The CTA’s “Inactive Entity” Exemption and Irrevocable Dissolution—“I’m Not Dead Yet”

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*Under the Corporate Transparency Act (the “CTA”) as enacted and as reflected in the Reporting Rules adopted in 2022, almost every LLC, corporation, and similar business organization in the United States is subject to beneficial ownership reporting requirements. A crucial mechanism for ending those reporting requirements is the ap­plication of an exemption written for “inactive entities”; in operation this may (or at least was anticipated to be) the most commonly relied upon exemption. In 2024, FinCEN, via a series of FAQs, created an alternative mechanism of exempting a company from the CTA’s reporting obligations, an exemptive scheme that is especially important to non-U.S. organized ventures, they being largely excluded from the statutory/regulatory scheme. Herein we attempt to unravel the oft contradictory requirements, concluding with a pair of hypothetical situations.*

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The Corporate Transparency Act (the “CTA”)1 obligates almost every entity created or qualified to do business in the United States2 to file and continually maintain a report of certain personal identifying information of its “beneficial owners”3 with the Financial Crimes Enforcement Network (“FinCEN”) of the U.S. Department of the Treasury via its online Beneficial Ownership Secure Sys­tem (“BOSS”). The CTA requires certain organizations (“reporting companies”)4 to file and update beneficial ownership information reports (“BOIRs”) at the time of formation (the “initial BOIR”) and each time any information reported on the initial BOIR changes (“updated BOIRs”). As discussed below, the burden of filing an initial BOIR is significant, but in many respects the burden of filing updated BOIRs may be even more burdensome as it requires the reporting company and its senior officers to monitor and report changes in information as to its beneficial owners over time. Thus, an organization should know when the updating obli­gation ceases. The CTA relieves the obligations of the reporting company and its senior officers from filing updated BOIRs after the reporting company has

1. The Corporate Transparency Act (the “CTA”) was adopted as part of the Anti-Money Laundering Act of 2020, which was part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, §§ 6401–6403, 134 Stat. 3388, 6404–25 (codified at 31 U.S.C. § 5336 (2024)). Congress overrode the President’s veto. *See* Catie Edmondson, *House Votes to Override Trump’s Veto of Military Bill*, N.Y. TIMES (Dec. 28, 2020); Catie Edmondson, *Senate Overrides Trump’s Veto of Defense Bill, Dealing a Legislative Blow*, N.Y. TIMES (Jan. 1, 2021). The CTA consists of three sections: section 6401 sets forth the short title; section 6402 sets forth Congress’s findings and objectives in passing the CTA; and section 6403 sets forth its substantive provisions.

In turn and as authorized in the CTA, the Treasury Department adopted regulations that implement the CTA. *See* 31 U.S.C. § 5336(b)(4) (2024); 31 C.F.R. § 1010.380 (2025). In promulgating that rule, the Treasury Department issued a series of releases (collectively, the “Reporting Rules”). *See* Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 17557 (Apr. 5, 2021) (“Advance Notice of Proposed Rulemaking”); Beneficial Ownership Information Reporting Requirements, 86 Fed. Reg. 69920 (Dec. 8, 2021) (“Notice of Proposed Rulemaking”); Beneficial Ownership Information Report­ing Requirements, 87 Fed. Reg. 59498 (Sept. 30, 2022); Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024, 88 Fed. Reg. 66730 (Sept. 28, 2023); Use of FinCEN Identifiers for Reporting Beneficial Ownership Information of Enti­ties, 88 Fed. Reg. 76995 (Nov. 8, 2023); Update to the Public Utility Exemption Under the Beneficial Ownership Information Reporting Rule, 89 Fed. Reg. 83782 (Oct. 18, 2024). *See also infra* notes 190– 93 and accompanying text.

1. The CTA is breathtaking in its anticipated reach. As acknowledged by the Treasury Department, “[t]he number of legal entities already in existence in the United States that may need to report in­formation on themselves, their beneficial owners, and their formation or registration agents pursuant to the CTA is in the tens of millions.” *See* Beneficial Ownership Information Reporting Requirements, *supra* note 1, at 59500 (footnote omitted). The Financial Crimes Enforcement Network (FinCEN) estimated “that there will be at least 32.6 million ‘reporting entities’ (entities that meet the core definition of a ‘reporting company’ and are not exempt) in existence when the proposed rule becomes effective.” *Id*. at 59500 n.21. “Summing the estimates of both domestic and foreign entities, the total number of existing entities in 2024 that may be subject to the reporting requirements is 36,581,506 and the total number of new companies annually thereafter is 5,616,382.” *Id*. at 59565 (footnote omitted); *see also* Defs.’ Motion to Stay Prelim. Injunction Pending Appeal at 4, Texas Top Cop Shop, Inc. v. Garland, No. 24-CV-478 (E.D. Tex. Dec. 11, 2024) (“By [January 1, 2025], most cov­ered companies, including all covered companies formed before 2024—a total estimated 32 million businesses nationwide—must submit the required information to FinCEN.”).
2. 31 U.S.C. § 5336(a)(3) (2024) (defining “beneficial owner”); 31 C.F.R. § 1010.380(d) (2025) (same).
3. 31 U.S.C. § 5336(a)(11) (2024) (defining “reporting company”); 31 C.F.R. § 1010.380(c)(1) (2025) (same).

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become exempt from the updating requirement and has filed a final updated BOIR indicating that it is now exempt from the reporting requirements. The stat­ute, however, does not address the cessation of the reporting requirements when the organization ceases to exist as a legal entity upon termination. This Article considers when an organization ceases to have the obligation to file updated BOIRs because it either (1) benefits from the inactive entity exemption or, (2) even if it does not benefit from the inactive entity exemption, it has ceased to exist as a business organization under state law and no longer constitutes a “re­porting company.”

Within the reach of the CTA’s definition of a “reporting company”5 is any corporation (whether or not for profit), limited liability company (“LLC”), or any “similar entity”6 that does not qualify for any of twenty-three exemptions.7 Each reporting company must file initial and updated BOIRs identifying itself,8 its “beneficial owners,”9 and, for entities formed after Jan­uary 1, 2024, its “company applicant[s].”10

Initially subject to these obligations is any entity “created” by a filing with a secretary of state or equivalent office (“reporting company”),11 except for any entity that meets any one of twenty-three exemptions (“exempt reporting com­pany”). This Article focuses upon one of those twenty-three exemptions—the “inactive entity”12 exemption and whether an organization that has ceased to exist for purposes of state law has a continuing reporting obligation even if it does not qualify for the inactive entity exemption. Noteworthy for purposes of this discussion is that the definition of a reporting company makes no ref­erence to commonly understood principles of legal organization law, such as

1. *See* 31 U.S.C. § 5336(a)(11)(A) (2024); 31 C.F.R. § 1010.380(c) (2025). There are slightly separate treatments under the CTA for reporting companies created in the United States and those formed in other countries. *Compare* 31 C.F.R. § 1010.380(c)(1)(i) (2025) (defining “domestic report­ing company”), *with id.* § 1010.380(c)(1)(ii) (defining “foreign reporting company”). This Article fo­cuses on business entities created in the United States.
2. 31 U.S.C. § 5336(a)(11)(B)(xxiii) (2024). The CTA uses the generic term “entity” to describe the legal organizations to which it may apply (“reporting company”). In legal organization law, the concept of “entity” has included general partnerships since 1994. *See* UNIF. P’SHIP ACT § 201 (Unif. Law Comm’n 1994); *see* LARRY E. RIBSTEIN ET AL., RIBSTEIN AND KEATINGE ON LIMITED LIABILITY COM­PANIES § 3:11 (2024). The CTA and this Article deal exclusively with organizations that are “created” by filing a document with a government office. *See* 31 U.S.C. § 5336(b)(11)(A)(i) (2024). In this Ar­ticle, we, like the statute, use the term “entity” (and occasionally “organization” or “company”) to refer to such an organization, except where the context indicates a different meaning. This Article princi­pally discusses business corporations and LLCs, but similar—if somewhat more idiosyncratic—rules apply to other organizations created by filing with the pertinent state official.
3. *See* 31 U.S.C. § 5336(a)(11)(B)(i)–(xxiii) (2024); 31 C.F.R. § 1010.380(c)(2)(i)–(xxiii) (2025). Congress also empowered the Treasury Department—with the written concurrence of the Attorney General and the Secretary of Homeland Security—to exempt certain companies from the reporting requirement of the CTA. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiv) (2024).
4. *See* 31 C.F.R. § 1010.380(b)(1)(i) (2025).
5. *See id*. § 1010.380(b)(1)(ii).
6. *Id*. In contrast with the information submitted as to the reporting company and its beneficial owners, there is no updating obligation with respect to the information submitted as to company applicants.
7. 31 U.S.C. § 5336(a)(11)(A)(i) (2024).
8. 31 C.F.R. § 1010.380(c)(2)(xxiii) (2025); 31 U.S.C. § 5336(a)(11)(B)(xxiii) (2024).

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“validly existing,” “in good standing,” “dissolution,” or “winding up and termi­nation.” Moreover, while the CTA acknowledges that a reporting company may “terminate,”13 that term is not explained. Rather, the CTA imposes a series of limitations that are poorly defined, in some instances simply unattainable, and in all circumstances unnecessarily burdensome as legitimate companies wind up and terminate their operations. While relatively few operating compa­nies will satisfy any of the twenty-three exemptions, most companies eventually terminate their operations and cease to exist. At that point, it seems rational to provide that the reporting obligations of the organization and its beneficial owners should also end. The CTA and its implementing regulations initially ad­dressed the question of how a reporting company ends its reporting obligations through the inactive entity exemption, but as discussed herein, that exemption (particularly as amplified by the regulations) is almost entirely unworkable. In subsequent non-regulatory guidance, even FinCEN appears to recognize this problem, adopting distinct rules addressing “irrevocable dissolution,”14 a solution that, as discussed below, evinces FinCEN’s lack of understanding of the operation of business organizational law and terminology. We conclude that an entity that, as a matter of state law, ceased to exist is exempt from fur­ther reporting under the CTA in that it no longer constitutes a “reporting company.”

This Article proceeds as follows: first, we review the law of the dissolution, winding up, and termination of organizations;15 second, we review the inactive

1. *See* 31 U.S.C. § 5536(c)(1) (2024) (“Retention of Information—Beneficial ownership informa­tion required under subsection (b) relating to each reporting company shall be maintained by FinCEN for not fewer than 5 years after the date on which the reporting company terminates.”). Not that Fin-CEN will ever know from the information filed pursuant to the CTA that a reporting company has terminated. *See, e.g*., *Small Entity Compliance Guide: Beneficial Ownership Information Reporting Require­ments*, FIN. CRIMES ENF’T NETWORK ch. 6.1, at 46 (Dec. 2024), <https://www.fincen.gov/sites/default/files/> shared/BOI\_Small\_Compliance\_Guide.v1.1-FINAL.pdf [hereinafter FinCEN Guide] (“There is no re­quirement to report a company’s termination or dissolution.”). Most states provide for either a man­datory or discretionary filing at the time of dissolution, *see, e.g*., KY. REV. STAT. ANN. § 275.315 (West 2025) (requiring filing of dissolution by LLC), but do not require a filing at the conclusion of winding up (i.e., the termination). *See* RIBSTEIN, *supra* note 6, at app. 14-11 (collecting LLC statutes).
2. The concept of “irrevocably dissolving” is not addressed in either the CTA or the Reporting Rules. FinCEN added the term in its FAQs on July 8, 2024, and expanded upon the concept on Sep­tember 10, 2024. *See Beneficial Ownership Information: Frequently Asked Questions*, FIN. CRIMES ENF’T NETWORK C.13–C.15, at 13–15 (updated Dec. 2024), <https://www.fincen.gov/boi-faqs#B_1>. That the first discussion of the treatment of an organization as ceasing to exist was addressed in informal rules issued after the reporting system had become effective and shortly before the requirement that all organizations formed before 2024 must file initial BOIRs reflects the confluence of a failure of thought by FinCEN, FinCEN’s lack of understanding about the dissolution process, and FinCEN’s strong disinclination to establish rules that end the obligation to file BOIRs. *See* C.S. LEWIS, *The Hu­manitarian Theory of Punishment*, *in* GOD IN THE DOCK: ESSAYS ON THEOLOGY AND ETHICS 287, 292 (Walter Hooper ed., 1970) (“Of all tyrannies, a tyranny sincerely exercised for the good of its victims may be the most oppressive. It may be better to live under robber barons than under omnipotent moral busy­bodies. The robber baron’s cruelty may sometimes sleep, his cupidity may at some point be satiated; but those who torment us for our own good will torment us without end for they do so with the approval of their own conscience.”).
3. The reader will note that much of the discussion of statutory law on dissolution of business organizations ignores that of Delaware, instead focusing on the Commonwealth of Kentucky, Colo­rado, and other states. That is intentional. First, Delaware is atypical as compared to most states in

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entity exemption of the CTA; third, we review the regulatory guidance from Fin-CEN regarding the treatment of reporting companies that have “irrevocably dis­solved” or terminated, including differences between the statutory and regulatory exemptions; fourth, we apply the inactive entity exemption and the FinCEN guid­ance in several basic hypothetical situations; and finally, we apply the exemption and guidance to two detailed scenarios.

“DISSOLVED” CORPORATIONS AND LLCS—“I’M NOT DEAD YET”16

The inactive entity exemption typically applies when an otherwise regulated organization brings its operations to a final resolution, typically referred to as its dissolution, winding up, and termination. States address these processes in various organizational laws through which alternative standards, requirements, and effects are, to a greater or lesser degree, defined. Understanding the steps required by these statutes is crucial to understanding the difficulties of applying the inactive entity exemption. Unfortunately, the recently enacted CTA failed to coordinate with longstanding processes under state law.

