

Corporate Transparency Act: FinCEN Updates FAQs on Beneficial Ownership Information

Article By:

Jeff C. Dodd

Kevin E. Gaunt

J. A. Glaccum

Carleton Goss

Tyler Grant

Robert J. Hahn

As part of our continued commitment to providing our clients with the latest updates on the Corporate Transparency Act (“CTA”), we wanted to apprise you of a few updates and clarifications from Financial Crimes Enforcement Network (“FinCEN”) regarding application of the final regulations implementing the beneficial ownership reporting requirements of the CTA.

For additional reference, please see these prior Hunton Client Alerts for a [general overview of the CTA](#) and [key considerations for securitization entities](#) and [real estate entities](#).

On January 12, 2024, FinCEN updated its Beneficial Ownership Information Frequently Asked Questions (“FAQs”) to include new information and clarifications about reporting companies, beneficial owners, company applicants, and other reporting requirements. FinCEN’s FAQs for the CTA may be found here: <https://www.fincen.gov/boi-faqs>. We briefly summarize below some of the notable items in this update:

FAQ D.12: If a beneficial owner of a reporting company is a corporate entity, reporting companies ordinarily must report individuals (not corporate entities acting as an intermediary) (1) who exercise substantial control over the reporting company or (2) own or control at least 25% of the ownership interests in the reporting company through the corporate entity.

The aim of the CTA is to eliminate monetary malfeasance through shell entities/companies or financial camouflage. As such, if a beneficial owner of a reporting company is a corporate entity,

reporting companies should report (1) individuals who exercise substantial control over the company or (2) individuals who own or control¹ at least 25% of the ownership interests in the reporting company through the corporate entity. Only in very limited circumstances do individuals not need to be reported. One is where individuals possess the requisite ownership interests entirely through an exempt entity, in which case the reporting company may report the name of the exempt entity. The other special circumstance arises if the beneficial owners of the reporting company and the intermediate company are the same individuals, then a reporting company may report the FinCEN identifier and full legal name of the intermediate company.

FAQ E.5: Reporting companies require case-by-case analysis on what individual qualifies as a company applicant “primarily responsible for directing the filing of the creation or registration document.”

Recall that at least one individual, and at most two, are required to be reported as company applicants when filing BOI for a reporting company. One is the person who directly files the document with the secretary of state or similar office (as opposed to who signs the creation or registration document).

The other, if not the same person, is the individual who “is primarily responsible for directing or controlling the filing.” FinCEN provides additional guidance regarding who this individual is for purposes of the statute, counseling companies to consider “who is responsible for making the decisions about the filing of the document, such as how the filing is managed, what content the document includes, and when and where the filing occurs.” The examples provided by FinCEN lean heavily on who plays the greatest role in substantive decisions about the preparation, management and directing the filing of the registration document. This analysis of who constitutes a company applicant should be considered carefully, and repeat applicants ought to contemplate standardized internal reporting and filing to reduce compliance complications.

FAQ L.6: Subsidiaries whose ownership interests are partially controlled by an exempt entity do not qualify for the subsidiary exemption.

If an exempt entity controls **some but not all** of the ownership interests of the subsidiary, the exemption does not apply. A subsidiary’s ownership interest must be “fully, 100 percent owned or controlled by an exempt entity” to qualify for the exemption. FinCEN clarified that “control of ownership interests means that the exempt entity entirely controls all of the ownership interests in the reporting company, in the same way that an exempt entity must wholly own all of a subsidiary’s ownership interests for the exemption to apply.”

FAQ C.7: Companies organized in a US territory are required to file.

In addition to companies in the 50 states and the District of Columbia, companies that register to do business by filing of a document within a US territory’s secretary of state or similar office (and that do not otherwise qualify for an exemption to the reporting requirements) are required to report beneficial ownership information to FinCEN.

FAQ D.11: If a reporting company’s ownership is in dispute, file BOI information and then correct it later if needed.

If beneficial ownership of a reporting company is in dispute at the time of filing, FinCEN requires the reporting company to report (1) all individuals “who exercise substantial control over the company”

and (2) all individuals “who own or control, or have a claim to ownership or control of, at least 25 percent ownership interests in the company.” If, after resolution of litigation or the dispute has been settled or otherwise resolved, there are different beneficial owners from those reported, the reporting company must file an updated BOI report within 30 days from such settlement or resolution.

FAQ M.2: FinCEN identifiers may be used instead of personal information; legal entities may also receive FinCEN identifiers that may be used in certain instances.

FinCEN permits use of FinCEN identifiers by individuals in lieu of personal information input for required personal information such as beneficial ownership or company applicant. Legal entities may also receive FinCEN identifiers, which reporting companies can use in place of providing full information about the entity’s beneficial ownership when the beneficial owners hold interests in the reporting company through ownership interests in the other entity and the beneficial owners of the reporting company and the entity providing a FinCEN identifier are the exact same individuals.

Footnote

¹ For purposes of this analysis, “control” applies to control over the ownership interests, rather than control of the entity or its decisions.

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Jane Hinton, Conor Shary, and Amy McDaniel Williams also contributed to this article.

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