

NEW FinCEN Guidance: Dissolved Businesses and CTA Compliance

by Lisa C. Thompson

On July 8, 2024, FinCEN issued guidance for business entities formally dissolved after January 1, 2024, requiring them to comply with the Corporate Transparency Act (CTA) by December 31, 2024, unless they are otherwise exempt and even if they do not exist at that time.

Background. The CTA was enacted in 2021 but went into effect in 2024. As with any new law, attorneys interpreted it based on its plain language while awaiting additional guidance from the regulatory agency administering it. Practitioners advised business owners that if their business dissolved before December 31, 2024, there would be no CTA reporting requirements because the business would no longer exist. After the new FinCEN guidance, this is no longer correct.

CTA Requirements for 2024. Here is the super short, very general synopsis of the CTA for 2024: effective January 1, 2024, business entities operating in the U.S. are required to file a Beneficial Ownership Information Report (BOIR) with FinCEN by December 31, 2024, unless they are exempt. In addition, new business entities must file a BOIR with FinCEN 90 days after approval of the business formation by the state. Business owners failing to comply with the CTA may be personally liable for civil fines of \$591/day (no cap), criminal penalties of up to \$10,000, and up to two years of imprisonment.

New FinCEN Guidance. Business entities that were not completely, formally, and irrevocably dissolved by January 1, 2024, still have to file a BOIR with FinCEN unless they otherwise meet the requirements of one of the 23 exemptions of the CTA. FinCEN's new guidance is unambiguous. The CTA still applies to businesses that existed during

2024 and are not otherwise exempt, even if they do not exist when they file the BOIR.

Analysis. An Arizona corporation that was administratively dissolved is not irrevocably dissolved because of the reinstatement provisions of A.R.S. § 10-1422, thus it would need to file a BOIR. However, if the corporation meets, for example, the six-part test of the inactive entity exemption, it is exempt from filing a BOIR. If a business entity commenced a formal dissolution, but did not complete it by January 1, 2024, and the business entity does not meet the requirements to be exempt as an inactive entity, it must file a BOIR. This analysis is the same for terminated LLCs. If they were terminated before 2024, there is no CTA reporting requirement, but if they were terminated during 2024, they must file a BOIR unless they are otherwise exempt. There are no provisions to reinstate a terminated LLC in Arizona.

Good News/Bad News. The good news is that dissolved entities that must file a BOIR only need to file once. They do not need to keep it updated or file another BOIR indicating that they no longer exist. The bad news is that business owners of dissolved entities required to still file a BOIR under the new guidance will be subject to the civil and criminal penalties that may be imposed for failure to comply with the CTA.

Key takeaway on new FinCEN Guidance. If you have advised clients about the CTA or sent a nonrepresentation letter regarding CTA compliance, review it and make sure FinCEN's new guidance does not change what you said. If it does or if you advised a client that it did not have to file a BOIR because it is dissolved, you need to reach out and let your client

know that this may not be true.

Constitutionality of the CTA. As with any new law (or so it seems), lawsuits have been filed challenging it. An Alabama District Court has issued a ruling stating that the CTA is unconstitutional. The ruling stays the enforcement of the CTA reporting requirements as to the Plaintiffs only. This ruling has been appealed to the 11th Circuit, the appellate briefs have been submitted and the parties are awaiting oral arguments in late September. No other lawsuit challenging the CTA has received a ruling at the trial court level. FinCEN is advising that business owners file their BOIRs by the December 31, 2024 deadline.

Lisa C. Thompson focuses her practice on CTA compliance, business law and bankruptcy.

Join us September 5, 2024, at noon for a one-hour comprehensive discussion of the CTA and the new guidance. You will be able to register for the CLE on the PCBA website.

As revolutionary as the internet was in 1995, AI is at least equal now. Three years ago, there were three revolutionary ideas on the horizon: blockchain, AI, and the metaverse. It's not too broad a statement to say that AI is the most revolutionary. It also is easy to say that AI will transform all businesses and professions.