State statutes generally provide three bases upon which a corporation or an LLC17 may be dissolved and required to wind up its affairs—voluntary,18 judicial,19 and

how it provides for the dissolution of LLCs, so a discussion of Delaware law is often not applicable in other states. In contrast, Kentucky enacted a modified version of the Model Business Corporation Act, a modified version of the American Bar Association (“ABA”) Prototype LLC Act, and a bespoke busi­ness entity filing act that centrally addresses administrative dissolution, making Kentucky more “typical” of most states. The same may be said of Colorado. All that said, every state has different, sometimes idiosyncratic laws as to how particular business organizations dissolve, wind up, and ter­minate their activities, and it is incumbent upon the practitioner to investigate the applicable law. In addition, it is important to remember that, although this Article focuses on business corporations and LLCs, the CTA applies not only to for-profit organizations but also to organizations that are not or­ganized for profit. While the CTA exempts some tax-exempt organizations, it notoriously does apply to organizations unlikely to be engaged in money-laundering such as homeowner associations and housing cooperatives. *See, e.g*., FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.10, C.12; Cmty. Ass’ns Inst. v. Yellen, No. 24-CV-1597, 2024 WL 4571412 (E.D. Va. Oct. 24, 2024) (holding that CTA applies to “community associations” other than those taxed under section 501(c) of the Internal Revenue Code), *appeal docketed*, No. 24-2118 (4th Cir. Nov. 7, 2024).

1. MONTY PYTHON AND THE HOLY GRAIL (EMI Films 1975) (quoting knight, who continues to chal­lenge King Arthur despite losing all limbs during their confrontation).
2. While the CTA defines “reporting company” beyond corporations and LLCs, we generally limit our discussion to those entities to simplify matters. *See* 31 U.S.C. § 5336(a)(11) (2024); Thomas E. Rutledge & Robert R. Keatinge, *LLPs Are Not CTA Reporting Companies*, BUS. L. TODAY (Oct. 10, 2024).
3. *See* COLO. REV. STAT. §§ 7-114-101 to -103 (2025) (addressing voluntary dissolution of corpora­tion); *id*. §§ 7-134-101 to -103 (addressing voluntary dissolution of nonprofit corporation); *id*. §§ 7-80­801 to -803.5 (addressing voluntary dissolution of LLC); KY. REV. STAT. ANN. §§ 271B.14-010 to -070 (West 2025) (addressing voluntary dissolution of corporation); *id*. § 273.300 (addressing voluntary dis­solution of nonprofit corporation); *id*. § 275.285 (addressing voluntary dissolution of LLC). *See generally* RIBSTEIN, *supra* note 6, at app. 14-6 (collecting LLC statutes).
4. *See* COLO. REV. STAT. §§ 7-114-301 to -305 (2025) (addressing judicial dissolution of corpora­tion); *id*. §§ 7-134-301 to -304 (addressing judicial dissolution of nonprofit corporation); *id*. §§ 7-80­810 to -813 (addressing judicial dissolution of LLC); KY. REV. STAT. ANN. §§ 271B.14-300 to -330 (West 2025) (addressing judicial dissolution of business corporation); *id*. § 273.320 (addressing judi­cial dissolution of nonprofit corporation initiated by the attorney general); *id*. § 273.330 (addressing

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administrative.20 Voluntary dissolution ordinarily results from a provision in the or­ganizational charter or by the consent of the owners or managers of the entity, as provided in its charter or by state statute. Involuntary dissolution of an entity may be imposed by the court in an action brought by an owner or state regulator for improper conduct or for failure to comply with state law. Whether the dissolu­tion is voluntary or involuntary, the organization loses the capacity to engage in business in the ordinary course and must wind up or liquidate its affairs by marshal­ling its assets, discharging its obligations, and distributing any remaining assets to its owners in proportion to their interests. Some statutes allow an organization to re­scind its dissolution and resume its existence as an organization in good standing. If the organization is not reinstated in this fashion, upon the completion of liquida­tion or winding up, the organization will be terminated and cease to exist.

Administrative dissolution results from an organization’s failure to satisfy what is otherwise a ministerial duty, such as filing an annual or biannual report or paying an administrative tax. Most states establish a limited period within which a company may “cure” its administrative dissolution by making the re­quired filings and sometimes by paying a “reinstatement fee.”21 Kentucky, Col­orado, and a few other states allow for indefinite resurrection of a corporation or LLC that was administratively dissolved but not completely liquidated.22 Such resurrection proves handy if a voluntarily dissolved company is discovered to still have title to assets,23 or if management was unaware of the administrative failure that prompted the administrative dissolution.

judicial dissolution of nonprofit corporation by members or directors); id. § 275.290 (addressing ju­dicial dissolution of LLC). See generally RIBSTEIN, supra note 6, at app. 14-7 (collecting LLC statutes).

1. See, e.g., KY. REV. STAT. ANN. §§ 14A.7-010 to -040 (West 2025) (addressing administrative dissolution of business entities).
2. See IND. CODE § 23-0.5-6-3 (2025) (permitting reinstatement not later than five years after ad­ministrative dissolution); GA. CODE ANN. § 14-2-1422 (2025) (same).
3. See KY. REV. STAT. ANN. § 14A.7-030(1) (West 2025) (“An entity administratively dis­solved . . . may apply to the Secretary of State for reinstatement at any time after the effective date of dissolution.” (emphasis added)). Well, not quite. In order for a company to be reinstated after ad­ministrative dissolution, it must make an affirmative representation that it “has taken no steps to wind up and liquidate its business and affairs and notify claimants.” See id. § 14A.7-030(1)(e). Should it undertake any of those actions, the entity may not be reinstated. See id. Delaware and Illinois, like Kentucky, have no time limit within which reinstatement must be sought. See 805 ILL. COMP. STAT. ANN. 5/12.45 (West 2025). With respect to LLCs, the states vary as to whether reinstatement is avail­able, the types of dissolution from which reinstatement is available, and whether reinstatement is available during or after the conclusion of winding up. See RIBSTEIN, supra note 6, at app. 14-12 (col­lecting LLC statutes).
4. See, e.g., Potter v. Blue Flame Energy Corp., No. 2002-CA-001404-MR, 2003 WL 22462183 (Ky. Ct. App. Oct. 31, 2003) (concluding that dissolution did not affect transfer of title of corporate owned real property to corporation’s shareholders); Michaelson v. Michaelson, 939 P.2d 835, 841 (Colo. 1997) (en banc) (“In Colorado, title to corporate property does not vest in the shareholders upon dissolution; rather, it remains in the corporation.” (citing Flader v. Campbell, 207 P.2d 1188, 1191 (Colo. 1949) (en banc))); In re Rogers, No. 23-40330, 2024 WL 3440020, at \*2 (Bankr. N.D. Fla. 2024) (“The Real Property is owned by a non-debtor Florida LLC.”); see also MODEL BUS. CORP. ACT ANN. § 14.03 cmt. (2016) (“Filing of the articles of dissolution makes the de­cision to dissolve a matter of public record and establishes the time when the corporation must begin the process of winding up and cease carrying on its business except to the extent necessary for wind­ing up. . . . This is the only filing required for voluntary dissolution; no filing is required to mark the completion of the winding up as the existence of the corporation continues for certain purposes even

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“Dissolution” emphatically is not the termination of the entities’ legal exis-tence,24 but rather an alteration in its purpose. A “dissolved” entity is restricted to those activities necessary or appropriate to effect its winding up.25 It remains a corporation (or LLC); its shareholders (or members) continue to enjoy limited liability; it retains title to its assets; its registered agent remains in place; and it may sue or be sued.26 Many states permit or require that articles of dissolution be filed by the corporation or the LLC at the beginning of the dissolution pro­cess or at the conclusion of winding up.27 Neither organization makes a filing

after the business is wound up and the assets remaining after satisfaction of all creditors are distrib­uted to the shareholders.”).

1. *See, e.g*., KY. REV. STAT. ANN. § 271B.14-050(1) (West 2025) (“A dissolved corporation shall continue its corporate existence ....”); *id*. § 273.302(1) (“A dissolved [nonprofit] corporation shall continue its corporate existence ....”); *id*. § 275.300(2) (“A dissolved [LLC] shall continue its existence ....”); COLO. REV. STAT. § 7-80-803(1) (2025) (“A dissolved limited liability company continues its existence as a limited liability company ....”); *id*. § 7-114-105(1) (“A dissolved corpo­ration continues its corporate existence ....”); MODEL BUS. CORP. ACT ANN. § 14.05(a) (2016). *See generally* LORD OF THE RINGS: RETURN OF THE KING (New Line Cinema 2003) (“End? No, the journey doesn’t end here. Death is just another path, one that we all must take.” (quoting Gandalf)).
2. *See, e.g*., KY. REV. STAT. ANN. § 14A.7-020(3) (West 2025) (“An entity administratively dis­solved continues its existence but shall not carry on any business except that necessary to wind up and liquidate its business and affairs.”); *id*. § 271B.14-050(1) (“A dissolved corporation shall con­tinue its corporate existence but may not carry on any business except that appropriate to wind up and liquidate its business and affairs ....”); *id*. § 273.302(1) (“A dissolved [nonprofit] corporation shall continue its corporate existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs ....”); *id*. § 275.300(2) (“A dissolved [LLC] shall con­tinue its existence but shall not carry on any business except that appropriate to wind up and liqui­date its business and affairs ....”); IND. CODE § 23-0.5-6-2(c)(2) (2025) (“A domestic filing entity that is dissolved administratively continues its existence as the same type of entity but may not carry on any activities except . . . as necessary to wind up its activities and affairs and liquidate its assets ....”); COLO. REV. STAT. § 7-80-803(1) (2025) (“A dissolved limited liability company continues its existence as a limited liability company but shall not carry on any business except as is appropriate to wind up and liquidate its business and affairs ....”); *id*. § 7-114-105(1) (“A dissolved corporation continues its corporate existence but may not carry on any business except as is appropriate to wind up and liquidate its business and affairs ....”); DEL. CODE ANN. tit. 8, § 278 (2025) (“All corporations, whether they expire by their own limitation or are otherwise dissolved, shall nevertheless be contin­ued, for the term of 3 years from such expiration or dissolution . . . for the purpose of prosecuting and defending suits, whether civil, criminal or administrative, by or against them, and of enabling them gradually to settle and close their business, to dispose of and convey their property, to discharge their liabilities and to distribute to their stockholders any remaining assets, *but not for the purpose of continuing the business for which the corporation was organized*.” (emphasis added)); DEL. CODE ANN. tit. 6, § 18-803(b) (2025) (“Upon dissolution of a limited liability company and until the filing of a cer­tificate of cancellation as provided in § 18-203 of this title, the persons winding up the limited lia­bility company’s affairs may, in the name of, and for and on behalf of, the limited liability company, prosecute and defend suits, whether civil, criminal or administrative, gradually settle and close the limited liability company’s business, dispose of and convey the limited liability company’s property, discharge or make reasonable provision for the limited liability company’s liabilities, and distribute to the members any remaining assets of the limited liability company, all without affecting the liability of members and managers and without imposing liability on a liquidating trustee.”). Statutes of this na­ture preclude an argument that a dissolved entity is no longer a corporation or LLC and is therefore no longer within the definition of a “reporting company.”
3. *See, e.g*., KY. REV. STAT. ANN. §§ 14A.7-020(4), 271B.14-050, 273.302, 275.300(2) (West 2025); IND. CODE §§ 23-0.5-6-2, 23-1-45-5, 23-17-22-5, 23-18-9-3 (2025); DEL. CODE ANN. tit. 8, § 278 (2025); DEL. CODE ANN. tit. 6, § 18-803(b) (2025).
4. *See, e.g*., KY. REV. STAT. ANN. § 271B.14-030(1) (West 2025) (“At any time after dissolution is authorized, the corporation may dissolve by delivering to the Secretary of State for filing . . . articles of dissolution ....”); *id*. § 275.315 (“After the dissolution of the limited liability company ..., the

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that the winding up and termination have been completed.28 In addition, there is the question of whether “dissolution” is complete prior to the filing of a final income or franchise tax return that reports the entity’s activities through the conclusion of the dissolution phase and at least tenders the calculated taxes that are due.29

States authorize voluntary dissolution via different mechanisms for different entities. States also differ in how voluntary dissolution is authorized and how (if at all) voluntary dissolution is made known in the public record. In the case of a corporation, if no directors have yet been appointed and if no shares have been issued or the corporation has not begun business, the incorporator may dissolve the corporation. Alternatively, if the directors have been appointed by the incorporator or were named in the articles of incorporation, the directors may cause the corporation’s dissolution.30 Notice of the dissolution is given by articles of dissolution that are filed with the appropriate state official. Alterna­tively, if the corporation has been in operation, the decision to dissolve is made by a majority of the shareholders acting upon a recommendation of the board of directors.31 There is, however, an important distinction regarding the articles of dissolution filed in these alternative instances. In the case of the arti­cles of dissolution filed with respect to a company for which shares have not been issued or the corporation had not begun to operate, the articles require an affirmative statement “that no debt of the corporation remains unpaid,”32

limited liability company shall file articles of dissolution with the Secretary of State ....”); COLO. REV. STAT. § 7-80-802(1) (2025) (“Upon dissolution, the limited liability company shall deliver to the sec­retary of state . . . a statement of dissolution ....”); *id*. § 7-114-103(1) (“At any time after dissolution is authorized, the corporation may dissolve by delivering to the secretary of state . . . articles of dis­solution ....”). States feature a great variety of statutory requirements for LLCs as to whether a filing is appropriate at the beginning or conclusion of winding up. *See* RIBSTEIN, *supra* note 6, at app. 14-11 (collecting LLC statutes).

