

The Corporate Transparency Act – Recent Updates on the Eve of the CTA’s Effective Date

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The fourth installment in a multi-part series looking at the new Corporate Transparency Act describes recent updates from FinCEN to its CTA guidance as the law is set to take effect next week.

The January 1, 2024, effective date of the Corporate Transparency Act (the “CTA”) has almost arrived. Many companies and firms have been preparing to comply with the new law, which will require reporting companies to add extra steps to their checklist when forming new entities and to promptly receive from their beneficial owners changes to any information included on prior reports, including mundane details such as changes to a beneficial owner’s home address.

FinCEN has issued recent guidance that, on balance, is generally helpful for reporting companies. Below is a recap of the more material CTA guidance that FinCEN has issued in the last couple months.

Extended Deadline to file Initial Report for Reporting Companies formed or registered in 2024

The regulations issued by FinCEN in September 2022 initially required domestic reporting companies that were formed (or foreign reporting companies that were first registered in the United States) on or after January 1, 2024, to file their initial report with FinCEN within 30 days after formation or registration. In November 2023, FinCEN modified this rule to provide that reporting companies formed or registered during the 2024 calendar year have 90 days after formation or registration to file their initial report with FinCEN. For reporting companies formed or registered on or after January 1, 2025,

the prior 30-day deadline remains in effect.

Effective Date for information reported on the Initial Report

Questions had arisen about whether the initial report should reflect information accurate as of the formation or registration date for a reporting company or the date of filing of the initial report. Many new entities are formed before the entity’s ownership is confirmed and before any stock, membership interests, or other equity are issued. If the initial report must reflect information that was accurate as of the formation date, a company may have to file both an initial report and an updated report to reflect changes that occurred within the first 30 days after formation.

In a Frequently Asked Questions document posted to its website, FinCEN helpfully clarified in November 2023 that the initial report should only include information accurate as of the time of filing of the report, eliminating the need to file both an initial report and updated report to reflect changes in reporting company information that occurred before filing of the initial report.

FinCEN Identifiers for Entities

The CTA permits a reporting company to report an individual’s FinCEN Identifier in lieu of reporting the required information of a beneficial owner or a company applicant. A “FinCEN Identifier” is a number that an individual can obtain from FinCEN by filing an application containing the same information that would be reported to FinCEN if that individual was a beneficial owner or company applicant of a reporting company. By reporting an individual’s

FinCEN Identifier, the reporting company can shift to the individual the obligation to file updated reports whenever changes occur to the individual's relevant information.

FinCEN's regulations also permit entities to obtain FinCEN Identifiers by filing an application containing all information that the entity would be required to include in an initial report. However, FinCEN had delayed finalizing its rules describing the circumstances when an entity's FinCEN Identifier could be included in a report.

In November 2023, FinCEN finalized its regulations describing when entity FinCEN Identifiers could be included in reports. A reporting company may report an entity's FinCEN Identifier in lieu of an individual beneficial owner's information if:

(a) The entity has obtained a FinCEN identifier and provided it to the reporting company;

(b) The individual is a beneficial owner of the reporting company solely by virtue of holding an interest in the entity with the FinCEN Identifier; AND

(c) The beneficial owners of the entity and the reporting company are the same individuals.

It may be the case that an individual does not hold any ownership interests in a reporting company directly but qualifies as a beneficial owner by holding ownership interests in another entity that, in turn, holds ownership interests in the reporting company. In this instance, if both the reporting company and the other entity have identical beneficial owners, the reporting company could include the entity's FinCEN Identifier rather than the individual's information. By taking this approach, the reporting company shifts the burden of keeping the individual's information up to date on its CTA reports to the entity with the FinCEN Identifier.

However, use of an entity FinCEN Identifier can pose traps for the unwary. If the beneficial owners of the reporting company and the entity with the FinCEN Identifier cease to be identical (for example, the reporting company may hire a new senior officer or admit another individual as a 25%+ direct owner), the reporting company will need to file an updated report with information for all beneficial owners. FinCEN noted this requirement in its explanation

accompanying the adoption of the rule regarding use of entity FinCEN Identifiers but did not describe this requirement in the text of the regulations.

Additional guidance will likely be forthcoming in the new year

Reporting companies and practitioners should stay updated on the law's developments and may wish to register for email alerts from FinCEN via the FinCEN's website.

Once the CTA takes effect and companies and firms begin filing reports, new issues and wrinkles in the law's interpretation will likely surface. The fact that FinCEN has issued updates in recent months that are generally helpful to industry and practitioners is a good sign that the agency will be watching the law's rollout and responsive to feedback received from the market.

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