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## Corporate Transparency Act Update: FinCEN's October 2024 FAQs

by Dwanye Fearon and Ken Witt

On October 3, 2024, the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") issued a major update of its [FAQs on the Corporate Transparency Act \("CTA"\)](#). The key FAQ updates are described below.

### **Access to Beneficial Ownership Information (BOI)**

#### ***Is your BOI subject to disclosure under FOIA?***

FinCEN has confirmed that beneficial ownership information ("BOI") reported to FinCEN is exempt from disclosure under the Freedom of Information Act ("FOIA"). (FAQ A.6)

### **Corporate Conversion**

#### ***Do I need to file with FinCEN if there is a corporate conversion?***

Converting from one corporate structure to another (e.g., from an LLC to a corporation) may create a new domestic reporting company that must file an initial BOI report with FinCEN. Depending on state or tribal laws, this conversion may establish a "new" reporting company. Even if a new reporting company is not formed, the entity may still need to submit an updated BOI report. For example, if "Company, Inc." converts to "Company, LLC," it must file an updated report to reflect the name change. (FAQ C.18)

### **Beneficial Owner**

#### ***Is a reporting company required to have a beneficial owner?***

FinCEN expects that every reporting company will have at least one beneficial owner that has to be reported. Even if no single individual owns 25% or more of the ownership interests of a reporting company, at least one individual must be named as a beneficial owner by reason of "substantial control." (FAQs D.1.i, D.1.ii)

### **Community Property**

#### ***How do community property laws affect beneficial owner disclosure?***

If state community property laws apply to beneficial owners, both spouses may collectively own or control at least 25% of the ownership interests in a reporting company. When applicable, both spouses should be reported to FinCEN as beneficial owners, unless an exception applies. (FAQ D.18)

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### Subsidiary Exemption

#### ***Does a subsidiary whose ownership interests are partially controlled by a non-exempt entity qualify for the subsidiary exemption?***

No. If any portion of the ownership interest is controlled by a non-exempt entity or individual, the subsidiary does not qualify for the subsidiary exemption. (FAQ L.6)

The subsidiary exemption from reporting company status applies if a company's ownership interests are entirely owned or controlled by certain exempt companies. It is not entirely clear what ambiguity FinCEN was trying to address with this FAQ.

### Pooled Investment Vehicle Exemption

#### ***Does my company qualify for the pooled investment vehicle exemption if it is operated or advised by an exempt reporting adviser?***

The pooled investment vehicle ("PIV") exemption from BOI reporting applies only to PIVs operated or advised by specific types of entities, including an investment adviser registered with the SEC under the Investment Advisers Act of 1940 ("Advisers Act"). Therefore, an adviser, including an exempt reporting adviser ("ERA"), that is not registered with the SEC would not qualify for this exemption. However, PIVs that are operated or advised by ERAs that meet the "venture capital fund adviser" criteria under the Advisers Act are exempt from CTA reporting. PIVs may not use the CTA PIV exemption if they are operated by ERAs that are private fund advisers, but that do not qualify as venture capital fund advisers. (FAQ L.10)

### Large Operating Company Exemption

#### ***Does my company qualify for the large operating company exemption if it is run from a personal residence?***

The term "operating presence at a physical office within the United States" refers to an entity that regularly conducts business at a physical location it owns or leases, distinct from any other unaffiliated entity. This definition allows for residences to qualify, provided the entity itself leases or owns the specific space used for business and that space is separate from any other unaffiliated entity's location. Therefore, if a company operates from a personal residence, it must rent or own the area it uses to meet the large operating company exemption. (FAQ L.11)

### FinCEN Identifier

A reporting company's BOI report is automatically linked and updated by the Beneficial Ownership IT system when a beneficial owner or company applicant updates FinCEN identifier information. No action is required on the part of the reporting company. (FAQ M.5.i)

Kutak Rock is here to help clients navigate the CTA compliance process. The firm is well-equipped to help navigate these updates, ensuring that clients are thoroughly prepared for the January 1, 2025, deadline, as well as ongoing compliance. If you have any questions about how the CTA will affect your business, please contact your Kutak Rock attorney or any member of the [CTA Client Service Team](#) listed on the left. You may also visit us at [kutakrock.com](https://kutakrock.com).