1. In Delaware, however, a certificate of cancelation is filed when the process of winding up and termination is completed by an LLC or a limited partnership, but not a corporation. *See* DEL. CODE ANN. tit. 6, § 18-203 (2024). This treatment is a carry-over to LLCs from Delaware’s law of limited partnerships and in contrast to its procedures for corporations. *Compare id*. tit. 6, § 17-203(a) (“A certificate of cancellation shall be filed in the Office of the Secretary of State to accomplish the can­cellation of a certificate of limited partnership upon the dissolution and the completion of winding up of a limited partnership ....”), *with* DEL. CODE ANN. tit. 8, § 275(d) (2024) (“If dissolution is autho­rized in accordance with this section, a certificate of dissolution shall be executed, acknowledged and filed ....”). *See generally* RIBSTEIN, *supra* note 6, at app. 14-11 (collecting LLC statutes).
2. *See, e.g*., KY. REV. STAT. ANN. § 271B.14-050(2)(h) (West 2025) (providing that dissolution does not alter obligations of a business corporation to file federal and state tax returns and to pay federal and state taxes due); *id*. § 275.300(4)(d) (same for LLCs).
3. *See, e.g*., *id*. § 271B.14-010 (“A majority of the incorporators or initial directors of a corpora­tion that has not issued shares or has not commenced business may dissolve the corporation by de­livering to the Secretary of State for filing articles of dissolution ....”); COLO. REV. STAT. § 7-114-101 (2025) (“If a corporation has not yet issued shares, a majority of its directors or, if no directors have been elected, a majority of its incorporators may authorize the dissolution of the corporation.”).
4. *See, e.g*., KY. REV. STAT. ANN. § 271B.14-020 (West 2025). Not all states follow this model. *See* COLO. REV. STAT. § 7-114-102(b) (2025) (excluding the requirement of a recommendation of the board due to “conflict of interest or other special circumstances”).
5. KY. REV. STAT. ANN. § 271B.14-010(4) (West 2025).

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which is made under penalty of perjury.33 If the corporation has been in oper­ation, the articles of dissolution do not require any statement about corporate debt.34 Further, in that latter instance, it is anticipated that creditors, whether known or unknown, will be apprised of the corporation’s dissolution only after the articles of dissolution have been filed with the state.35

In nonprofit corporations, approval of a voluntary dissolution depends on whether the corporation has members who are entitled to vote on the question of dissolution. If members vote on dissolution, dissolution is approved by two-thirds of the members present at a meeting at which the question is considered, following a recommendation to dissolve by the board of directors.36 Alterna­tively, if the corporation does not have members or if the members are not en­titled to vote on dissolution, the corporation’s dissolution may be approved by a majority of the board.37 For nonprofit corporations, there is no proviso for the dissolution by the incorporator,38 because the initial directors must be named in the articles of incorporation.39

There is an important distinction between the steps involved in the dissolu­tion of business and nonprofit corporations. In the case of a business corpora­tion: first, dissolution is approved;40 second, articles of dissolution are filed with the state;41 and third, upon the effective time and date of those articles of dissolution,42 the corporation is dissolved, whereupon its purpose is

1. See id. § 14A.2-030(1) (“A person who executes a document with intent that the document be delivered to the Secretary of State for filing shall be deemed to have declared under penalty of perjury that to that person’s knowledge the contents of the document are true.”); COLO. REV. STAT. § 7-90­301.5 (2025) (“By causing a document to be delivered to the secretary of state for filing...., an individual affirms, under penalty of perjury, that: (a) The document is the individual’s act and deed or that the individual in good faith believes that the document is the act and deed of the person on whose behalf the document is delivered for filing; (b) The individual in good faith believes that the facts stated in the document are true; and (c) The document complies with the requirements of this [statute], the constituent documents, and the organic statutes.”).
2. See COLO. REV. STAT. § 7-114-103(1) (2025); KY. REV. STAT. ANN. § 271B.14-030(1) (West 2025); see also MODEL BUS. CORP. ACT ANN. § 14.03(a) (2016).
3. See, e.g., KY. REV. STAT. ANN. § 271B.14-060(2) (West 2025) (“The dissolved corporation shall notify its known claimants in writing of the dissolution at any time after its effective date.”); id. § 271B.14-070(1) (“A dissolved corporation may also publish notice of its dissolution and request that persons with claims against the corporation present them in accordance with the notice ....”); id. § 271B.14-030(3) (“A corporation shall be dissolved upon the effective date of its articles of dis­solution.”). See generally RIBSTEIN, supra note 6, at app. 14-11 (collecting statutes regarding dissolution filings for LLCs).
4. See, e.g., KY. REV. STAT. ANN. § 273.300(1) (West 2025).
5. See, e.g., id. § 273.300(2).
6. Cf. id. § 271B.14-010.
7. See id. §§ 273.247(1)(f), 273.211(2).
8. See, e.g., id. § 271B.14-020.
9. See, e.g., id. § 271B.14-030(1).
10. See id. §§ 271B.14-030(3), 14A.2-070(1)–(2); see also DEL. CODE ANN. tit. 8, § 275(d) (2025) (“If dissolution is authorized in accordance with this section, a certificate of dissolution shall be ex­ecuted, acknowledged and filed, and shall become effective, in accordance with § 103 of this title.”); id. § 275(g) (“A corporation shall be dissolved upon the earlier of: (1) The date specified in such cor-poration’s certificate of incorporation . . . ; or (2) The effectiveness in accordance with § 103 of this title of a certificate of dissolution filed in accordance with this section.”); id. § 103(d) (“Any instru­ment filed in accordance with subsection (c) of this section shall be effective upon its filing date. Any

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affected.43 For nonprofit corporations, the alternation of the purpose of the or­ganization is effective immediately upon the decision to dissolve. For example, Kentucky provides as follows:

Upon the adoption of such resolution by the members, or by the board of direc­tors if there are no members or no members entitled to vote thereon, the corpo­ration shall cease to conduct its affairs except insofar as may be necessary for the winding up thereof, shall immediately cause a notice of the proposed dissolution to be mailed to each known creditor of the corporation, and shall proceed to col­lect its assets and apply and distribute them as provided in KRS 273.161 to 273.390.44

The nonprofit corporation may thereafter file articles of dissolution,45 thereby placing third parties on notice of the dissolution, but that filing is not a precon­dition to the corporation entering into the winding up phase.

For an LLC, dissolution must be approved by some or all of the members.46 Thereafter, the LLC files articles of dissolution,47 but the dissolution occurred upon approval by the members. The filing of the articles of dissolution merely notified third parties of the LLC’s dissolution.48

As detailed, states differ on the process to approve dissolution and to notice the public of any such dissolution. States, however, generally require the filing of a notice of dissolution to alert the public that the winding up process has begun, but states generally do not require a public filing that the dissolution and winding up processes have been completed.

instrument may provide that it is not to become effective until a specified time subsequent to the time it is filed, but such time shall not be later than a time on the ninetieth day after the date of its filing.”).

1. *See, e.g*., COLO. REV. STAT. § 7-114-105 (2025); KY. REV. STAT. ANN. § 271B.14-050(1) (West 2025).
2. *See* KY. REV. STAT. ANN. §§ 273.300(3), 273.302(1). (West 2025).
3. *See id.* § 273.313.
4. *See id*. § 275.285(3) (“Unless otherwise set forth in the operating agreement, the written con­sent of all of the members of a limited liability company ....”). We assume a written operating agree­ment did not delegate to the managers the capacity to approve and effect the LLC’s dissolution.
5. *See id*. § 275.315.
6. *See, e.g*., *id*. § 275.285 (“A limited liability company shall be dissolved, and it shall commence to wind up its affairs upon the happening of the first to occur of the following: . . . (3) [t]he written consent of all of the members of a limited liability company ....”); COLO. REV. STAT. § 7-80-801(1) (2025) (“A limited liability company formed under this article is dissolved ... upon the agreement of all members ....”); DEL. CODE ANN. tit. 6, § 18-801(a)(3) (2025) (“A limited liability company is dissolved and its affairs shall be wound up upon the first to occur of the following: . . . (3) Unless otherwise provided in a limited liability company agreement, upon the vote or consent of members who own more than 2/3 of the then-current percentage or other interest in the profits of the limited liability company owned by all of the members ....”).

For limited partnerships, Kentucky provides that, after the partners approve the entity’s dissolu­tion, the certificate of limited partnership may be amended to recite that it has been dissolved. *See* KY. REV. STAT. ANN. §§ 362.2-801(2), 362.2-803(2)(a) (West 2025). It is mandatory that a “statement of cancellation” be filed when the winding up is completed. *See id.* § 362.2-203.

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THE STATUTORY INACTIVE ENTITY EXEMPTION

The CTA exempts from the obligation to file BOIRs any inactive entity, exclud­ing them from the definition of a “reporting company,”49 if such entity meets the following requirements:

any corporation, limited liability company, or other similar entity—

1. in existence for over 1 year;
2. that is not engaged in active business;
3. that is not owned, directly or indirectly, by a foreign person;
4. that has not, in the preceding 12-month period, experienced a change in own­ership or sent or received funds in an amount greater than $1,000 (including all funds sent to or received from any source through a financial account or ac­counts in which the entity, or an affiliate of the entity, maintains an interest); and
5. that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity.50

THE REGULATORY INACTIVE ENTITY EXEMPTION

The Reporting Rules,51 in furtherance of the CTA, exempt from the scope of a “reporting company”52:

Any entity that:

1. Was in existence on or before January 1, 2020;
2. Is not engaged in active business;
3. Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
4. Has not experienced any change in ownership in the preceding twelve-month period;
5. Has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period; and
6. Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.53
7. *See* 31 U.S.C. § 5336(a)(11) (2024) (defining “reporting company”).
8. *Id.* § 5336(a)(11)(B)(xxiii).
9. *See supra* note 1 (defining “Reporting Rules”).
10. *See* 31 C.F.R. § 1010.380(c)(2) (2025) (crafting exemptions from the definition of “reporting company”).
11. *Id*. § 1010.380(c)(2)(xxiii) (“Inactive entity”).

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DISTINCTIONS BETWEEN THE INACTIVE ENTITY EXEMPTIONS OF THE CTA AND THE REPORTING RULES

There are a number of distinctions between the inactive entity exemptions set forth in the CTA and the Reporting Rules, as well as a number of common issues. Further, as will be discussed below, this exemption may, by negative inference, indicate that many entities which were thought to be “dissolved” constitute “re­porting companies” subject to the CTA’s filing obligations.54 The following table breaks down the elements of the respective exemptions.

|  |  |
| --- | --- |
| Statutory Exemption Requirements  31 U.S.C. § 5336(a)(11)(B)(xxiii) | Regulatory Exemption Requirements  31 C.F.R. § 1010.380(c)(2)(xxiii) |

In existence for over 1 year; Was in existence on or before January 1,

2020;

Is not engaged in active business; Is not engaged in active business;

|  |  |
| --- | --- |
| Is not owned, directly or indirectly, by a foreign person; | Is not owned by a foreign person, whether directly or indirectly, wholly or partially; |

Has not, in the preceding 12-month period, experienced a change in ownership;

Has not, in the preceding 12-month period, ... sent or received funds in an amount greater than $1,000 (including all funds sent to or received from any source through a financial account or accounts in which the entity, or an affiliate of the entity, maintains an interest); and

Does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity.

Has not experienced any change in ownership in the preceding twelve-month period;

Has not sent or received any funds in an amount greater than $1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period; and

Does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

Following the Supreme Court’s *Loper Bright* decision,55 agency regulations no longer command judicial deference. *Loper Bright* looms large because FinCEN’s

1. *See* 31 U.S.C. § 5336(b)(2)(E) (2024) (providing that an inactive entity that ceases to satisfy the exemption shall, within thirty days, file a beneficial ownership report). Apparently, the resurrec­tion of an inactive entity is possible. That said, it is curious that this provision did not make its way into the Reporting Rules beyond an oblique reference. *See* 31 C.F.R. § 1010.380(a)(1)(iv) (2025). Section 5336(b)(2)(E) is not referenced in the Reporting Rules.
2. Loper Bright Enters. v. Raimondo, 144 S. Ct. 2244, 2273 (2024), *overruling* Chevron U.S.A., Inc. v. Nat. Res. Def. Council, Inc., 467 U.S. 837 (1984) (according deference to reasonable agency interpretation of ambiguous statute).

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regulations narrow the congressional exemption for inactive entities—limiting the exemption to organizations in existence on or before January 1, 2020— thereby increasing the number of organizations governed by the statute.

PERIOD OF EXISTENCE

It is clear that the regulatory exemption is more narrow and therefore more difficult to satisfy than is the statutory exemption, as the former would exclude from its scope any domestic reporting company created after January 1, 2020; the statutory exemption contains no such limitation. Presumably FinCEN took the “in existence for over 1 year” of the CTA,56 looked to the CTA’s effective date of January 1, 2021, and backed it off one year, thereby turning the statute’s more flexible floating date requirement to a fixed point in time under the regulations. This disparity raises an important question of whether the regulatory requirement is enforceable as a further limitation on the statutory ex­emption. While the CTA grants the Treasury Department the authority to create exemptions,57 the CTA does not empower the Treasury Department to limit the availability of a statutory exemption.

