

Publications

Corporate Transparency Act Reporting by Dissolved Companies

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CTA Background

The Corporate Transparency Act (CTA) is a new federal law that requires millions of companies to report to the federal government information about the company and personal information about individuals who directly or indirectly exercise substantial control over the company or directly or indirectly own or control 25% or more of the company-- referred to as the company's "beneficial owners."

Reporting companies in existence before January 1, 2024 have until January 1, 2025 to file their initial beneficial ownership (BOI) reports. New reporting companies formed or registered between January 1, 2024 and December 31, 2024 have 90 days to file their initial BOI reports. New reporting companies formed or registered on or after January 1, 2025 will have 30 days to file their initial BOI reports.

Some Dissolved Reporting Companies are Required to File BOI Reports, Despite Being Dissolved

On July 8, 2024, FinCEN, the bureau of the U.S. Treasury that administers the CTA, issued FAQs with guidance on certain questions about the effect of the "dissolution" of a company on the company's obligation to file an initial BOI report.

One question is whether a reporting company that was in existence prior to 2024 but that is dissolved, wound up and terminated during 2024 and prior to the January 1, 2025 deadline for filing initial BOI reports nonetheless is required to file an initial BOI report, even after the company has dissolved, wound up and terminated.

A related question is whether a company formed on or after January 1, 2024 but dissolved, wound up and terminated prior to the 90 day initial BOI reporting deadline nonetheless is required to file an initial BOI report, even after the company has dissolved, wound up and terminated.

In the absence of clear contrary guidance under the CTA, many had concluded that no initial BOI filing was required in either of those two circumstances.

But the FAQs issued by FinCEN on July 8, 2024 instead indicate that an initial BOI filing indeed is required in both of those circumstances.

CTA Compliance Takeaways and Open Questions

Companies that were dissolved during 2024 should be revisited now to determine whether an initial BOI report was made and, if not, whether an initial BOI report should now be made before the applicable filing deadline.

The new FAQs leave several questions unanswered. For example, after a company dissolves, or ceases to exist, does the company even have entity power or authority to act sufficient to make the BOI filing, and how does one determine the direct and indirect owners and persons deemed to directly or indirectly exercise substantial control over a dissolved or non-existent company?

Answering those questions could require analysis of the applicable business organizations law and company governing documents to determine what individuals would be deemed to directly or indirectly exercise substantial control over the company or directly or indirectly be entitled to post-dissolution distributions after the company has ceased to exist.

FinCEN's rationale for these new FAQs also raises a separate question about initial BOI reporting obligations of companies that were in existence prior to 2024 but, during 2024, *merged out of existence* into another company.

Please contact one of the authors of this alert or your regular Vorys contact attorney for more information about the subject matter of this alert and other CTA compliance matters.