

GIBSON DUNN



Anti-Money Laundering Update

October 7, 2024

The Corporate Transparency Act: Reminders and Key Updates, Including FinCEN's October 3 FAQs

As the January 1, 2025 deadline for entities that were organized prior to 2024 quickly approaches, we provide a summary of key developments in the CTA space over the past few months.

In 2024, the beneficial ownership interest reporting requirements of the Corporate Transparency Act (CTA) came into effect. Gibson Dunn has previously published a number of client updates on CTA issues.^[1] As the deadline (January 1, 2025) for entities that were organized prior to 2024 quickly approaches, this update provides a summary of key developments in the CTA space over the past few months. In short, the update discusses: (1) the CTA filing deadlines, which are quickly approaching for all entities that need to file; (2) notable frequently asked questions that the U.S. Financial Crimes Enforcement Network (FinCEN) has answered regarding dissolved entities and entities that withdrew their registration for doing business in U.S. states; (3) a brief summary of the FAQs announced on October 3; (4) an update on the litigation challenging the CTA; (5) a reminder of the potential penalties under the CTA; and (6) a short preview of future CTA developments to monitor.

Deadlines

As a reminder, the CTA's beneficial ownership information reporting deadline for entities created or registered to do business in the United States prior to 2024 is coming up quickly. Specifically, companies organized in the United States or, in the case of foreign entities, registered to do

business in the United States, in either case before January 1, 2024, must file beneficial ownership information reports with FinCEN by January 1, 2025, unless an exemption is available. Further, entities formed or registered to do business in the United States between January 1, 2024 and December 31, 2024 must file beneficial ownership information reports with FinCEN within 90 days of formation or registration. And in 2025, the deadline for newly formed or newly registered entities to file will decrease from 90 days to 30 days.^[2] For organizations that must make a particularly large number of filings, it may be prudent to begin the filing process in the next couple of months to ensure adequate time to file.

Dissolved and De-Registered Entities

Throughout 2024, FinCEN has continued to issue guidance in the form of FAQs regarding the CTA. For instance, in February, the agency issued a notable FAQ regarding the scope of the subsidiary exemption, which we have [discussed elsewhere](#).^[3] More recently, FinCEN has issued important FAQs on the reporting obligations of entities that are dissolved or foreign entities that de-registered from doing business in U.S. states. The CTA and its implementing regulations did not squarely address situations where an entity is dissolved or, for foreign entities, withdraws its registration, before the entity's beneficial ownership information report is due. FinCEN has subsequently released a number of FAQs, which collectively state, among other things, that:

- If an entity is dissolved or a foreign entity withdrew its registration to do business in U.S. states prior to 2024, then the entity does not need to file.^[4]
- If, on the other hand, an entity that would have needed to report existed or was registered at any point during 2024, then it must file a report with FinCEN, even if the entity is dissolved or is a foreign entity that withdrew its registration to do business in U.S. states before its beneficial ownership information report was due.^[5]

October 3 FAQs

On October 3, FinCEN announced 25 new or revised FAQs.^[6] Some of the most notable FAQs include:

1. *Beneficial Owners*—FinCEN confirmed its expectation that every reporting company identify at least one beneficial owner, because, even if a natural person does not own 25% of the entity, the entity will be substantially controlled by one or more individuals.^[7]
2. *Owned or Controlled by Multiple Exempt Entities*—FinCEN also confirmed that if an entity's ownership interests are controlled or wholly owned by multiple exempt entities, "the reporting company may still qualify for the subsidiary exemption if the entities are unaffiliated," provided that "every controlling or owning entity" is itself exempt.^[8]
3. *PIVs*—When a pooled investment vehicle (PIV) is operated or advised by an exempt reporting adviser (ERA), FinCEN explained that ERAs do not qualify for the definition of an investment adviser under the CTA, because they are not registered with the SEC. Thus, a PIV that is "operated or advised" by an ERA only qualifies for the PIV exemption (#18) if the ERA meets the definition of a "venture capital fund adviser" (i.e., an entity that is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)) and has filed Item 10, Schedule A and Schedule B of Part 1A of Form ADV (or any successor thereto) with the SEC). If the ERA relies on another exemption from registration with the SEC, then the PIV would not qualify for the CTA exemption.^[9]