In addition, the term “existence” is not defined.58 The term “existence” differs from the term “created,” which is used when determining whether a particular busi­ness organization is a “domestic reporting company.”59 It remains unclear why the Treasury Department employed different terms. The Reporting Regulations could have required that the entity had been “created not later than January 1, 2020” and could have obtained the same effect without adding yet another undefined term.60

NOT ENGAGED IN ACTIVE BUSINESS

The term “active business” is not defined in either the CTA or the Reporting Rules.61 Presumably a business that is in the process of winding up and terminating

1. 31 U.S.C. §§ 5336(a)(11)(B)(xxiii), 5336(b)(5) (2024) (“[T]he regulations prescribed by the Secretary of the Treasury . . . shall be promulgated not later than 1 year after the date of the enactment of this section.”).
2. *See id*. § 5336(a)(11)(B)(xxiv); *see also* Beneficial Ownership Information Reporting Require­ments, 87 Fed. Reg. 59498, 59540 (Sept. 30, 2022) (“As discussed in Section III.E.iii, the CTA autho­rizes the Secretary to exempt additional entities or classes of entities from the definition of ‘reporting company.’” (footnote omitted)); *id*. at 59545 (“As previously noted, any expansion beyond the enumer­ated statutory exemptions also requires the concurrence of the Departments of Justice and Homeland Security and is subject to an assessment of statutory criteria regarding the public interest and the in-formation’s usefulness.” (footnote omitted)).
3. *See* 31 U.S.C. § 5336(a) (2024) (setting forth definitions); 31 C.F.R. § 1010.380(c)–(g) (2025) (defining various terms).
4. *See* 31 C.F.R. § 1010.380(c)(1)(i) (2025) (“The term ‘domestic reporting company’ means any entity that is . . . (C) *Created* by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe ....”(emphasis added)).
5. The Reporting Rules did not define “created.” If those regulations had left only one term un­defined, the reader would have a better chance to glean its meaning.
6. *See* 31 U.S.C. § 5336(a) (2024) (setting forth definitions); 31 C.F.R. § 1010.380(c)–(g) (2025) (defining various terms).

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its affairs, where its business activities are restricted to that purpose,62 is not engaged in an active business. A highly fact-specific issue concerns the distinction between “active business” and activities “appropriate to wind up and liquidate its business.”63 While the purchase of additional inventory for resale might not be part of a retailer’s winding up and liquidation, the purchase of additional mulch by a landscaping company to complete its last job (and to get paid thereon) might be.64

Further, neither the statute nor the regulations specify when this limitation should be assessed. Is it: (1) as of January 1, 2020; (2) as of January 1, 2024; (3) for the entire period January 1, 2020, through January 1, 2024; (4) for the entire period January 1, 2020, through December 31, 2024; or (5) as of some other date? Hopefully the answer is “some other date,” namely the date on which the entity determines it otherwise satisfies the requirements of the exemp­tion, but FinCEN has not confirmed that interpretation.

NOT OWNED BY A FOREIGN PERSON

First, the regulations define “foreign person” to mean “a person who is not a United States person.”65 In turn, the term “United States person” means:

1. a citizen or resident of the United States,
2. a domestic partnership,
3. a domestic corporation,
4. any estate (other than a foreign estate, within the meaning of paragraph (31)), and
5. any trust if—
6. a court within the United States is able to exercise primary supervision over the administration of the trust, and
7. one or more United States persons have the authority to control all substan­tial decisions of the trust.66
8. *See supra* note 25 and accompanying text.
9. 31 U.S.C. § 5336(a)(11)(B)(xxiii)(II) (2024); COLO. REV. STAT. §§ 7-80-803(1), 7-114-105(1) (2025).
10. The concept of an “active business” has a rich provenance with the Treasury Department. The term appears five times in the Internal Revenue Code and fifty-seven times in the regulations. *See, e.g*., I.R.C. § 355(a)(1)(C) (2024) (“active businesses”); *id*. § 355(b)(1) (“active conduct of a trade or busi­ness”); Treas. Reg. § 1.355-3 (1989) (“active conduct of a trade or business”); *see also* Rev. Rul. 2007­42, 2007-2 C.B. 44 (“active conduct of a trade or business”); E. John Lopez, *Defining “Trade or Business” Under the Internal Revenue Code: A Survey of Relevant Cases*, 11 [FLA. ST](http://FLA.ST). U. L. REV. 949 (1984) (analyzing interpretation of the term). As with many items, its terse inclusion in the CTA with no background or explanation demonstrates the bedeviling uncertainty with which those attempting to comply with the CTA’s nuances and their advisors will have to deal. Simply put, in using “active business,” did Congress or the Treasury Department intend to adopt the existing meaning of “active trade or busi­ness” or some other unknown meaning?
11. 31 C.F.R. § 1010.380(f)(3) (2025); *see* 31 U.S.C. § 5336(a)(7) (2024) (cross-referencing I.R.C. § 7701(a)).
12. *See* 31 C.F.R. § 1010.380(f)(10) (2025) (defining “United States person” by cross-referencing I.R.C. § 7701(a)(30)); Treas. Reg. § 7701(a)(30) (2011).

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So, none of these “persons” is implicated by the exemption’s exclusion of entities with a foreign owner. That is easy for entities that never had an owner that is a “foreign person,” but what about a company desiring to be classified as an inac­tive entity that previously had such an owner? The exclusion from the exemption is for an entity that “is not” so owned, a phrase different from the “has not” so owned, which is elsewhere employed, indicating more of a point in time assess­ment. But at what point in time should this criterion be assessed? Is it: (1) as of January 1, 2020; (2) as of January 1, 2024; (3) at any time between January 1, 2020, and January 1, 2024; (4) at any time between January 1, 2020, and De­cember 31, 2024; or (5) as of some other date? Hopefully the answer is “some other date,” namely the date on which the entity determines it otherwise satisfies the requirements of the exemption, but FinCEN has not confirmed that interpretation.

Turning to the larger issue, what is meant by the undefined term “owned”? Is that single word shorthand for “beneficial owner,” such that the statutory and regulatory exemptions require that the entity “does not have a beneficial owner who is a foreign person, whether directly or indirectly, wholly or par­tially”? That seems a stretch. Moreover, “owned” is a verb that must be connected with something. The Reporting Rules provide a detailed definition of an “own­ership interest,”67 but that term is not employed in the regulatory inactive entity exemption.

NO CHANGE IN OWNERSHIP IN THE PRECEDING TWELVE MONTHS

Continuing the theme set forth above, neither the CTA nor the Reporting Rules defined the term “ownership.” Does the granting or termination of an out-of-the-money option constitute a “change in ownership”? While an option, even one that is out-of-the-money, is an “ownership interest” for purposes of the beneficial ownership tests,68 such an option does not, at the time of grant or at the time of termination, alter the percentage interests of the venture’s other “owners.” On these facts has there been a “change?”

As was the case above, the phrase “in the preceding twelve-month period” is not anchored by a reference date. Is it: (1) the twelve months preceding Jan­uary 1, 2020; (2) the twelve months preceding January 1, 2024; (3) the twelve months preceding January 1, 2025; (4) the twelve months preceding the date on which the entity determines it otherwise satisfies the requirements of the inactive entity exemption; or (5) from some other date? Hopefully the answer is option (4), but FinCEN has not confirmed that interpretation.

Presumably an involuntary change in ownership, such as consequent to death, would render this exemption unavailable. Assume that Corp A existed for forty years with Sheldon as its sole shareholder, director, and officer. On December 31, 2023, Sheldon retired. During 2024, the corporation had been winding up

1. *See* 31 C.F.R. § 1010.380(d)(2)(i) (2025) (defining “ownership interest”).
2. *See id*.

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and terminating its affairs. That process concluded on October 31, 2024, when Sheldon passed away in his sleep. Ignoring certain complications,69 it seems that Corp A must file an initial BOIR not later than January 1, 2025.70 Further, Corp A could not benefit from the inactive entity exemption until October 31, 2025.71 All of which seems to be an especially pointless application of the law.

Another open question is whether the initial issuance of ownership rights con­stitutes a change in ownership. Assume a corporation was created under the Model Business Corporation Act (the “MBCA”) on day 1, 2024, by filing of the Articles of Incorporation with the state. On day 30, the incorporator appointed A, B, and C as directors, which board then issued shares to 1, 2, and 3. Before day 90, a BOIR was filed identifying each of A, B, C, 1, 2, and 3 as beneficial own­ers. No additional shares were ever issued, and no outstanding shares were trans­ferred or redeemed. On day 366, after the corporation existed for at least a year,72 the board recommended, and the shareholders approved, the corporation’s disso­lution, whereupon Articles of Dissolution were filed with the state. Was there a change in ownership in the twelve months preceding the filing of the Articles of Dissolution, or must that determination be made after day 395, more than twelve months from the initial (and only) share issuance? There is no authority to support the position that the share issuance is other than a change in ownership.

NOT SENT OR RECEIVED MORE THAN $1,000 IN THE PRECEDING TWELVE MONTHS

Returning to a theme in interpreting the inactive entity exemption, the phrase “in the preceding twelve-month period” is not anchored by a reference date. Is it: (1) the twelve months preceding January 1, 2020; (2) the twelve months preceding January 1, 2024; (3) the twelve months preceding January 1, 2025; (4) the twelve months preceding the date on which the entity determines it otherwise satisfies the requirements of the inactive entity exemption; or (5) from some other date? Hope­fully the answer is option (4), but FinCEN has not confirmed that interpretation.

Next, while transfers by an “affiliate” of the reporting company hoping to uti­lize the inactive entity exemption may be counted against it, the term “affiliate of an entity” is not defined.73 In other legal contexts, the federal government has defined “affiliate,”74 but neither the CTA nor the Reporting Rules define that term. Further, it is unclear how one should apply the language “through any fi­nancial account in which the entity or any affiliate of the entity had an interest.”

1. Presumably Corp A never had to file a BOIR. Consequently, special rules regarding estates may not be applicable.
2. *See* 31 C.F.R. § 1010.380(a)(1)(iii) (2025); *see also* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.12, C.13.
3. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii) (2025).
4. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(I) (2024).
5. *See id.* § 5336(a) (setting forth definitions); 31 C.F.R. § 1010.380(c)–(g) (2025) (defining var­ious terms).
6. *See* 17 C.F.R. § 230.501(b) (2025) (defining “affiliate” for purposes of SEC Regulation D); *see also* I.R.C. § 1504(a)(1) (2024) (defining “affiliated group”).

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Assuming affiliated companies use common accounts, at the inception of the dis­solution process, must the dissolving company be barred from access to those accounts so as to avoid attribution of the ongoing activities of the other compa­nies to the company undergoing dissolution to preserve availability of the ex­emption? Alternatively, should one focus exclusively upon transfers expressly on behalf of the dissolving venture? If the latter, what level of documentation of separation is necessary?

Finally, the very act of analyzing the activities of the reporting company to de­termine its eligibility for the inactive entity exemption may entail costs of $1,000 or more, the payment of which by an “affiliate” may run afoul of this limitation.

HOLDS NO ASSETS

The entity desiring to be classified as an “inactive entity” must not hold any “kind or type of asset,” including an “ownership interest” in another venture. While not express in the Reporting Rules, this limitation precludes a subsidiary of an inactive entity from claiming exemption from the CTA on the basis that its parent is exempt.75

It is unclear whether contingent assets or purely intangible assets, such as goodwill attached to a business name or website address, violates this limitation. The question was presented during the rule-making process, but FinCEN did not address the point in the Reporting Rules or in subsequent commentary.76 Any such assets—which are quite common—could render this exemption inap­plicable. Is it FinCEN’s objective that a business organization must change its name and abandon any associated goodwill to take advantage of this exemption? Of course, such assets are not the only category that may give rise to problems. While winding up, many companies may be awaiting a tax refund or an ad­vanced pricing agreement (“APA”) purchase price adjustment; whether the exis­tence of these and similar claims will bar access to the inactive entity exemption has not yet been addressed.

THE INACTIVE ENTITY FAQS

On July 8, 2024, FinCEN issued three Frequently Asked Questions (“FAQs”)77 that touch upon the application of the inactive entity exemption. Be­fore turning to their substance, it is important to recognize that, while FinCEN stated that FAQs go through the same level of scrutiny as would a proposed amendment to the regulations promulgated by the Treasury Department, the guidance specifically stated, “[t]hese Frequently Asked Questions are explana­tory only and do not supplement or modify any obligations imposed by statute

1. *See* 31 C.F.R. § 1010.380(c)(2)(xxii) (2025) (providing that wholly owned subsidiaries of most classes of exempt companies are themselves exempt, but not extending that exemption to the inactive entity exemption).
2. *See* Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59545 (Sept. 30, 2022).
3. FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.12–C.14, at 13–14.

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or regulation.”78 As is identified below, these FAQs often tacitly ignore limita­tions imposed by the Reporting Rules and impose additional requirements upon reporting companies, including companies seeking classification as inac­tive entities. Though FinCEN may be estopped from disavowing its FAQs when pursuing an enforcement action against a company that relied thereon, such additional requirements further complicate matters for regulated compa­nies and their attorneys.

According to the first of the FAQs regarding the inactive entity exemption, re­porting obligations are not applicable to what would otherwise be reporting companies that “ceased to exist as legal entities before January 1, 2024.”79 The second FAQ expands on the “ceased to exist” requirement:

A company is not required to report its beneficial ownership information to Fin-CEN 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. A company that ceased to exist as a legal entity 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.

