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FinCEN Throws Another Curveball: Beneficial Ownership Reporting for Dissolved Companies

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This week, FinCEN issued new FAQs interpreting the obligations of the Corporate Transparency Act (“CTA”) that would require entities that were dissolved prior to the due date of the beneficial ownership initial report (“BOI Report”) to file such report regardless of their dissolution. This guidance will be significantly impactful on private equity firms and other businesses that are created to engage in mergers and acquisitions or other corporate transactions and then dissolved. In particular, any entity that is formed solely to facilitate a merger or other transaction and whose corporate existence would be terminated following the closing of such merger or transaction will now need to file a BOI Report even if the entity only exists for a few weeks unless it otherwise qualifies for an exemption. This guidance will also require these entities, which typically do not obtain taxpayer identification numbers, to obtain taxpayer identification numbers (“TINs”) for the sole purpose of filing the BOI Report. This may be particularly challenging for companies that were dissolved within the past seven months without the benefit of this guidance because there may not be an authorized person to obtain a TIN for them.

New Guidance for Dissolved Companies

Enacted concurrently with the AML Act of 2020, the CTA requires certain businesses to file reports with the federal government disclosing the names, addresses, dates of birth, and identification documents of their beneficial owners, among other information. FinCEN issued regulations implementing the CTA that took effect on January 1, 2024. Based on questions from the public, FinCEN continues to issue guidance interpreting the regulations. Recently, FinCEN issued two new FAQs:

- [C. 13](#). Is a company required to report its beneficial ownership information to FinCEN if the company ceased to exist before reporting requirements went into effect on January 1, 2024?
- [C. 14](#). If a reporting company created or registered in 2024 or later winds up its affairs and ceases to exist before its initial BOI report is due to FinCEN, is the company still required to submit that initial report?

While FinCEN stated that a company that was dissolved before Jan. 1, 2024 did not have a reporting obligation, FinCEN stated that an entity that was dissolved after Jan. 1, 2024 but prior to the due date of its BOI Report would still have an obligation to file the report with FinCEN to comply with the CTA reporting requirements.

Did the Bureau Change its Mind?

This guidance from FinCEN is particularly concerning as the bureau appears to be backtracking from statements made in the final rule. Specifically, in assessing the costs to implement the rule, FinCEN discounted the number of filings for 2024 by offsetting the estimated newly formed companies with those that would be dissolved within the first year.¹ Therefore, FinCEN used expected dissolutions to lower the assessed costs of implementing the rule for 2024, yet FinCEN's recent guidance includes dissolved companies in those required to file BOI Reports. Not only is FinCEN having its cake and eating it too, but the costs on dissolved companies to file these reports will be significantly higher. Additionally, in response to other [FAQs](#), FinCEN indicated that it was more interested in having the information "at the time of filing" rather than including historical information. However, any filing on a company that has dissolved prior to the due date of its submission is inherently historical.

How to Manage Dissolved Companies under FinCEN's New Guidance

Going forward, persons engaged in corporate transactions that involve entities formed to facilitate the transaction must consider their obligations to file BOI Reports for such entities regardless of the length of time for which they exist. This will include determining whether an exemption applies, identifying the beneficial owners, and determining the need to obtain a TIN from the IRS. Such persons may also want to consider structuring the formation of such entities so that the entity is either wholly owned or entirely controlled by an exempt entity to reduce unnecessary filings.

Persons that controlled or owned companies that were dissolved within the last seven months must now determine if such companies were subject to the reporting obligations of the CTA, including the application of an exemption. For any non-exempt entities that were dissolved without the filing of a BOI Report, such entities may need to file a BOI Report with FinCEN, including managing the logistical challenges of filing a report that requires a TIN for entities that dissolved without a TIN and identifying beneficial owners for an entity that has ceased to exist. Unfortunately, FinCEN did not provide guidance on how dissolved companies should complete their filings, leaving them to figure out these reporting challenges.



If you have any questions concerning these developing issues, please do not hesitate to contact any of the following Paul Hastings lawyers:

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¹ FinCEN used data that included both formations and dissolutions to determine the number of reporting entities that would exist on Jan. 1, 2024 as 32,556,929 to estimate the number of initial BOI Reports filed in 2024. Using this same data, FinCEN determined that there would be approximately 5 million new entities created every year. However, for 2024, FinCEN did not include newly created companies because "[w]hile new reporting companies may be created during this year as well, FinCEN notes that some existing companies will dissolve and not file within the first year, though FinCEN does not account for dissolutions in the analysis." 87 Fed. Reg. 59498, 59569 (Sept. 30, 2022).

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