4. *Conversion*—If an entity converts from one type of entity to another (e.g., an LLC to a corporation), the conversion “may result in the creation of a ‘new’ domestic reporting company” depending on the law of the state where it occurred and the nature of the conversion.[\[10\]](#)
5. *FOIA*—FinCEN confirmed that beneficial ownership information reported to FinCEN is not accessible under the Freedom of Information Act (FOIA).[\[11\]](#)
6. *FinCEN Identifier Updates*—FinCEN confirmed that:
 1. *Individuals* must update information they submitted to request a FinCEN identifier no later than 30 days after the date on which a change occurred, and individuals must correct any inaccuracies no later than 30 days after the date on which they became aware, or had reason to know, of an inaccuracy;
 2. When information for a beneficial owner’s or company applicant’s FinCEN identifier is updated, the beneficial ownership information reports where that FinCEN identifier appears are automatically updated, with no further action needed; and
 3. *Reporting companies* with a FinCEN identifier must update or correct the company’s information by filing an updated or corrected beneficial ownership information report, as appropriate.[\[12\]](#)

CTA Litigation Update

There are currently at least six pending lawsuits challenging the constitutionality of the CTA, on various grounds, including that the CTA exceeds Congress’s enumerated authorities and violates the First, Fourth, Fifth, Eighth, Ninth, Tenth, and Fourteenth Amendments.[\[13\]](#) Most notably, a federal district court in Alabama concluded that the CTA unconstitutionally exceeds Congress’s enumerated powers.[\[14\]](#) As we explained in a [prior client update](#), the district court’s order is limited to the parties in the case, and FinCEN released a statement taking the position that any entity that is not a party to the case must continue to comply with the CTA.[\[15\]](#) The government appealed the district court’s decision, and the Eleventh Circuit heard oral argument on September 27, 2024. By contrast, a federal district court in Oregon recently rejected arguments challenging the constitutionality of the CTA.[\[16\]](#) Another lawsuit was filed in a federal district court in Texas, and there is a preliminary injunction hearing scheduled in that case for October 9, 2024. In the other cases, motions for summary judgment have either been briefed or are being briefed. Against this backdrop, companies should continue to proceed on the basis that the CTA will remain enforceable for the time being.

Penalties and Liability

As a reminder, the CTA provides for both civil and criminal penalties for “willful” violations of the law.[\[17\]](#) The civil penalties are currently \$591 per day, and the criminal penalties can be up to \$10,000 and up to two years of imprisonment.[\[18\]](#) Regarding who can be liable, FinCEN has made clear that “[b]oth individuals and corporate entities can be held liable for willful violations.”[\[19\]](#) This can include: (i) an individual who actually files (or attempts to file) false information with FinCEN, (ii) anyone who willfully provides the filer with false information to report,

and (iii) individuals who either cause a willful failure to file or are a senior officer at the company at the time of the failure.^[20]

Looking Ahead

The CTA space will continue to remain very active. For instance, FinCEN continues to publish FAQs clarifying its view of the law and is slated to conduct another rulemaking to harmonize the CTA and the Customer Due Diligence (CDD) Rule. In the interim, FinCEN has [published a notice](#) explaining how CDD obligations and CTA beneficial owner obligations are similar and different.^[21] In the coming years, states are also set to become active in this space. New York, for instance, has passed a bill similar to the CTA that is slated to come into effect in 2026, and the legislatures in California, Massachusetts, and Maryland are considering similar bills.^[22]

Gibson Dunn will continue to monitor CTA developments closely.

^[1] See, e.g., Top 10 Mid-Year Developments in Anti-Money Laundering Enforcement in 2024, Gibson Dunn (Aug. 14, 2024), <https://www.gibsondunn.com/top-10-mid-year-developments-in-anti-money-laundering-enforcement-in-2024/>; The Corporate Transparency Act Declared Unconstitutional: What It Means for You, Gibson Dunn (Mar. 18, 2024), <https://www.gibsondunn.com/corporate-transparency-act-declared-unconstitutional-what-it-means-for-you>; Top 12 Developments in Anti-Money Laundering Enforcement in 2023, Gibson Dunn (Feb. 2, 2024), <https://www.gibsondunn.com/top-12-developments-in-anti-money-laundering-enforcement-in-2023/>; The Impact of FinCEN's Beneficial Ownership Regulation on Investment Funds, Gibson Dunn (Aug. 10, 2023), <https://www.gibsondunn.com/the-impact-of-fincens-beneficial-ownership-regulation-on-investment-funds/>.