Although state or Tribal law may vary, a company typically completes the process of formally and irrevocably dissolving by, for example, filing dissolution paperwork with its jurisdiction of creation or registration, receiving written confirmation of dis­solution, paying related taxes or fees, ceasing to conduct any business, and winding up its affairs (e.g., fully liquidating itself and closing all bank accounts).80

The FAQ identifies facts that would indicate the reporting company remains subject to the reporting requirements:

If a reporting company . . . 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.81

The FAQ provided an example of when this relief from reporting is not avail­able: “[a] company that is administratively dissolved or suspended—because, for example, it failed to pay a filing fee or comply with certain jurisdictional require-ments—generally does not cease to exist as a legal entity unless the dissolution

1. *Id.* at 1.
2. *Id.* C.12, at 13; *see also* FinCEN Guide, *supra* note 13, ch. 6.1, at 46 (“There is no requirement to report a company’s termination or dissolution.”).
3. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.13, at 13–14.
4. *Id*. (citing C.1, at 7) (addressing “What companies will be required to report beneficial own­ership information to FinCEN?”).

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or suspension becomes permanent.”82 Then, undermining any supposed clarity, FinCEN stated: “[f]or specifics on how to determine when a company ceases to exist as a legal entity, consult the law of the jurisdiction in which the company was created or registered.”83 States, however, rarely provide that level of speci­ficity in dissolution statutes. Dissolution is as much a status as it is a process, signaling to the world that the venture has ceased to do business in the ordinary course and has shifted to a purpose of winding up and terminating its affairs.84 After dissolution commences, typically by filing “articles of dissolution”85 with the pertinent state office,86 the dissolving organization remains a corporation or LLC; its shareholders or members continue to enjoy limited liability; it retains title to its assets; its registered agent remains in place; and it may sue or be sued.87 There­after, the entity must collect its assets, ascertain its liabilities, satisfy or make pro­vision for those liabilities, and distribute any remainder to its owners. Even after dissolution is complete, absent resignation, the directors and officers remain di­rectors and officers, with the analogous treatment for LLC managers, and the shareholders or members remain in that same role. There is not typically a filing with the state to the effect “dissolution is done, we are really finished.”88 In addi­tion, there is the question of whether “dissolution” is complete prior to the filing of a tax return that reports the entity’s activities and at least tenders payment of any taxes due.89 Should completion of winding up be necessary before the obli­gation to submit and update BOIRs ends? FinCEN instructed: “[w]ith respect to questions regarding the treatment of company termination or dissolution, FinCEN does not expect a reporting company to file an updated report upon company ter­mination or dissolution.”90 Dissolution typically happens by filing the “articles of dissolution” and typically long precedes the completion of the winding-up pro­cess. FinCEN arguably focused upon updated, and not initial, BOIRs, but then,

1. Id. C.13, at 14.
2. Id.
3. See supra notes 24–26 and accompanying text.
4. See, e.g., KY. REV. STAT. ANN. §§ 271B.14-030(1), 275.315 (West 2025) (referencing “articles of dissolution”); COLO. REV. STAT. § 7-114-103(1) (2025) (same); cf. DEL. CODE ANN. tit. 6, § 18-203 (2025) (referencing a “certificate of cancellation” for an LLC).
5. See FIN. CRIMES ENF’T NETWORK, supra note 14, C.17, at 16 (referencing the secretary of state or a “similar office”). “A ‘similar office’ is any office (including a department, agency, or bureau) of a governmental authority under the law of a State or Indian Tribe where or through which a domestic entity files a document to be created or a foreign entity files a document to be registered to do busi­ness in the United States. Federal agencies are not ‘similar offices.’ Domestic entities that are created by State or Federal charter are not created by the filing of a document with a secretary of state or similar office.”
6. Id. KY. REV. STAT. ANN. §§ 14A.7-020(4), 271B.14-050, 273.302, 275.300(2) (West 2025); IND. CODE §§ 23-0.5-6-2, 23-1-45-5, 23-17-22-5, 23-18-9-3 (2025); DEL. CODE ANN. tit. 8, § 278 (2025); DEL. CODE ANN. tit. 6, § 18-803(b) (2025).
7. This is a point on which attention to the applicable state law is necessary. For example, for an LLC, Delaware requires such a filing. See DEL. CODE ANN. tit. 6, § 18-203 (2025).
8. See, e.g., KY. REV. STAT. ANN. § 271B.14-050(2)(h) (West 2025) (providing that dissolution of a corporation does not alter obligations to file federal and state tax returns and to pay federal and state taxes due); id. § 275.300(4)(d) (same for LLCs).
9. See Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59514 (Sept. 30, 2022) (emphasis added).

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could not a company already in dissolution file an initial BOIR and then make no further reports irrespective of when winding up is completed? Last, what is meant by “irrevocable?” Does “irrevocable” require that there be no state court mecha­nism by which assets discovered post-dissolution may be addressed?91

While the two FAQs referenced above apply to companies created prior to January 1, 2024,92 the third FAQ addresses companies formed on or after that date, which was the effective date of the Reporting Rules:

These [reporting] obligations remain applicable to reporting companies that cease to exist as legal entities—meaning wound up their affairs, ceased conducting business, and entirely completed the process of formally and irrevocably dissolving—before the . . . reporting companies have to report their beneficial ownership information to FinCEN. If a reporting company files an initial beneficial ownership information report and then ceases to exist . . . , then there is no requirement for the reporting company to file an additional report with FinCEN noting that the company has ceased to exist.93

So, must a company created and dissolved in 2024 file a BOIR even if it no longer carries on business activities? How that will work is hard to ascertain. As­sume a shell LLC is created on June 1, 2024, so it has ninety days to file its initial BOIR. But it is never used for anything by anyone. Nobody ever becomes a mem­ber, so the LLC never came into existence, as an LLC must have a member.94 How exactly is the LLC to file a BOIR? It never had a member and the organizer, unlike an incorporator,95 has no authority over the LLC after the moment of its

1. *See supra* notes 21–23 and accompanying text.
2. These FAQs do not reference the requirement that the reporting company must have existed as of January 1, 2020. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(A) (2025).
3. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14; *see also* Beneficial Ownership Infor­mation Reporting Requirements, *supra* note 1, at 59514 (“Lastly, with respect to questions regarding the treatment of company termination or dissolution, FinCEN does not expect a reporting company to file an updated report upon company termination or dissolution.”).
4. *See, e.g*., DEL. CODE ANN. tit. 6, § 18-101(8) (2025) (“‘Limited liability company’ and ‘domestic limited liability company’ means a limited liability company formed under the laws of the State of Delaware and having 1 or more members.”); KY. REV. STAT. ANN. § 275.015(12) (West 2025) (requir­ing for-profit LLCs to have at least one member); ME. STAT. tit. 31, § 1531(1)(C) (2025) (“The limited liability company must have one or more members.”); S.D. CODIFIED LAWS § 47-34A-202.1(a) (2025) (“One or more persons may organize a limited liability company, *consisting of one or more members*, by delivering articles of organization to the Office of the Secretary of State for filing.” (emphasis added)). These statutes create another question with respect to the operation of the CTA; under many acts, an LLC does not come into legal existence unless it has a member, among other requirements. In such circumstances, does such an LLC constitute a reporting company? *See also* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.9, at 12 (“In an unusual circumstance where a domestic corporation or limited li­ability company is created, but not by the filing of a document with a secretary of state or similar office, such an entity is not a reporting company.”).
5. Recall that an “incorporator” of a corporation has authority to, for example, if not set forth in the articles of incorporation, appoint the initial directors and adopt the initial bylaws. *See, e.g*., KY. REV. STAT. ANN. §§ 271B.2-050(1)(b), 271B.2-060(1) (West 2025); MODEL BUS. CORP. ACT ANN. §§ 2.05(a)(2), 2.06(a) (2016). The “organizer” of an LLC, however, is not similarly empowered; an organizer may simply sign the articles of organization and submit that document to the secretary of state for filing. *See, e.g*., COLO. REV. STAT. §§ 7-80-203(1), 7-90-301.5 (2025); KY. REV. STAT. ANN. § 275.020(1) (West 2025). While a corpo­rate incorporator may have the capacity to voluntarily dissolve a corporation, there is no similar capacity with respect to the organizer of an LLC; dissolution occurs by action of the members. *See, e.g*., KY. REV.

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formation. Being that there are no members, there is no actual or apparent agent for the company. No one has “substantial control” and, as there are no members, no one has any, much less 25 percent, ownership.96 A business organization is a legal construct,97 governed according to state law. This FAQ seems to assume that every organization engages in operations before entering the process of dis­solution. This FAQ fails to address the treatment of an entity that was (partially) organized but then abandoned.

Assuming a company was organized in 2024 or thereafter and engaged in some level of activity, which may be as little as transient usage in an exchange or acquisition transaction, it will need to file a BOIR even if it is wound up before the arrival of the BOIR reporting deadline. For entities created in 2024, the dead­line is ninety days after notice of formation, a timeline that was be reduced to thirty days for entities organized on or after January 1, 2025.98 There may not be much to report. A BOIR needs to include information current as of the time the filing is made.99 Presumably any officer, director, or manager of a tran­sient entity could resign from those positions before the reporting date and be­fore the date upon which the entity otherwise ceases to exist, leaving the entity with no one to exercise managerial control.100 Likewise, any person or entity who was an owner could “resign” from being an owner, irrevocably forfeiting any such ownership rights, leaving the reporting company with no owners, much less owners with a 25 percent ownership interest. On those facts, the BOIR would identify the reporting company and the company applicant(s), but there would be no information provided as to beneficial owners, as none exist. Though the BOIR would be accurate, FinCEN’s BOSS would reject the fil­ing as it lacks at least one beneficial owner,101 leaving reporting companies to

Stat. Ann. § 271B.14-010 (2025); DEL. CODE ANN. tit. 6, § 18-801(a)(3) (2025) (requiring, by default, “vote or consent of members who own more than 2/3 of the then-current percentage or other interest in the profits of the [LLC]”); COLO. REV. STAT. § 7-80-801 (2025) (requiring unanimous consent); KY. REV. STAT. ANN. § 275.285(3) (West 2025) (same).

96. 31 C.F.R. § 1010.380(d) (2025) (defining “beneficial owner” by reference to “substantial control” and “ownership interests”).

97. *See, e.g*., Sutton’s Hosp. (1612), 77 Eng. Rep. 937, 973 (KB) (holding that a hospital corporation founded by King James I, “although it be but a fiction,” it is “invisible, immortal, and resteth only in intendment and consideration of the Law”); Trs. of Dartmouth Coll. v. Woodward, 17 U.S. (4 Wheat.) 518, 636 (1819) (“A corporation is an artificial being, invisible, intangible, and existing only in con­templation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence.”); CHARLES B. EL-LIOTT, A TREATISE ON THE LAW OF PRIVATE CORPORATIONS § 8, at 9–10 (3d. ed. 1900) (“The idea of separate personality is at the base of the corporation concept. . . . The sharp line of demarcation between the collective person and the separate members expressed the fundamental idea underlying the Roman law of corporations. . . . But the English common law fully recognized the separate personality of the cor­porate entity. It inherited this principle from the Roman law and adorned it with such metaphysical concepts as ‘invisibility,’ ‘intangibility,’ ‘immortality,’ and ‘soullessness.’” (footnote omitted)). For more on *Sutton’s Hospital*, see David C. Smith, *The Beginning of History for Corporate Law: Corporate Government, Social Purpose and The Case of Sutton’s Hospital (1612)*, 45 SEATTLE U. L. REV. 367 (2021).

1. *See* 31 C.F.R. § 1010.380(a)(1)(i)(A)–(B) (2025).
2. *See id*. § 1010.380(b); FIN. CRIMES ENF’T NETWORK, *supra* note 14, G.4, at 41.
3. *See supra* note 99.
4. *See Beneficial Ownership Information Report: Filing Instructions*, FIN. CRIMES ENF’T NETWORK 6 (Jan. 2024), <https://boiefiling.fincen.gov/resources/BOIR_Filing_Instructions.pdf> (“BOIRs must be

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navigate between the Scylla of the reporting deadline and the Charybdis of the requirement of completeness.102

Notwithstanding these significant issues, there is an overriding problem. The FAQ guidance is not integrated with the inactive entity exemption of the Reporting Rules.103 Two examples follow. First, with respect to FAQ C.13 and dissolution of entities completed before January 1, 2024, is it also necessary that the organiza-tion’s existence pre-dated January 1, 2020,104 and that there has been no change in ownership in the twelve months preceding its cessation of legal existence?105 Alternatively, is it sufficient the dissolution was completed before the effective date of the Reporting Rules? Second, with respect to FAQ C.14, if this is an expli­cation of the inactive entity exemption, how can a company “created or registered in 2024”106 make use of an exemption limited by its express terms to a reporting company that “[w]as in existence on or before January 1, 2020”?107

But wait; there’s more. On September 10, 2024, FinCEN issued FAQs C.15 and C.16 and amended both C.14 and G.4. The amendments focus upon the information to report with respect to a company that has ceased to exist, requir­ing that the information be current as of the moment before existence ceased.108

complete before they can be filed with FinCEN. FinCEN will not accept a BOIR if any items marked with a red asterisk (\*) are blank.”).

