



Alerts

Updated FinCEN FAQs Provide Three Important Clarifications on Reporting Obligations Under the Corporate Transparency Act (CTA)

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Hinshaw Alert

The Corporate Transparency Act (the CTA) went into effect earlier this year, although many uncertainties about the CTA's application still remain. To help remedy those uncertainties, the Financial Crimes Enforcement Network (FinCEN) has updated its [FAQs](#) several times since the CTA has gone into effect. The current FAQs provide three important clarifications that subject companies should be aware of.

1. Clarification on "Large Operating Company" Exemption

Under the CTA, there is a "large operating company" exemption, which has three qualification requirements. One of the requirements to qualify for that exemption is that the subject company must have "*filed a Federal income tax or information return in the United States for the **previous year** demonstrating more than \$5,000,000 in gross receipts or sales.*"

As provided in item L.9 of FAQs, FinCEN has now clarified that **if a company has not filed its tax/information return for the immediate "previous year" by the time its Beneficial Ownership Information (BOI) report is due, it must look back to its most recently filed tax/information return.**

By way of example, if a company's 2023 tax/information return is not filed by the due date of its BOI report, it must look to the gross receipts in its 2022 tax/information return to determine whether it qualifies under this exemption.

2. Clarification on Reporting Obligations for Companies that Have Ceased to Exist

While you might assume that if a company is no longer in business, it would not be required to file a BOI report, that is not always the case. The updated FAQs from FinCEN provide important clarifications regarding the reporting obligations for companies that have ceased to exist. More specifically, according to items C.13 and C.15 of the FAQs:

- A company that ceased to exist (i.e. *actually filed the necessary paperwork for formal dissolution, and that paperwork was fully processed*) **before** the CTA's effective date of January 1, 2024, would **not be obligated** to file a

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BOI report; and

- A company that **is in existence for any period of time after January 1, 2024, is obligated** to file a BOI report.

Under the FAQs, the determination of exactly when a company is deemed to have ceased existence as a legal entity is based on the laws of its jurisdiction of formation. The FAQ further clarifies that the above standard regarding companies that are in existence after January 1, 2024, applies to:

- companies that ceased doing operational business before January 1, 2024, but filed for formal dissolution, or where its dissolution filings were not fully processed until after January 1, 2024.
- companies formed before January 1, 2024, with an initial BOI report due by January 1, 2025.
- companies formed at any time after January 1, 2024.

3. Clarification on Providing Employer Identification Numbers

Under the CTA, a reporting company must provide on its BOI report either:

- an Employer Identification Number (EIN);
- a Social Security Number (SSN);
- an Individual Taxpayer Identification Number (ITIN); or,
- with respect to foreign entities that have not been issued a TIN, a tax identification number issued by a foreign jurisdiction (*and the name of that jurisdiction*).

For newly formed companies, an EIN can often be obtained instantly online (through the IRS' free online portal) or within four to five weeks, where the company is required to submit a formal application (i.e., *Form SS-4*) to obtain its EIN.

While the above is generally the norm, it is possible that a newly formed company may not be able to obtain its EIN prior to its BOI report filing deadline. In that event, item G.3 of the FAQ clarifies that the subject company should actually wait and file its BOI report as soon as it gets its EIN (even if that date is after its actual BOI deadline).

The FAQs further state that in such an event, it would be best practice for the subject company to retain all applicable documentation evidencing its efforts to comply with its BOI reporting obligations in a timely manner.

What's Next for Subject Companies?

These clarifications emphasize the fact that the CTA's interpretation remains very much in flux at the moment and the importance of companies staying abreast of any new/modified FAQs or other CTA-related guidance issued by FinCEN.

Companies need to understand their reporting obligations under the CTA to avoid potentially harsh civil and/or criminal penalties. For more detailed guidance, please consult the [FAQs](#) or contact Hinshaw for personalized assistance.

Related Insights

- [Alabama Federal Judge Finds the Corporate Transparency Act \(CTA\) Unconstitutional: FinCEN Responds](#), March 20, 2024
- [REMINDER: New Federal Corporate Transparency Act Set to Impose Significant New Reporting Requirements and Noncompliance Penalties in 2024](#), December 12, 2023
- [The Corporate Transparency Act Is Almost Here – Are You Ready?](#), January 31, 2023