that no longer exists, there will need to be an authorized person to file it. FinCEN has not offered clear guidance on who is required to act with respect to such a filing, so businesses will need to review authorizing resolutions and other considerations under state law in making a determination of the person authorized to complete such filing.

Troutman Pepper continues to monitor updates to the CTA and advise clients on CTA matters. If you have questions or concerns regarding how this new guidance may impact your reporting practices or obligations, please reach out to the authors or your primary Troutman Pepper contact.

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