1. *See* 31 C.F.R. § 1010.380(a)(1)(i)(A)–(B) (2025) (establishing deadlines for filing of initial reports by companies formed on or after January 1, 2024); *id*. § 1010.380(b) (requiring that report be certified as “true, correct and complete”); *see also* HOMER, ODYSSEY 455 (A.T. Murray trans., 1995) (referencing the terrors of Scylla and Charybdis that must be navigated); DESIDERIUS ERASMUS, THE AD­AGES OF ERASMUS 84 (William Barker ed., 2001) (“I escaped Charybdis but fell into Scylla.”).
2. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii) (2025).
3. *See id.* § 1010.380(c)(2)(xxiii)(A).
4. *See id.* § 1010.380(c)(2)(xxiii)(D).
5. FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
6. 31 C.F.R. § 1010.380(c)(2)(xxiii)(A) (2025).
7. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14 (“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. Reporting companies created or registered in 2025 or later, *no matter how quickly they cease to exist thereafter*, must report their beneficial ownership information to FinCEN within 30 days of receiving actual or public notice of creation or registration. These obligations remain applicable to reporting companies that cease to exist as legal entities—meaning wound up their affairs, ceased con­ducting business, and entirely completed the process of formally and irrevocably dissolving—before the expiration of the 30- or 90-day period reporting companies have to report their beneficial own­ership information to FinCEN. If a reporting company files an initial beneficial ownership informa­tion report and then ceases to exist *before the expiration of the 30- or 90-day period reporting companies have to report their beneficial ownership information to FinCEN*, then there is no requirement for the reporting company to file an additional report with FinCEN noting that the company has ceased to exist.” (emphasis added to highlight amendments)); *id*. G.4, at 41 (“*Except as noted below*, an initial BOI report should only include the beneficial owners as of the time of the filing. Reporting companies should notify FinCEN of changes to beneficial owners and related BOI through updated reports. *If a reporting company created or registered in 2024 or later ceases to exist before the expiration of the 30- or 90-day period reporting companies have to report their beneficial ownership information to FinCEN, but no one submits the reporting company’s initial beneficial ownership information report to FinCEN until after the reporting company ceases to exist, then that beneficial ownership information report should reflect the ben­eficial ownership information accurate as of the moment prior to the reporting company ceasing to exist.”* (emphasis added to highlight amendments)).

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The new guidance of FinCEN FAQ C.15 addresses persons that may act on behalf of a reporting company that has ceased to exist:

Anyone whom a reporting company authorizes to act on its behalf—such as an em­ployee, owner, or third-party service provider—may file a BOI report on the report­ing company’s behalf, even after the reporting company ceases to exist. . . . Thus, if a reporting company will cease to exist before the expiration of the 30- or 90-day pe­riod reporting companies have to report their beneficial ownership information to FinCEN, then it should make arrangements while it exists to have the report submit­ted on its behalf, even if the requisite filing does not occur until after the reporting company ceases to exist. Regardless, the BOI report must be filed by the time such report is due to FinCEN.109

Okay, the reporting company “should” take such actions, but it is not manda­tory that the reporting company appoint a post-cessation agent to effect the fil­ing. Moreover, it is debatable whether FinCEN may, in an FAQ, alter substantive state law (including the law of agency) to impose an obligation upon those who are overseeing its winding up to provide that someone will see to the filing of a BOIR *that is not due until after operations have totally ceased.* There is a fascinating question of whether and how a company can appoint a post-cessation agent, and a fip-side question of whether a company that has appointed such an agent and holds as a contract right the ability to insist upon her or his performance has truly ceased as described in FAQ C.14.

FinCEN FAQ C.16 deals with foreign reporting companies,110 essentially ex­tending the guidance of FAQs C.13 and C.14 to that category of reporting companies.

APPLYING THE CTA’S INACTIVE ENTITY EXEMPTION

A “reporting company” may be subject to the reporting requirements of the CTA even if not “validly existing,” not “in good standing,” or has been “dis­solved.” It is clear that being “not validly existing,” “not in good standing,” or having been “dissolved” are insufficient standing alone to qualify for the inactive entity exemption. Irrespective of the ambiguities in applying the inactive entity exemption addressed above, the existence of the exemption indicates there are a class of entities “not engaged in active business” that still constitute “reporting companies” under the CTA.” As to this point, note than an entity that underwent dissolution is not exempt from complying with applicable law,111 including the federal obligation to file BOIRs.

1. *Id*. C.15, at 15 (citation omitted); *see id*. C.14, at 14 (“These obligations remain applicable to reporting companies that cease to exist as legal entities—meaning wound up their affairs, ceased con­ducting business, and entirely completed the process of formally and irrevocably dissolving—before the expiration of the 30- or 90-day period reporting companies have to report their beneficial own­ership information to FinCEN.”).
2. *Id*. C.16, at 15; *see* 31 C.F.R. § 1010.380(c)(1)(ii) (2025) (defining “foreign reporting company”).
3. *See, e.g*., IND. CODE § 23-18-2-1(b) (2025) (“A limited liability company must comply with any statute that regulates the limited liability company’s business.”); N.C. GEN. STAT. § 57D-1-02(a) (2025)

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The critical question emerges: how does one identify an entity that is “not engaged in active business” but is still subject to the CTA’s reporting require­ments and its penalty provisions? There is no easy answer to that question. The meaning of “existence” under the CTA is ambiguous. Also ambiguous is whether one can draw an equivalency between the CTA’s “not engaged in active business”112 and the state law formula “not carry on any business except that necessary to wind up and liquidate its business and affairs.”113

In the end, the guidance from FinCEN is not particularly helpful. The intent of the CTA and other anti-money laundering efforts and programs is to enable iden­tification of the individuals who own and control business organizations that hold property or actively conduct businesses.114 Thus, the organizations with which FinCEN is concerned would be organizations that are legally competent to hold property and conduct business. An organization that has dissolved and is in the process of winding up may hold property and act, but only within a con­strained limit—they may only conduct business, including the disposition of as­sets, consistent with its purpose of winding up the organization’s affairs.115 In this process, an individual must oversee the winding up of the organization and the organization may have other individuals with interests in any remaining assets. Any such individuals would probably exercise substantial control over the winding-up process,116 and individuals having sufficient interests in the organi­zation may also be considered beneficial owners.117 To the extent that the indi­viduals that exercised substantial control over the management of the business of the organization continue to manage the winding up, and the proportionate

(“This Chapter and any other applicable laws of this State govern (i) the internal affairs of every LLC, including the interpretation, construction, and enforcement of operating agreements and determining the rights and duties of interest owners, managers, and other company officials and (ii) any liability that interest owners or managers or other company officials may have for the liabilities of the LLC.”).

1. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(B) (2025).
2. KY. REV. STAT. ANN. § 14A.7-020(3) (West 2025); *see supra* note 25 and accompany text.
3. William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 6402, 134 Stat. 3388, 4604 (2021) (“It is the sense of Congress that ... malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States; [and] money launderers and others in­volved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting “Matryoshka” dolls, across various secretive jurisdictions such that each time an investigator obtains ownership re­cords for a domestic or foreign entity, the newly identified entity is yet another corporate entity, ne­cessitating a repeat of the same process ....”).
4. *See supra* note 25 and accompanying text.
5. *See* COLO. REV. STAT. § 7-80-803.3 (2025) (empowering manager (and if no manager, any mem­ber) to wind up the LLC’s business); *id*. § 7-80-803.5 (defining manager’s or member’s power to bind LLC after dissolution); KY. REV. STAT. ANN. § 275.305 (West 2025) (describing the authority of members and managers during winding up of the LLC); RIBSTEIN, *supra* note 6, at app. 14-10 (collecting LLC stat­utes on “Participation in Winding Up”).
6. *See, e.g*., COLO. REV. STAT. § 7-80-803(1)(d) (2025); KY. REV. STAT. ANN. § 275.300(2)(d) (West 2025); *see also* RIBSTEIN, *supra* note 6, at app. 14-13 (collecting LLC statutes on “Priority of Dis­tribution of Assets”).

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interests of the owners remain the same, the dissolution of an organization would not require an update to the organization’s BOIR as a result of dissolution. In some circumstances, such as the designation of a liquidating trustee or the shift in the proportionate interests in the organization, as might happen when dis­tributions to preferred interest owners liquidate and terminate their interests, up­dated reports may be required during winding up. On the conclusion of winding up, when all assets have been marshalled, debts paid or provided for, and all of the remaining assets of the organization have been distributed, the authority of any individual heretofore having had direct or indirect control of the organization and any interest in the organization will be extinguished. At this point, the orga­nization will be considered terminated and will no longer have the power to transact business or to hold property.118

For these reasons, it seems likely that the reporting obligations will continue until the organization has terminated as contemplated by state law. But even here, there are questions that need to be considered. Has the organization termi­nated if additional property or liabilities of the organization are subsequently dis­covered? Has the organization terminated if the organization created a liquidating trust or transferred assets to a state fund for any unidentified or unlocated own­ers? Outside of the CTA, the answers seem clear, but under the CTA the answers seem to be the reverse. If the organization is truly reinstated and carries on busi­ness, it would no longer be exempt. But is that treatment appropriate when ad­dressing a forgotten asset for which disposition must be addressed? How does such treatment advance the policy goals of the CTA?

Unlike the inactive entity exemption, which requires notification to FinCEN through the filing of an update to the previously filed BOIR and can take place only after specific timeframes have lapsed, the cessation of reporting obli­gations as a result of the termination of an organization does not require any no­tification to FinCEN.119

Ultimately, notwithstanding that the FAQs cannot alter the Reporting Rules and the FAQs are not coordinated with the Reporting Rules, the FAQs create a new path to escape treatment as a “reporting company.”120 Essentially, the approach

1. *See generally* UNFORGIVEN (Warner Bros. 1992) (“It’s a hell of a thing, killin’ a man. Take away all he’s got and all he’s ever gonna have.” (quoting Clint Eastwood’s character, Bill Munny)); *Monty Python’s Flying Circus: Dead Parrot Sketch* (BBC television broadcast Oct. 5, 1969) (“I wish to complain about this parrot that I purchased not half an hour ago from this very boutique.” ...“What’s wrong with it?” “I’ll tell you what’s wrong with it, my lad. ‘e’s dead, that’s what’s wrong with it!” “No, no, ‘e’s uh, he’s resting.”).
2. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.13, at 13 (“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. A com­pany that ceased to exist as a legal entity 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.”); *id*. C.14, at 14 (“If a reporting company files an initial beneficial ownership information report and then ceases to exist . . . , then there is no requirement for the reporting company to file an additional report with FinCEN noting that the company has ceased to exist.”).
3. *See* 31 C.F.R. § 1010.380(c)(1)–(2) (2025) (defining “reporting company” and creating ex­emptions therefrom).

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set forth in FAQs C.12, C.13, C.14, C.15, and C.16 of an entity that “ceased to exist” excludes the entity from treatment as a “reporting company” as it “irrevoca­bly dissolved” under applicable state law. Any such exclusion, however, is not based on the express terms of the statutory or regulatory inactive entity exemption. Under this paradigm, the term “irrevocably dissolved” should be applied at the point that the owners in good faith believe they have completed winding up, and, as a result no further updates (including an update reflecting the termination) need be filed, notwithstanding that, under state law, the resurrection of the entity for purposes of addressing an unknown asset or unknown liability is a possibility (however unlikely). As such, the “ceased to exist” analysis serves as an alternative exemptive path (the “Cessation Alternative”). While, as noted above, this discus­sion is focused upon “domestic reporting companies,”121 this alternative path to inactive entity status and relief from CTA BOIR updating obligations is crucial to foreign reporting companies in that most will have foreign owners and for that reason be perpetually barred (absent a transfer of ownership to either U.S. persons or to otherwise exempt reporting companies) from the statutory and reg­ulatory inactive company exemptions, consigned to a perpetual limbo of having ceased all business activities but still required to file updated BOIRs.122

**APPLICATION OF THESE RULES TO HYPOTHETICAL FACTS**

REPORTING COMPANY FORMED BEFORE JANUARY 1, 2020, AND FULLY DISSOLVED, WOUND-UP BEFORE JANUARY 1, 2024

This entity was never a reporting company as it ceased to exist before the ini­tial effective date of the Reporting Rules.123 Note that the pertinent FAQs do not consider the entity transactions in the twelve months preceding December 31, 2023.124 No filing is required.

REPORTING COMPANY FORMED BETWEEN JANUARY 1, 2020, AND JANUARY 1, 2024, AND FULLY DISSOLVED, WOUND-UP BEFORE JANUARY 1, 2024

While this company is not able to avail itself of the regulatory exemption in that it was created after January 1, 2020,125 it may avail itself of the treatment provided for in FinCEN FAQs C.12 and C.13 to the effect it was never a “reporting company” in that it ceased to exist before the initial effective date of the Reporting Rules. Note

1. *See supra* note 6 and accompanying text.
2. *See also* ITALO CALVINO, THE NONEXISTENT KNIGHT 3, 20, in THE NONEXISTENT KNIGHT AND THE CLO­VEN VISCOUNT (trans. Archibald Colquhoun) (Harcourt Brace & Jovanovich 1977). (“It was the hour in which objects lose the consistency of shadow that accompanies them during the night and gradually reacquire colors, but seem to cross meanwhile an uncertain limbo, faintly touched, just breathed on by light; the hour in which one is least certain of the world’s existence.”).
3. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.12–C.13, at 13.
4. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(D)–(F) (2025).
5. *See id*. § 1010.380(c)(2)(xxiii)(A).

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that the pertinent FAQs do not consider the entity transactions in the twelve months preceding December 31, 2023.126 No filing is required.

REPORTING COMPANY FORMED BEFORE JANUARY 1, 2020, ADMINISTRATIVELY DISSOLVED UNDER APPLICABLE STATE LAW, PERIOD FOR REINSTATEMENT HAS EXPIRED BEFORE JANUARY 1, 2024

In most circumstances, the administrative dissolution of a reporting company for failure to file administrative paperwork (such as an “annual report”) or to pay administrative taxes (which are typically nominal) is insufficient to bring a com­pany under the inactive entity exemption as state law typically permits reinstate­ment of the company into good standing with little effort and expense.127 Under some state laws, there is an outer limit by which the reinstatement must be ac­complished or the company’s administrative dissolution is not reversible.128 In that case, if the administrative dissolution became irrevocable before January 1, 2024, the organization was never a “reporting company” in that it ceased to exist before the initial effective date of the Reporting Rules.129 Note that the appli­cable FAQ does not consider entity transactions in the twelve months preceding December 31, 2023.130 No filing is required.