^[2] See, e.g., FinCEN FAQ B.1, <https://www.fincen.gov/boi-faqs> ("FinCEN CTA FAQs").

^[3] Top 10 Mid-Year Developments in Anti-Money Laundering Enforcement in 2024, Gibson Dunn (Aug. 14, 2024), <https://www.gibsondunn.com/top-10-mid-year-developments-in-anti-money-laundering-enforcement-in-2024/>.

^[4] FinCEN CTA FAQ C13 ("A company is not required to report its beneficial ownership information to FinCEN if it ceased to exist as a legal entity before January 1, 2024, meaning that it entirely completed the process of formally and irrevocably dissolving."); C14 ("Reporting companies created or registered in 2024, no matter how quickly they cease to exist thereafter, must report their beneficial ownership information to FinCEN within 90 days of receiving actual or public notice of creation or registration."); C16 ("A foreign company that entirely withdrew any and all registrations to do business in the United States before the beneficial ownership information reporting requirements became effective January 1, 2024, was never subject to the reporting requirements and thus is not required to report its beneficial ownership information to FinCEN.").

^[5] FinCEN CTA FAQ C13 ("If a reporting company (see Question C.1) continued to exist as a legal entity for any period of time on or after January 1, 2024 (i.e., did not entirely complete the process of formally and irrevocably dissolving before January 1, 2024), then it is required to report its beneficial ownership information to FinCEN, even if the company had wound up its affairs and ceased conducting business before January 1, 2024. Similarly, if a reporting company

was created or registered on or after January 1, 2024, and subsequently ceased to exist, then it is required to report its beneficial ownership information to FinCEN—even if it ceased to exist before its initial beneficial ownership information report was due.”); C16 (“If a foreign reporting company (see Question C.1) was registered to do business in the United States on or after January 1, 2024 for any period of time (i.e., the company did not entirely complete the process of withdrawing its registration before January 1, 2024), then it is required to report its beneficial ownership information to FinCEN, even if the company had wound up its affairs and ceased conducting business before January 1, 2024.”).

[6] See generally FinCEN CTA FAQs

[7] FinCEN CTA FAQ D.1

[8] FinCEN CTA FAQ L.3; *id.*, L.6.

[9] FinCEN CTA FAQ L.10

[10] FinCEN CTA FAQ C.18.

[11] FinCEN CTA FAQ A.6.

[12] FinCEN CTA FAQ M.6.

[13] *National Small Business United et al. v. Yellen et al.*, No. 5:22-cv-01448 (N.D. Ala. 2024), on appeal *National Small Business United et al. v. U.S. Dep’t of the Treasury et al.*, No. 24-10736 (11th Cir. 2024); *Boyle v. Yellen et al.*, No. 2:24-cv-00081 (D. Me. 2024); *Small Business Assn. of Mich., et al. v. Yellen, et al.*, 1:24-cv-00314 (D. Mich. 2024); *Texas Top Cop Shop, Inc. et al. v. Garland, et al.*, No. 4:24-cv-00478 (E.D. Tx. 2024); *Black Economic Council of Mass., et al.*, No. 1:24-cv-11411 (D. Mass. 2024); *Firestone v. Yellen*, No. 3:24-cv-1034 (D. Or.).

[14] *National Small Business United et al. v. Yellen et al.*, No. 5:22-cv-01448, Dkt. 51 (N.D. Ala. 2024).

[15] The Corporate Transparency Act Declared Unconstitutional: What It Means for You, Gibson Dunn (Mar. 18, 2024), <https://www.gibsondunn.com/corporate-transparency-act-declared-unconstitutional-what-it-means-for-you>.

[16] *Firestone v. Yellen*, No. 3:24-cv-1034, Dkt. 18 (D. Or.).

[17] 31 U.S.C. § 5336(h).

[18] *Id.*; FinCEN CTA FAQ K2.

[19] FinCEN CTA FAQ K3.

[20] *Id.*

[21] Notice to Customers: Beneficial Ownership Information Reference Guide, FinCEN, July 26, 2024, <https://www.fincen.gov/sites/default/files/shared/BOI-Notice-to-Customers-508FINAL.pdf>.

[22] S.995-B/A.3484-A; CA S.B. 1201; MD S.B. 954; MA H. 3566.

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Gibson Dunn has deep experience with issues relating to the Bank Secrecy Act, the Corporate Transparency Act, other AML and sanctions laws and regulations, and challenges to Congressional statutes and administrative regulations.

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