

Locke Lord QuickStudy: The Corporate Transparency Act: End of Year Filing Deadline Rapidly Approaches

Locke Lord LLP

WRITTEN BY

Barry J. Bendes

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.

Reporting companies that existed prior to January 1, 2024, only have until January 1, 2025, to file their initial beneficial ownership information reports (BOI Reports) with the Financial Crimes Enforcement Network (FinCEN) under the Corporate Transparency Act (CTA). Some entities may be exempt from the CTA filing requirement under one or more of the 23 statutory filing exemptions or may not even be covered under the CTA at all depending upon where or how the entity was formed.

With less than 45 business days remaining before the deadline to file BOI Reports with FinCEN, each reporting company should determine if it is exempt and who are or may be deemed to be its beneficial owners for CTA reporting purposes. The CTA definition of a beneficial owner is very broad and includes persons owning 25% or more of the equity or profits interests (including interests not yet owned under warrants, rights, grants, options, convertible debt instruments, etc.) as well as persons in substantial control of the entity (such as, for example, by contract or as senior executive officers, members of executive or management committees, managers of LLCs, general partners of limited partnerships, persons having the power or authority to appoint or remove senior level officers or directors, and persons otherwise exercising important management functions).

Reporting Companies formed this year only have 90 days from the date of formation to file initial BOI Reports. Starting in 2025, newly formed entities will only have 30 days from the date of formation to file initial BOI Reports with FinCEN.

FinCEN has made clear through its regulations, guides, FAQs and outreach programs that the BOI Report must be timely filed. There is no provision for extensions of the filing deadlines other than for hurricane specific exemptions granted to certain companies located in designated areas affected by Hurricane Milton, Hurricane Helene, Hurricane Debby, and Hurricane Francine.

An initial BOI Report is required if a non-exempt reporting company formed prior to January 1, 2024, no longer exists or has no business operations or assets. Similarly, an initial BOI Report is required for non-exempt entities formed on or after January 1, 2024, whether or not they were acquired, dissolved, merged out of existence during

or after the applicable filing deadlines, or have no assets or business.

Depending upon the local state laws involved, a conversion or redomestication may be considered a formation requiring both an initial BOI Report for the resulting entity and an initial or amended BOI Report for the original entity. This is an issue best addressed by trained legal professionals since local law will govern.

Since the definition of a domestic Reporting Company includes entities formed by a filing with a secretary of state (or equivalent authority) it is critical for each domestic entity formed in the United States or a foreign entity qualified to do business in the United States to determine if it is a reporting company or eligible to claim an exemption under the CTA. If an entity currently is able to claim an exemption from BOI Report filing, it should document the basis for the exemption and facts supporting that conclusion and preserve the documents necessary to support that decision since facts can change and an exemption that was once available to an entity may not apply to the entity in the future.

For incorporated entities, or limited liability companies, the formation document is usually filed with a secretary of state or an official or office having like power and authority. For other entities, the determination is not always so clear and the assistance of a trained legal profession is often necessary. Under a recent FinCEN FAQ, FinCEN has interpreted the term “equivalent authority” very broadly to include agencies other than what one would normally consider the equivalent of a secretary of state. Under the FAQ, the term might be deemed to include such diverse governmental offices such as an education department, recorder of deeds, attorney general’s office, county clerk or other governmental authority where a certificate, articles of formation, master deed, or other documents are filed to “form the entity”. Thus, for a condominium or homeowners’ association that is an unincorporated entity, this might include the recorder of deeds or county clerk where the declaration, easement or other governance document is recorded to create or form the unincorporated association.

Although there is no requirement for periodic or annual BOI Report filing, if there is any change in the information filed in a BOI Report (e.g., redomestication, conversion, ownership changes, changes due to an acquisition, merger, spinoff, etc., changes in senior executive officers or other persons having substantial control, or changes in the personal information or government issued ID number or document of each individual disclosed in the initial BOI Report or an updated report), then the reporting company has only 30 days to file an amendment to update the entity’s and the individual’s information on file with FinCEN. However, individuals who have provided a FinCEN identifier to the reporting company for purposes of a BOI Report, must personally keep their information current by amendments to their personal filing with FinCEN made within 30 days of a change in the personal information on file. The update by the individual holding the FinCEN identifier will automatically update the reporting company’s information concerning such individual.

Whether or not an entity is currently exempt from a BOI Report filing, collecting a FinCEN identifier (a unique number issued to an individual by FinCEN) from each beneficial owner of a reporting company, or collecting and securing the necessary personal information (full legal name, address, date of birth, acceptable government issued ID number and copy of government issued ID document) from each beneficial owner should be considered by the management and owners of each reporting company. This can be a heavy burden, especially for entities in complex ownership structures or where minors, guardians, trusts, trustees and trust beneficiaries, or complex loan covenants are involved. For entities formed on or after January 1, 2024, the same information as is collected for beneficial owners will need to be obtained and preserved for Company Applicants involved in the formation of the

reporting company for use with the filing of the initial BOI Report during the 90 or 30 day post formation period or whenever the reporting company no longer has the ability to claim an exemption from filing a BOI Report.

The financial penalties for failure to file are heavy and assessed on a per day basis. Criminal penalties can also be imposed. Both the reporting company and its management personnel can be liable for these fines and penalties, as can any person that fails to provide the necessary information to permit the reporting company to timely file its BOI Report.

RELATED INDUSTRIES + PRACTICES

- [Corporate](#)
- [Finance + Banking](#)
- [Financial Services Litigation](#)
- [Real Estate](#)
- [Tax](#)