REPORTING COMPANY FORMED BEFORE JANUARY 1, 2020, ADMINISTRATIVELY DISSOLVED UNDER APPLICABLE STATE LAW, PERIOD FOR REINSTATEMENT HAS NOT RUN, COMPANY TOOK NO STEPS TO DISSOLVE AND WIND UP

A company that has undergone administrative dissolution and is still within the period within which it may be reinstated is typically not treated as having ceased its business activities, such that it may not avail itself of the Cessation Al­ternative as set forth in the related FAQs.131 If, however, all of the requirements of the statutory or regulatory inactive entity exemption were satisfied not later than December 31, 2023, then either exemption would be available to the sub­ject company. Recall that formal dissolution under state law is not a precondition to the availability of inactive entity status. If that is the case, then the company is not a “reporting company” subject to the CTA’s reporting requirements,132 and no filing to that effect is necessary.

1. *See id.* § 1010.380(c)(2)(xxiii)(D)–(F).
2. *See supra* notes 21–23 and accompanying text.
3. *See supra* note 21 and accompanying text.
4. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.12–C.13, at 13.
5. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(D)–(E) (2025).
6. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.13, at 14 (“A company that is administra­tively dissolved or suspended—because, for example, it failed to pay a filing fee or comply with certain jurisdictional requirements—generally does not cease to exist as a legal entity unless the dis­solution or suspension becomes permanent.”).
7. *See id.* C.12, at 13.

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REPORTING COMPANY FORMED BEFORE JANUARY 1, 2020, ADMINISTRATIVELY DISSOLVED UNDER APPLICABLE STATE LAW, PERIOD FOR REINSTATEMENT HAS NOT RUN, COMPANY TOOK STEPS TO DISSOLVE AND WIND UP BEFORE JANUARY 1, 2024

A company that has undergone administrative dissolution and is still within the period within which it may be reinstated is typically not treated as having ceased its business activities, such that it may not avail itself of the inactive entity exemption, as set forth in the related FAQs.133 State law, however, may provide that, if the administratively dissolved entity proceeds to wind up its affairs and notifies creditors, the administrative dissolution is no longer subject to being set aside by reinstatement.134

On the assumption the controlling state law so provides, and further assuming that all other provisions of the statutory or the regulatory exemption are satisfied, the company may be classified as an inactive entity. If the requirements of either inactive entity exemption were satisfied not later than December 31, 2023, then the company was never a “reporting company” subject to the CTA’s reporting requirements,135 and no filing to that effect is necessary.

REPORTING COMPANY FORMED AFTER JANUARY 1, 2020, AND BEFORE JANUARY 1, 2024, ADMINISTRATIVELY DISSOLVED UNDER APPLICABLE STATE LAW, PERIOD FOR REINSTATEMENT HAS NOT RUN, COMPANY TOOK STEPS TO DISSOLVE AND WIND UP BEFORE JANUARY 1, 2024

A company that has undergone administrative dissolution and is still within the period within which it may be reinstated is typically not treated as having ceased its business activities, such that it may not avail itself of the inactive entity exemption, as set forth in the related FAQs.136 State law, however, may provide that, if the administratively dissolved entity proceeds to wind up its affairs and notifies creditors, the administrative dissolution is no longer subject to being set aside by reinstatement.137

On the assumption the controlling state law so provides, and further assuming that all other provisions of the statutory exemption are satisfied,138 the company may be classified as an inactive entity. If the requirements of either the statutory or regulatory inactive entity exemption were satisfied as of December 31, 2023,

1. *See id.* C.13, at 14 (“A company that is administratively dissolved or suspended—because, for example, it failed to pay a filing fee or comply with certain jurisdictional requirements—generally does not cease to exist as a legal entity unless the dissolution or suspension becomes permanent.”).
2. *See supra* note 22.
3. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.12–C.13, at 13.
4. *See id*. C.13, at 14 (“A company that is administratively dissolved or suspended—because, for example, it failed to pay a filing fee or comply with certain jurisdictional requirements—generally does not cease to exist as a legal entity unless the dissolution or suspension becomes permanent.”).
5. *See supra* note 22.
6. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii) (2024). The regulatory exemption is not available as the company’s existence did not predate January 1, 2020. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(A) (2025).

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then the company was never a reporting company subject to the CTA’s reporting requirements, and no filing to that effect is necessary.

If dissolution and winding up was not completed before January 1, 2024, the company must file an initial BOIR not later than January 1, 2025, and then file an update providing notice it is an inactive entity once the requirements for doing so have been satisfied.

REPORTING COMPANY FORMED AFTER JANUARY 1, 2020, AND BEFORE JANUARY 1, 2024, THAT DISSOLVED IN 2024 WITH DISSOLUTION COMPLETED BEFORE JANUARY 1, 2025

In that the reporting company was not in existence on or before January 1, 2020, the regulatory inactive entity exemption is not available,139 but its statutory counterpart remains available. In FinCEN’s view, having existed on January 1, 2024, the reporting company was obligated to file a BOIR not later than January 1, 2025, even if its winding up and termination was completed before January 1, 2025.140 However, the company may later amend its BOIR to indicate that it be­came an exempt inactive entity, after the necessary time requirements have lapsed, including that twelve months have passed since any change in ownership or any receipt or transmission of more than $1,000.141 During that time, the company will be obligated to keep its BOIR filing updated.142

Alternatively, if the company truly ceased to exist in 2024, it may avail itself of the Cessation Alternative, because, under state law, it has no jural existence.

BUSINESS CORPORATION INCORPORATED AFTER JANUARY 1, 2024, THAT NEVER HAD ANY BUSINESS ACTIVITIES

The fact that a corporation never engaged in any business operations does not exempt it from the obligation to file BOIRs pursuant to the CTA and the Reporting Rules. In FinCEN’s view, the obligation to file a BOIR accrued ninety days from no­tice of incorporation, if incorporated in 2024, and thirty days from such notice, if incorporated in 2025 or thereafter.143 BOIR will identify the company applicant(s) and the beneficial owner(s).144 If the directors were not appointed in the articles of incorporation and have not been named by the incorporator, then the incorporator will be the beneficial owner.145 Alternatively, if the directors were named in the ar­ticles of incorporation or the incorporator appointed one or more directors, then

1. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(A) (2025).
2. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
3. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(IV) (2024).
4. *See* 31 C.F.R. § 1010.380(a)(2)(i) (2025).
5. *See id.* § 1010.380(a)(1)(i)(A)–(B); FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
6. *See* 31 C.F.R. §§ 1010.380(a)(2)(i), 1010.380(b)(1)(i)–(ii) (2025); FIN. CRIMES ENF’T NET­WORK, *supra* note 14, E.1, at 28.
7. *See* MODEL BUS. CORP. ACT ANN. § 2.05(a)(2) (2016); COLO. REV. STAT. § 7-102-105(1)(a) (2025); KY. REV. STAT. ANN. § 271B.2-050(1)(b) (West 2025); *see also* 31 C.F.R. § 1010.380(d)(1)(i)(B) (2025) (defining “beneficial owner” to include a person with the capacity to appoint a majority of the board of directors).

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those directors generally constitute beneficial owners, whether or not there are shareholders.146 The CTA requires the company to keep its BOIR current147 until it has satisfied the requirements of the statutory inactive entity exemption in­cluding that it has existed for at least a year,148 at which time it can update its filing to indicate it is exempt from reporting.149 Alternatively, the corporation may rely on the Cessation Alternative if its requirements are met.

LLC ORGANIZED AFTER JANUARY 1, 2024, THAT NEVER HAD ANY BUSINESS ACTIVITIES

The fact that an LLC never engaged in business operations does not exempt it from the obligation to file BOIRs pursuant to the CTA and the Reporting Rules. In FinCEN’s view, the obligation to file a BOIR accrued ninety days from notice of formation, if organized in 2024, or thirty days from such notice, if organized in 2025 or thereafter.150 But, who files it and how is the filing accomplished? As noted previously, under many states’ LLC statutes, the organizer is not a member and has no power vis-a-vis the LLC once the formation takes place. Unlike a cor­porate incorporator, an LLC’s organizer does not have the authority to appoint managers or officers or to admit members to the company. While the LLC will have at least one company applicant,151 it will have no beneficial owners under either the substantial control test or the ownership test and likely will not have an employer identification number (“EIN”).152 So, the LLC lacks the information required to be disclosed in the LLC’s BOIR.153 Further, there is no person authorized to file the BOIR, and hence no person who can certify, on the LLC’s behalf, that the BOIR “is true, correct, and complete.”154 While Fin-CEN may contend that the LLC must file a BOIR, nothing in the CTA enables FinCEN to require a person to become a beneficial owner as either a member or a senior officer of the LLC or to alter substantive state LLC law by creating new organizational authority.

1. 31 C.F.R. § 1010.380(d)(1)(i)(B) (2025); *see* DEL. CODE ANN. tit. 8, § 141(a) (2025) (empow­ering directors to manage the corporation); FIN. CRIMES ENF’T NETWORK, *supra* note 14, D.9, at 23 (not­ing that a director is not necessarily a beneficial owner).
2. *See* 31 C.F.R. § 1010.380(a)(2)(i) (2025).
3. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(I) (2024).
4. *See* 31 C.F.R. § 1010.380(a)(2)(ii) (2025).
5. *See id*. § 1010.380(a)(1)(i)(A)–(B); FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
6. *See* 31 C.F.R. § 1010.380(e) (2025).
7. *See id.* §§ 1010.380(d)(1)–(2), 1010.380(b)(1)(i)(F) (requiring disclosure of IRS identifying number); *see also* FIN. CRIMES ENF’T NETWORK, *supra* note 14, G.3, at 40–41 (addressing means to fulfill disclosure requirements regarding IRS identification numbers).
8. 31 C.F.R. § 1010.380(b)(1) (2025).
9. *Id*. § 1010.380(b).

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NON-EXEMPT REPORTING COMPANY CREATED BEFORE JANUARY 1, 2020, DISSOLUTION INITIATED AND COMPLETED DURING 2024

This company may avail itself of both the statutory and regulatory inactive en­tity exemptions. The due date for its initial BOIR is not later than January 1, 2025,155 but we posit that all requirements of the statutory and regulatory inac­tive entity exemptions were satisfied before that date. In FinCEN’s view, this company’s obligation to file a BOIR accrued on January 1, 2024, with a due date of not later than January 1, 2025.156 Assuming that position to be accurate, the company may file a BOIR, and then, as soon as all of the terms of the stat­utory exemption have been satisfied (e.g., at least twelve months have passed since any change in ownership or any receipt or transmission of more than $1,000),157 then the company may file an updated BOIR to the effect it is now an exempt reporting company.158 Indeed it is possible that the two filings may be made back to back. Alternatively, if the reporting company truly ceased to exist in 2024, it may avail itself of the Cessation Alternative because, under state law, it had no jural existence.

NON-EXEMPT REPORTING COMPANY CREATED AFTER JANUARY 1, 2020, AND BEFORE JANUARY 1, 2024, DISSOLUTION INITIATED AND

COMPLETED AFTER JANUARY 1, 2024, BEFORE FIRST BOIR DEADLINE

This company may avail itself of only the statutory inactive entity exemption; the regulatory exemption is not available because the company was created after January 1, 2020.159 The due date for its initial BOIR is not later than January 1, 2025,160 but we posit that all requirements of the statutory inactive entity ex­emption were satisfied before that date. In FinCEN’s view, this company’s obli­gation to file a BOIR accrued on January 1, 2024, with a due date of not later than January 1, 2025.161 Assuming that position to be accurate, the company may file a BOIR, and then, as soon as all of the terms of the statutory exemption have been satisfied (e.g., at least twelve months have passed since any change in ownership and any receipt or transmission of more than $1,000),162 the com­pany may file an updated BOIR to the effect it is now an exempt reporting company.163 Indeed it is possible that the two filings may be made back to back. Alternatively, if the reporting company truly ceased to exist in 2024, it may avail itself of the Cessation Alternative because, under state law, it has no jural existence.

1. *See id*. § 1010.380(a)(1)(iii).
2. *See id*.; FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
3. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(IV) (2024).
4. *See* 31 C.F.R. § 1010.380(a)(2)(ii) (2025).
5. *See id.* § 1010.380(c)(2)(xxiii)(A).
6. *See id*. § 1010.380(a)(1)(iii).
7. *See id*.; FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
8. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(IV) (2024).
9. *See* 31 C.F.R. § 1010.380(a)(2)(ii) (2025).

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A PAIR OF CASE STUDIES

Clearly the inactive entity exemptions are demanding, and it may be debated whether FinCEN, in FAQs C.12, C.13, and C.14, clarified the situation. The fol­lowing two case studies afford some practical guidance regarding the rules as they exist as of February 1, 2025.164 In the first, we consider the transition of a Large Operating Company (“LOC”) through dissolution to the point where it is eligible for an inactive entity exemption. In the second, we consider a company that has elected to transition into an inactive entity exemption but later discovers that it still holds assets.

