

Locke Lord QuickStudy: Duty to File and Update U.S. Corporate Transparency Act Beneficial Ownership Reports

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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.

As reported in our earlier QuickStudies on the Corporate Transparency Act (the “CTA”)^[1] and the Regulations adopted by the Financial Crimes Enforcement Network (“FinCEN”), each company in existence on or after January 1, 2024 that is or was formed by a filing at any time with a Secretary of State or similar governmental authority in any U.S. state, protectorate, district, territory or Tribal authority (each a “Reporting Company”)^[2] must determine if a beneficial ownership report (a “BOIR”) containing personal information concerning its beneficial owners and control persons should be filed with FinCEN or whether the entity is exempt from filing a BOIR with FinCEN under one or more of the statutory exemptions. Beneficial ownership information filed with FinCEN is treated as “sensitive information”^[3] maintained by FinCEN in a “secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level”^[4] and should be treated as such by the Reporting Company and its management.

Unfortunately, the filing/exemption analysis or duty to file or update BOIRs does not end with an initial BOIR filing or with a determination that an exemption may apply. After the initial filing or exemption determination is made, it is important that the Reporting Company review its filing/exemption status and the information on file with FinCEN for itself and for each of its subsidiaries and beneficial owners since it may be necessary to amend or update filings or reconsider the applicability of an exemption or the loss of an exemption to the entity or its subsidiaries.^[5]

Changes in the name, trade names, size or form of the entity, its beneficial owners (including for this purpose equity and profits interest owners, convertible debt holder, officers, control persons, etc.), state of formation, address, or exempt status will require updated filings with FinCEN by each Reporting Company that has filed an initial BOIR or the filing of an initial BOIR. Similarly, changes in information concerning the entity’s beneficial owners (for example, changes in name, status, address, government issued ID number, government issued ID document) will require updates to the Company’s FinCEN BOIR unless the BOIR of the company included the FinCEN identifier of the individual beneficial owner and the individual updated his, her or their data on file with FinCEN when the change in reported information occurred. The deadline for amendments or updates to Reporting Company reports and to Beneficial Owner FinCEN identifier filings is 30 calendar days from the date of the event.

Non-exempt Reporting Companies existing prior to January 1, 2024, will need to make an initial BOIR filing before January 1, 2025, whether or not they are or were dissolved on or after January 1, 2024. Reporting Companies formed in 2024 have 90 calendar days to make an initial BOIR filing unless an exemption applies, but starting in 2025, the deadline for making initial BOIR filings is only 30 calendar days from the date of formation.

For entities formed prior to January 1, 2024, the initial BOIR need not include the personal information or FinCEN identifier of a Company Applicant, while for entities formed in 2024 or later years, Company Applicant information is required for a BOIR to be complete. There is no duty to update Company Applicant information unless erroneous information concerning a Company Applicant was included in the initial BOIR.

The following is a non-exhaustive list of some of the changes affecting Reporting Companies that might trigger mandatory amendments or updates to BOIRs already filed or trigger the need to file an initial BOIR with FinCEN:

- Formation of a new entity
- Change in entity name or trade names
- Changes in the form of entity or state of formation
- Change in address
- Mergers, acquisitions, spinoffs or other divestitures
- Equity or debt financings or transfers
- Issuance of options, warrants or rights
- Registration or deregistration as a reporting company under the Securities and Exchange Act of 1934, as amended (the “34 Act”)
- Loss of or qualification for a BOIR filing exemption
- Change in Beneficial Owners
- Changes in the personal information for any Beneficial Owner

With less than four months remaining in 2024, it is important that each potential Reporting Company collect, preserve and safeguard the information that it might need to comply with the CTA reporting requirements.

On July 26, 2024, FinCEN issued a Notice to Financial Institution Customers on Beneficial Ownership Information Requirements with a Reference Guide highlighting the differences between the information to be collected by financial institutions from customers and the information that must be provided by Reporting Companies directly to FinCEN in BOIRs.

The use of a third-party service provider to collate and assemble the information and make the filing for a Reporting Company and its subsidiaries might be helpful in meeting the deadlines imposed by the CTA Regulations. However, as FinCEN has noted on its website, there have been fraudulent attempts to solicit beneficial ownership information from Reporting Companies and their managements and beneficial owners under the guise of assisting Reporting Companies to make timely filings. Accordingly, it is important to carefully vet any third-party service provider and its CTA platform to assure data security and integrity.

Having company, company applicant and beneficial owner information readily available will be especially important when an entity is involved with an offering, merger, acquisition, divestiture, sale or issuance of securities or debt that might trigger a reporting requirement in the future. In this regard, updating governance documents before the end of 2024, such as shareholders' agreements, limited partnership agreements, limited liability company

agreements, joint venture agreements, employment agreements and template subscription agreements to include duties and obligation of owners, senior executives and other persons in substantial control of the entity to provide and update the necessary personal information and documentation might be in order. Similarly, collecting and preserving Company Applicant information for entities formed in 2024 and later years will be important if, as and when initial BOIRs become necessary.

FinCEN has provided and periodically updates a series of Frequently Asked Questions and a Small Entity Compliance Guide to assist Reporting Companies and their managements with complying with the CTA and FinCEN's Regulations.

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[1] CTA, 31 U.S.C. 5336

[2] The BOIR requirement also applies to foreign entities qualified to do business in the United States by a filing with a similar entity.

[3] CTA, Section 6402(6).

[4] CTA, Section 6402(7)(A).

[5] Exemptions may be lost, claimed or recovered over time. For example, (i) the Securities and Exchange Act reporting company exemption may be lost if the entity deregisters or goes private or again becomes applicable if a new registration is filed, and (ii) the large operating company exemption may be lost if the number of

employees drops below 21 or revenues fall below \$5 million, or this exemptions could be reclaimed if the entity again qualifies for the large operating company exemption

because it again meets the applicable size and revenues. If an exempt Reporting Company no longer qualifies for any exemption, it must the file a BOIR. If it was a

Reporting Company that filed an initial BOIR and now qualifies for any exemption, it must file a BOIR claiming the exemption.

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