

Beneficial Ownership Information Update

Cross References

- www.fincen.gov/boi

The Financial Crimes Enforcement Network (FinCEN) has updated information on their website on the new requirement for small business owners to file a report starting January 1, 2024. The penalty for failing to report is \$500 per day up to \$10,000, and/or up to two years imprisonment.

In 2021, Congress enacted the Corporate Transparency Act. This law creates a beneficial ownership information reporting requirement as part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.

New Federal Reporting Requirement for Beneficial Ownership Information (BOI)

Beginning on January 1, 2024, many companies in the United States will have to report information about their beneficial owners, i.e., the individuals who ultimately own or control the company. They will have to report the information to FinCEN, which is a bureau of the U.S. Department of the Treasury.

Who has to report? Companies required to report are called reporting companies. Reporting companies may have to obtain information from their beneficial owners and report that information to FinCEN.

A company may be a reporting company and need to report information about its beneficial owners if it is:

- 1) A corporation (including an S corporation), a limited liability company (LLC) (including a single member LLC disregarded for federal tax purposes), or was otherwise created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe, or
- 2) A foreign company registered to do business in any U.S. state or Indian tribe by such a filing.

Author's Comment

There is no de minimis exception to the reporting requirement. Small businesses with no employees, including sole proprietors who file with their secretary of state to be an LLC or LLP are required to report. However, a sole proprietor or partnership that does not file any documents with their secretary of state to be a corporation or LLC is not a reporting company.

Who does not have to report? The following types of entities are exempt from the beneficial ownership information reporting requirements.

- 1) A securities reporting issuer.
- 2) A governmental authority.
- 3) A bank.
- 4) A credit union.
- 5) A depository institution holding company.
- 6) A money services business.
- 7) A broker or dealer in securities.
- 8) A securities exchange or clearing agency.
- 9) An Other Exchange Act registered entity.
- 10) An investment company or investment adviser.
- 11) A venture capital fund adviser.
- 12) An insurance company.
- 13) A state-licensed insurance producer.
- 14) A Commodity Exchange Act registered entity.
- 15) A registered public accounting firm.
- 16) A public utility.
- 17) A financial market utility.
- 18) A pooled investment vehicle.
- 19) A tax-exempt entity.
- 20) An entity assisting a tax-exempt entity.
- 21) A large operating company that employees more than 20 full time employees.
- 22) A subsidiary of certain exempt entities.
- 23) An inactive entity.

Details about the above 23 entities exempt from the reporting requirements can be found at: <https://www.fincen.gov/boi/small-entity-compliance-guide>

Company applicant. If the reporting company is created or registered on or after January 1, 2024, the company applicant must also be identified in the report. A company applicant is the individual who directly files the creation or first registration document for the reporting company with the secretary of state or similar office (such as the attorney or tax preparer who filed the documents with the secretary of state on behalf of a client).

What information must be reported? The following information about the reporting company must be reported.

- Full legal name, plus any trade name or “doing business as” (DBA) name,
- Complete current U.S. address (not a P.O. Box number),
- State, Tribal, or foreign jurisdiction of formation, and
- Taxpayer identification number (TIN) of the entity (such as an Employer Identification Number (EIN) or Social Security Number of a single member LLC). If a foreign reporting company has not been issued a TIN, report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

The following information about each beneficial owner and company applicant must be reported:

- Full legal name,
- Date of birth,
- Complete current address (not a P.O. Box number), and
- A unique identifying number and issuing jurisdiction from, and image of, one of the following non-expired documents:
 - U.S. passport.
 - State driver's license.
 - Identification document issued by a state, local government, or tribe.
 - If an individual does not have any of these documents, foreign passport.

Author's Comment

Upon request, FinCEN will issue to an individual or reporting company a FinCEN unique identifying number that may be used instead of personal information about the individual in the BOI report (for example, instead of using the individual's Social Security Number). This personal information must still be provided to FinCEN to get the unique identifying number. However, it then avoids having to put such personal information on the report itself. This provision is similar to a tax preparer entering his or her PTIN on a client's tax return rather than his or her Social Security Number. This provision may be especially important when a tax preparer acting as a company's applicant files multiple reports for multiple clients.

How do I report? Reporting companies must report beneficial ownership information electronically through FinCEN's website: www.fincen.gov/boi

The system will provide the filer with a confirmation of receipt once a completed report is filed with FinCEN. There is no provision to file these reports on paper.

When do I report? Reports will be accepted starting on January 1, 2024. FinCEN cannot accept reports before January 1, 2024.

- If a company was created or registered prior to January 1, 2024, it will have until January 1, 2025, to report BOI.
- If a company is created or registered on or after January 1, 2024, and before January 1, 2025, it must report BOI within 90 calendar days after receiving actual or public notice that the company's creation or registration is effective, whichever is earlier.
- If a company is created or registered on or after January 1, 2025, it must file BOI within 30 calendar days after receiving actual or public notice that its creation or registration is effective.
- Any updates or corrections to beneficial ownership information that was previously filed with FinCEN must be submitted within 30 days.

Note: This is a one-time filing requirement and not an annual filing requirement. A subsequent filing requirement only applies if and when there is an update or correction to beneficial ownership information.

More Information

The Small Entity Compliance Guide provides more detailed information about this reporting requirement and can be found at:

<https://www.fincen.gov/boi/small-entity-compliance-guide>

To sign up for FinCEN email or text updates, go to:

<https://service.govdelivery.com/accounts/USFINCEN/subscriber/new>

The text of the actual law can be found at:

<https://www.govinfo.gov/content/pkg/USCODE-2021-title31/pdf/USCODE-2021-title31-subtitleIV-chap53-subchapII-sec5336.pdf>