TRANSITIONING THE LOC TO AN INACTIVE ENTITY

Assume a corporation (the “Company”) was incorporated in an MBCA juris­diction before January 1, 2020, and operated successfully. As of January 1, 2024, the Company satisfied all of the requirements for the LOC exemption from classification as a reporting company.165 Forty percent of the Company was owned by an ESOP Trust, for which a local bank serves as trustee, 40 per­cent by its founder Russ, and the balance by members of Russ’ family, including his son-in-law, Alexander. Unfortunately, on September 1, 2024, Russ tragically and suddenly passed away while celebrating the anniversary of the 1532 ascen­sion of Anne Boleyn to the noble office of Marquess of Pembroke. The remaining directors met shortly thereafter and determined that the Company’s operations should be sold to NewCo, organized by Kamryn, who is Russ’s daughter and Al-exander’s wife. Importantly, Alexander is not a U.S. citizen; he met Kamryn while she was studying in Ireland. Potential liabilities made a stock acquisition unappealing, so the parties negotiated an asset purchase agreement, which closed on November 1, 2024. NewCo hired the Company’s employees on the same terms.

NewCo, an LLC organized on October 1 in anticipation of the closing, had ninety days from that date to file its initial BOIR.166 While NewCo anticipates qualifying as an LOC like the Company, it will not do so until it satisfies all three of the exemption’s requirements, including the filing of a tax return dem­onstrating revenue or sales of more than $5 million.167 It seems unlikely that NewCo would qualify for the LOC exemption for 2024, but it may after filing its 2025 return.

Because the Company anticipated it would qualify for the LOC exemption for the foreseeable future, it had not considered CTA compliance. As of the closing on the sale to NewCo, the Company must commence compliance with the CTA. The Company lost all of its employees at the closing; the few officers who continue to oversee the Company’s winding up are far fewer than the LOC exemption’s

1. *See also infra* notes 190–193 and accompanying text.
2. *See* 31 C.F.R. § 1010.380(c)(2)(xxi) (2025) (exempting any “large operating company”); *see* 31 U.S.C. § 5336(a)(11)(b)(xxi) (2024) (authorizing the “large operating company” exemption).
3. *See* 31 C.F.R. § 1010.380(a)(1)(i)(A) (2025).
4. *See id.* § 1010.380(c)(2)(xxi)(C).

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minimum of twenty-one.168 So, generally within thirty days after failing to satisfy the requirements for the LOC exemption, the Company would file an initial BOIR.169 As it preexisted, the Reporting Regulation’s initial effective date is January 1, 2024; however, the Company is afforded more than thirty days to file its initial BOIR.170 In that the ESOP Trust stills owns 40 percent of the Company’s stock, its trustee must be reported as a beneficial owner.171 The balance of the beneficial owners, including the Company’s “senior officers,” must also be reported.172 The Company must establish a system for tracking information as to itself and its beneficial owners to update its initial BOIR, as required by the CTA and the Reporting Rules.173 In addition, the Company cannot satisfy the requirements of the inactive entity exemption, which include the requirement that no owner be a “foreign person, whether directly or indirectly, wholly or partially.”174 Alexander is a foreign person. Consequently, the Company redeemed Alexander’s ownership interests for a nominal payment of $10.00; that redemption was effective as of De­cember 31, 2024. On January 1, 2025, the Company filed articles of dissolution with the secretary of state and sent notice to those few creditors whose obligations were not assumed by NewCo. Under state law, those creditors have ninety days to present their claims. By April 15, 2025, NewCo resolved its creditors’ claims, or­ganized an irrevocable liquidating trust to hold certain insurance that addresses certain potential legacy claims and cash estimated to cover the costs of the trust’s administration,175 distributed the net proceeds from the asset sale to its sharehold­ers, including an estimate of the expenses to be incurred by the ESOP in its wind­ing up, and filed final tax returns with payment of all amounts calculated as being due. That day, all of the corporate directors and officers resigned, save Reagan, one of Russ’ daughters, who was long involved in the Company’s management. Reagan will serve as the Company’s sole director and officer.

As of April 15, 2025:

* The Company was not engaged in an active business;176
* The Company filed articles of dissolution and proceeded, as dictated by
    
  state law, through the process of winding up and dissolution;177 and

1. *See id*. § 1010.380(c)(2)(xxi)(A).
2. *See id.* § 1010.380(a)(1)(iv).
3. *See id.* § 1010.380(a)(1)(iii); FIN. CRIMES ENF’T NETWORK, *supra* note 14, G.6, at 42.
4. *See* 31 C.F.R. § 1010.380(d)(2)(ii)(C)(1) (2025); FIN. CRIMES ENF’T NETWORK, *supra* note 14, D.12, D.16, at 24, 26.
5. FIN. CRIMES ENF’T NETWORK, *supra* note 14, D.2, at 18 (identifying “senior officer” as exercising substantial control).
6. *See* 31 C.F.R. § 1010.380(a)(2)(i) (2025).
7. *Id.* § 1010.380(c)(2)(xxiii)(C); *see also id*. § 1010.380(f)(3) (defining “foreign person”); *id*. § 1010.380(f)(10) (defining “United States person”).
8. Under the terms of the trust, any excess funds are to be distributed to a local non-profit to which Russ was a regular donor.
9. *See* 31 C.F.R. § 1010.380(c)(2)(xxiii)(B) (2025).
10. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.13, at 13. Note that neither the statutory inactive entity exemption nor the regulatory inactive entity exemption requires the filing of a formal dissolution document with the state.

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* The Company was not owned by a foreign person.178 However:
* The Company had a change in ownership on December 31, 2024, in con­nection with Alexander’s redemption;179 and
* The Company transmitted more than $1,000 on April 15, 2025.180

Assuming no additional facts, the Company must maintain its BOIRs through April 15, 2026. As of April 15, 2026, the Company may amend its BOIR to in­dicate it became exempt from the CTA’s reporting obligations. However, if the Company receives a federal or state tax refund or other funds, the twelve­month period may be reset as of the day of receipt, extending the period that the Company remains subject to CTA reporting.181 Further, the Company must consider whether the dissolution of the ESOP Trust upon the distribution of the sale proceeds to the plan participants is another change in ownership that resets the twelve-month period.

THE INACTIVE ENTITY THAT DISCOVERS IT HAS ASSETS

Returning to the principle that business organizations are legal constructs,182 one formula is that any such organization is a “rights holding vehicle.” Unlike natural persons, the rights afforded a particular organization are defined by state law, and typically include the right to enter contracts and to hold property in its name. Those rights are not eliminated by dissolution but are prospectively curtailed.183 To the extent the organization has unknown rights—such as the right to recover financial assets that escheated to the state—the right to those as­sets continues unimpaired notwithstanding dissolution. Consider, for example, corporate funds totaling $7700 that, for whatever reason, were escheated to a foreign state, unbeknownst to the corporation or its managers. The corporation dissolved, gave notice to creditors, collected and liquidated its known assets, paid off creditors, distributed any remainder to the shareholders as residual claimants, and, after applicable periods had run, filed a BOIR update that it qual­ified for the inactive entity exemption.184

When the foreign state sends the corporation notice of the escheated funds, all would agree that such funds constitute a corporate asset. One would expect the corporation to recover the escheated funds and distribute them accordingly.

1. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(III) (2024); 31 C.F.R. § 1010.380(c)(2)(xxiii)(C) (2025).
2. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(IV) (2024); 31 C.F.R. § 1010.380(c)(2)(xxiii)(D) (2025).
3. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(IV) (2024); 31 C.F.R. § 1010.380(c)(2)(xxiii)(E) (2025).
4. Consider whether potential tax refunds, workers compensation insurance rebates, or similar receipts should be assigned to a liquidating trust to avoid them becoming the Company’s property.
5. *See supra* note 97 and accompanying text.
6. *See supra* note 25 and accompanying text.
7. *See* 31 C.F.R. §§ 1010.380(a)(2)(ii), 1010.380(c)(2)(xxiii) (2025).

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If the creditors had not been paid in full, the creditors rightly expect the corpo­ration to recover and distribute the escheated funds to them to reduce any losses. Irrespective of “dissolution” and what is believed to be a final settling of accounts, there remains the faintest flame by which the corporation’s exis­tence may be fanned back to full strength in order to collect the escheated funds that are its property. Assuming that, during dissolution, all directors and officers resigned and a liquidating trust185 was not set-up, the shareholders must elect a board, which must appoint an officer to recover the escheated funds and distribute them accordingly. This scenario presents questions regard­ing the CTA.

First, do those facts preclude the company from successfully asserting that it ceased to exist as a legal entity?186 Certainly that cannot be the case or FinCEN’s FAQs would have little, if any, application. Second, must the company, upon learning of the escheated funds, immediately file an amended BOIR, in effect for­feiting the previously claimed inactive entity exemption, which exemption is not available if the reporting company has “any” assets?187 Under a strict reading of the CTA and the Reporting Rules, neither the statutory exemption nor the reg­ulation exemption is available.188 Woe to the attorney who must advise the com­pany and its constituents. Third, in recovering and distributing the escheated funds, must the company reset the twelve-month waiting period, given its re­ceipt and transmission of more than $1,000? If so, the company must file up­dated BOIRs for another year, before qualifying for the inactive entity exemption.189

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The statutory and regulatory inactive entity exemptions are, at best, confusing and, for most organizations, entirely ineffective at addressing the conclusion of organizational existence. FinCEN’s attempt to address organizational termination through its FAQs regarding “irrevocable dissolution” contributes to the uncer­tainty. Unfortunately, Congress and the Treasury Department failed to craft relatively straightforward rules building upon accepted principles of business en­tity law and tied to generally applicable statutory language. The requirement to continue as a reporting company a year after completing the winding-up process creates an ouroboros for compliance. Companies will incur additional costs when winding up without benefit to creditors or residual owners. Attorneys will face exasperated clients when explaining the generally inexplicable burdens imposed by the CTA.

1. *See* Treas. Reg. § 301.7701-4(d) (2022).
2. *See* FIN. CRIMES ENF’T NETWORK, *supra* note 14, C.14, at 14.
3. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiii)(V) (2024); 31 C.F.R. § 1010.380(c)(2)(xxiii)(F) (2025).
4. *See also* FIN. CRIMES ENF’T NETWORK, *supra* note 14, H.6, at 42–43 (“If there is *any change* to the required information . . . in a [BOIR] that your company filed, your company must file an updated report ....”).
5. *See* 31 C.F.R. § 1010.380(a)(2)(i)–(ii) (2025).

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**A Post-Script: The Current Status of the CTA**

As of March 11, 2025, the status of the Corporate Transparency Act is as con­fusing as is its treatment of “inactive” and former entities. And for the same reason. The CTA reflects the attempt by people without a background in the history of or-ganizations190 before the current era191 to reshape organizational law for purposes and uses unrelated to those for which such organizations were created and have evolved. Unsurprisingly, this attempt to federalize and deputize the law and tradi­tion under which millions of organizational associations have been formed has met with a significant resistance from the economic community affected. As a result, the reactions from all three branches of government have been inconsistent and contradictory, and, as of this writing, there is serious question as to the extent, if any, that the CTA will apply to United States business organizations.192 Even if the CTA ultimately becomes irrelevant with respect to United States organiza­tions or “beneficial owners” (however defined) who are U.S. citizens,193 a more rational system designed to identify the beneficial owners of organizations will need to address organizations that have ceased to exist, thereby implicating the de­termination of the beginning and end of organizational existence. These existential issues are both complex and subtle, and the efforts to address them to date do not provide comfort that the necessary knowledge base has been brought to bear in the process of developing the related Reporting Rules. We hope this Article will help either those authors or those succeeding them to address these important issues more rationally and effectively than has been done to date.

1. This Article and the CTA deal with relationships (for profit or other objectives) that are some­times described as entities or as organizations. This implicates a distinction between a relationship among individuals that arises to the level of separate legal personhood, sometimes called an entity, and one which in which the action or association does not. For a discussion of this distinction, see RIBSTEIN, *supra* note 6, § 3.11. The CTA and this article address only those organizations: (1) that can be termed entities and (2) owe their creation or existence to a filing with a domestic or government filing officer. We have otherwise addressed this later filing qualification. *See* Thomas E. Rutledge & Robert R. Keatinge, *LLPs Are Not Reporting Companies*, BUS. L. TODAY (Oct. 10, 2024), <https://businesslawtoday.org/2024/10/llps-are-not-cta-reporting-companies/>. For purposes of this Article, when we speak of “organizations” we mean those organizations that would qualify (currently or at some point in the past) as “reporting companies” under the CTA.
2. *See* RIBSTEIN, *supra* note 6, § 1.2.
3. *See also* Christina Houston et al., *The Corporate Transparency Act: Are Rumors of Its Death Exaggerated?*, BUS. L. TODAY (Mar. 17, 2025), <https://businesslawtoday.org/2025/03/the-corporate-transparency-act-are-rumors-of-its-death-exaggerated/>. Christina Houston et al., *The Corporate Transpar­ency Act Is Still on Pause, but Less So,* BUS. L. TODAY (Feb. 6, 2025), <https://businesslawtoday.org/2025/02/> the-corporate-transparency-act-is-still-on-pause-but-less-so/; Christina Houston et al., *How FinCEN Stole Christmas: The Corporate Transparency Act, Year 1*, BUS. L. TODAY (Jan. 13, 2025), <https://businesslawto-day.org/2025/01/how-fincen-stole-christmas-the-corporate-transparency-act-year-1/.>
4. *See* Press Release, U.S. Dep’t of Treasury, Treasury Department Announces Suspension of En­forcement of Corporate Transparency Act Against U.S. Citizens and Domestic Reporting Companies (Mar. 2, 2025), <https://home.treasury.gov/news/press-releases/sb0038>. While the focus of this Article has been upon what were classified as “domestic reporting companies,” the statutory and regulatory forms of the Inactive Entity exemption will never encompass what was a “foreign reporting company” (now a “reporting company”) in that those entities will only ever report the substantial control of per­sons who are not “U.S. persons” and “ownership” (which is not co-extensive with beneficial owner status; *see supra* notes 65 through 67 and accompanying text) by a person who is not a U.S. person precludes application of the exemption.