October 23, 2024

The Time to Make Initial CTA Filings Is Now

With barely more than two months to go until the end of the year, now is the time for reporting companies (entities created by filing a document with a secretary of state or similar office under the law of a state or Indian tribe) formed prior to 2024 to make their initial beneficial ownership information reports (BOIRs) pursuant to the Corporate Transparency Act (CTA). The deadline provided for in the CTA for pre-2024 reporting companies is January 1, 2025, but you don't want to wait until the last moment to make a required filing. The BOIR requires identifying a reporting company's beneficial owners, and beneficial ownership under the CTA is both a function of equity ownership and substantial control over the subject reporting company. Consequently, determining who the beneficial owners are is a process in itself, never mind having to also report them. The Department of the Treasury's Financial Crime Enforcement Network (FinCEN), which is charged with administration of the CTA, anticipates that millions of filings may be made over the next few weeks, and it is unclear whether FinCEN's reporting portal will become overwhelmed. With all that in mind, here are a few tips to facilitate a smoother BOIR filing process:

- If you have not started reviewing your CTA obligations, that should begin immediately. The analysis and information that go into each BOIR filing can vary widely, and since filing is the reporting company's obligation, it is crucial to identify beneficial owners as soon as possible so they can provide the requisite information for the BOIR.
- Consider now how the BOIR will be filed. The reports may be filed directly with FinCEN, or filers may use one of the many third-party services that offer assistance with the filings. If filing directly with FinCEN, consider using the PDF filing template that FinCEN has made available. Using the PDF ensures that you have a copy of what was filed and that if an updated filing is later required, the existing PDF only needs to be updated and refiled.
- Although there are several exemptions available to having to file a BOIR, do not assume that you will qualify for one. The exemptions are narrowly constructed and require close analysis. For example, the exemption for "inactive" entities involves meeting six different criteria, including that the entity was formed prior to 2020 and does not hold any assets—not that an entity is merely dormant.
- If you dissolved a reporting company this year thinking you could avoid having to file a BOIR, FinCEN dictates a different outcome. Over the summer, FinCEN announced that entities in existence on January 1, 2024, even if subsequently dissolved, are required to file an initial BOIR.
- There are still several legal challenges to the CTA working their way through various courts, but do not rely on the possibility of a last-minute filing reprieve from some federal district court.
- If you are a beneficial owner of more than one reporting company, consider obtaining a FinCEN identifier. It will save the reporting company time with its initial filing and potential subsequent updates.

If you need advice regarding CTA obligations, please feel free to reach out to your existing Day Pitney counsel, and if you do not have one, you can contact a member of the Day Pitney CTA team at CTA@daypitney.com.

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