

The Corporate Transparency Act: Coming to A Reporting Company Near You

AUGUST 20, 2024

The Corporate Transparency Act (CTA) establishes beneficial ownership information (BOI) reporting requirements for the vast majority of privately held corporations, limited liability companies (LLCs), and other similar entities created in, or registered to do business in, any of the states of the United States (U.S.), known as “reporting companies.”^[1] Millions of reporting companies created prior to January 1, 2024 are facing the fast-approaching BOI reporting compliance deadline of January 1, 2025. Yet, a recent survey of 200 general counsels, corporate secretaries, and other legal and compliance executives from across a broad range of industries revealed that 83% of respondents were “concerned or very concerned” about their own organization’s readiness to comply with the CTA.^[2]

The U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) published a set of BOI Frequently Asked Questions (FAQs) on March 24, 2023 and went on to release five updated sets of answered questions throughout the remainder of 2023. Through the first seven-and-a-half months of 2024, FinCEN has already released six additional sets of answered questions, with the three most recent having been released during the 44-day span from June 10 to July 24.^[3] We expect these regular releases to continue as the year winds down. Below, we summarize some of the more notable FAQs released in recent months.

JUNE 10, 2024 – HOAS, INDIAN TRIBES & CERTAIN EXEMPTIONS

The FAQs issued or updated in June 2024 cover reporting requirements for the status of homeowners associations (HOAs) as reporting companies; the large operating company exemption; the public utility exemption (F.8); acceptable forms of identification (F.5); and Indian Tribes.

In FAQ C.10, FinCEN confirmed that HOAs created by the filing of a document with a secretary of state or similar office are considered reporting companies and must file BOI, absent an exemption.

FAQ L.9 noted that qualification for the large operating company exemption hinges on the company’s Federal income tax or information return filed “in” the previous year. Therefore, a company should use the return filed in the previous year in determining its qualification for the exemption. But, if an exempt company subsequently files a tax return demonstrating that it no longer qualifies for the exemption (or any other exemption), it has 30 days from the date of the tax return to file a BOI report.

FAQ A.5 clarified that “Indian Tribe” means any Indian or Alaska Native tribe acknowledged by the Secretary of the Interior, who must annually publish a list of all recognized tribes in the Federal Register. FAQ C.11 explained that a legal entity created by a filing with a Tribal office or agency is a reporting company required to file BOI, unless it qualifies for an exemption, even though the office or agency might be called something other than a “secretary of state.” On the other hand, tribal corporations formed through the issuance of a charter of incorporation by the Secretary of the Interior are not reporting companies. FAQ D.17 provided further guidance for Indian Tribes to analyze who their beneficial owners are.

JULY 8, 2024 – APPLICABILITY AND TIMING

The FAQs issued or updated on July 8, 2024 included an update to FAQ D.17 (discussed above) and otherwise deal with CTA applicability and timing issues.

FAQ C.12 reminded the public that BOI requirements apply to all reporting companies, regardless of when they were created or registered. FAQs C.13 and C.14 explained that a company that has entirely completed the process of formally and irrevocably dissolving prior to January 1, 2024 is not considered a reporting company. A formal and irrevocable dissolution may occur, as an example, by filing dissolution paperwork, receiving written confirmation of dissolution, paying related taxes or fees, ceasing to conduct any business, and winding up affairs (e.g., fully liquidating and closing all bank accounts). A reporting company that did not entirely formally and irrevocably dissolve before January 1, 2024 (including reporting companies created or registered on or after January 1, 2024 that subsequently ceased to exist) must report BOI.

JULY 24, 2024 – TAXPAYER IDENTIFICATION NUMBERS

The FAQs issued or updated on July 24, 2024 concern Taxpayer Identification Numbers (TINs).

To report BOI, a reporting company must report its TIN. A TIN could be an Employer Identification Number (EIN), a Social Security Number (SSN), an Individual Taxpayer Identification Number (ITIN), or (if it has none of the foregoing) a tax identification number issued by a foreign jurisdiction.

FAQ F.13 illustrated that a disregarded entity that is a reporting company should report one of the above TINs depending on the following circumstances:

- If the entity has its own EIN or is owned by a U.S. entity that has an EIN, then it may report that EIN as its TIN.
- If the entity is owned by another disregarded entity or a chain of disregarded entities, then it may report the TIN of the first owner up the chain of disregarded entities that has a TIN, as its TIN.
- If the entity is a single-member LLC or otherwise has only one owner that is an individual with an SSN or ITIN, then it may report that individual’s SSN or ITIN as its TIN.
- If the entity does not have an EIN, then it is not required to obtain one so long as it can instead provide another type of TIN or a tax identification number issued by a foreign jurisdiction.

FAQ G.3 pointed readers toward the Internal Revenue Service’s (IRS) free online application for an Employer Identification Number (EIN). In some situations, a reporting company needs to file a Form SS-4 with the IRS to receive an EIN. An applicant who submits a Form SS-4 by fax should receive an EIN in four business days, while an applicant who submits by mail should receive an EIN in four to five weeks. However, in some circumstances, an EIN may take six to eight weeks to arrive.

FinCEN encourages reporting companies currently unable to submit their BOI (due to the lack of a TIN) to request all necessary information as early as practicable and retain documentation associated with their efforts to comply with the BOI reporting requirements in a timely manner.

WINSTON & STRAWN’S CTA TASK FORCE IS ABLE AND READY TO ASSIST

January 1, 2025 will be here before we know it. Is your organization prepared to comply with the CTA? Contact a member of our [CTA Task Force](#) today.

[1] Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59,498 (Sept. 30, 2022), <https://www.federalregister.gov/d/2022-21020>.

[2] See Corporation Services Company, *The Corporate Transparency Act: Readiness, Concerns, and Implications*, <https://www.cscglobal.com/cscglobal/pdfs/2024-CTA-Report.pdf>.

[3] FinCEN, *Beneficial Ownership Information Frequently Asked Questions* (issued Mar. 24, 2023; updated July 24, 2024), <https://www.fincen.gov/boi-faqs>.

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