

The Corporate Transparency Act

New Federal Reporting Requirement for Beneficial Ownership Information (BOI)

January 31, 2024



Agenda

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- Questions

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- Nick earned his undergraduate degree from the University of Kansas in 2007, graduating with honors from the KU School of Business with a Bachelor of Science in Business with a concentration in Finance. Nick obtained his Master's degree in Business Administration from the University of Notre Dame in 2010. He graduated Magna Cum Laude from the Mendoza College of Business with MBA concentrations in Corporate Finance, Consulting, and Business Analytics.
- Prior to joining Ong & Company, Nick spent five years in public accounting with Ernst & Young where he specialized in advising Controllers and CFOs on strategic alignment, cost reduction, and performance improvement initiatives. He has worked with executives at Koch Industries, Cigna, Xerox, Bunge, L-3 Communications, and the United States Postal Service to assist with improving the efficiency and effectiveness of Finance & Accounting operations.
- Nick completed the Uniform Certified Public Accountant Examination in 2014 and holds permits to practice in the states of Kansas and New Hampshire.



Ong & Company

Tax

- Preparation of Business, Individual, and Estate & Trust tax returns, tax planning, and representation before taxing authorities

Accounting

- Implementation and maintenance of accounting software, bookkeeping services, and preparation historical financial statements

Payroll

- Implementation and processing of employee payroll, payroll tax compliance and planning, and preparation of annual W2s and 1099s

Advisory

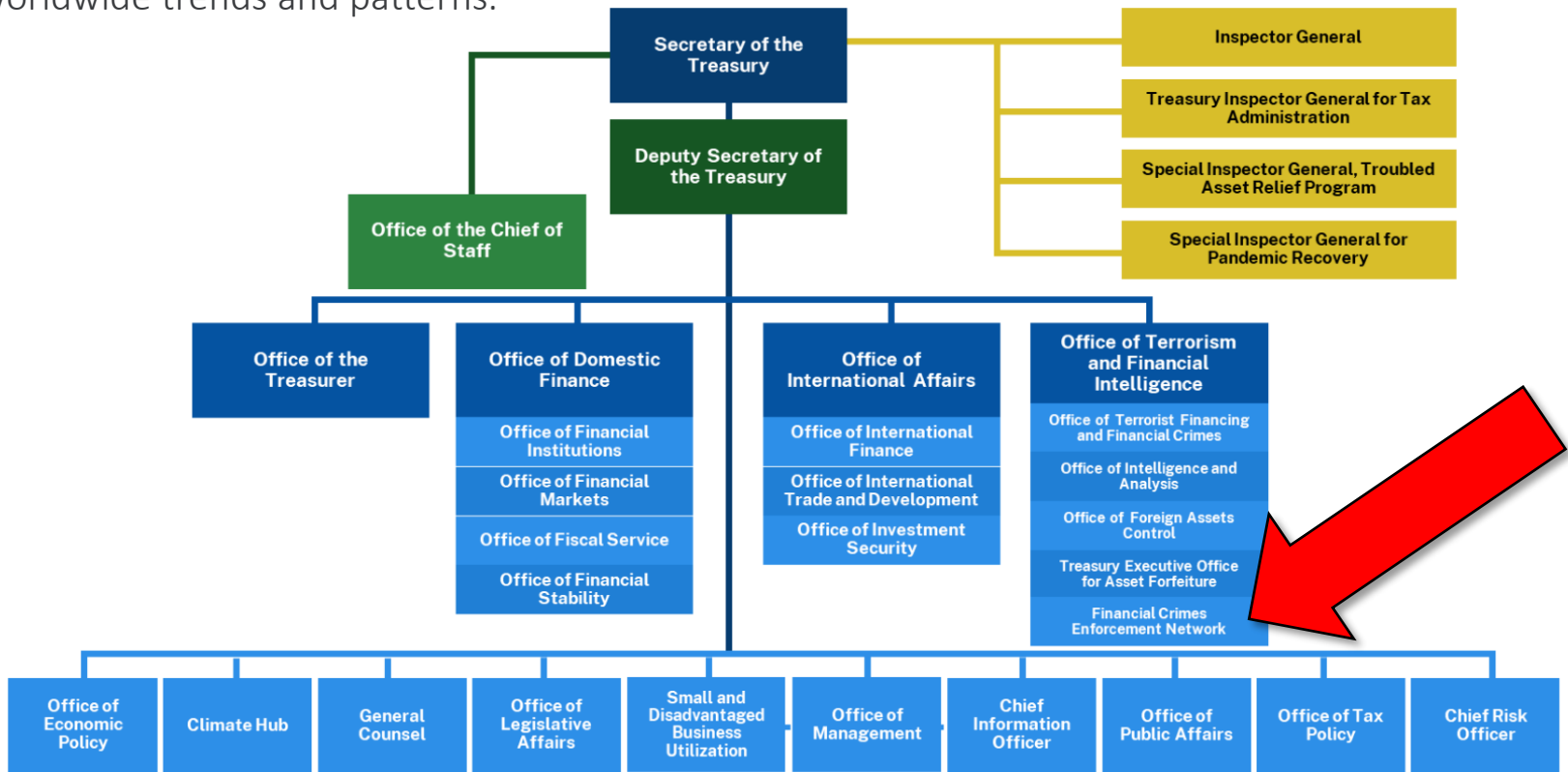
- Consultation regarding business formation and incorporation, business acquisitions and sales, and financial performance improvement opportunities

What Has Changed?

- In 2021, Congress enacted the Corporate Transparency Act to curb illicit finance. This law requires many companies doing business in the United States to report information about who ultimately owns or controls them.
- Effective January 1, 2024, many companies in the United States must report information about their beneficial owners—the individuals who ultimately own or control the company—to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury.
- FinCEN will store BOI reports in a centralized database and only share this information with authorized users for purposes specified by law.
- The new FinCEN database, called the Beneficial Ownership Secure System (the “BOSS”), will collect the names, dates of birth, addresses, and identification documents of individuals who own at least a 25% equity stake in each reporting company or who exercise substantial control over the reporting company.
- The purpose of the database is to provide U.S. law enforcement with the resources to crack down on anonymous shell companies, money launderers, terrorists, and criminals.

What Has Changed?

The Financial Crimes Enforcement Network (FinCEN) supports law enforcement investigative efforts and fosters interagency and global cooperation against domestic and international financial crimes. It also provides U.S. policy makers with strategic analyses of domestic and worldwide trends and patterns.



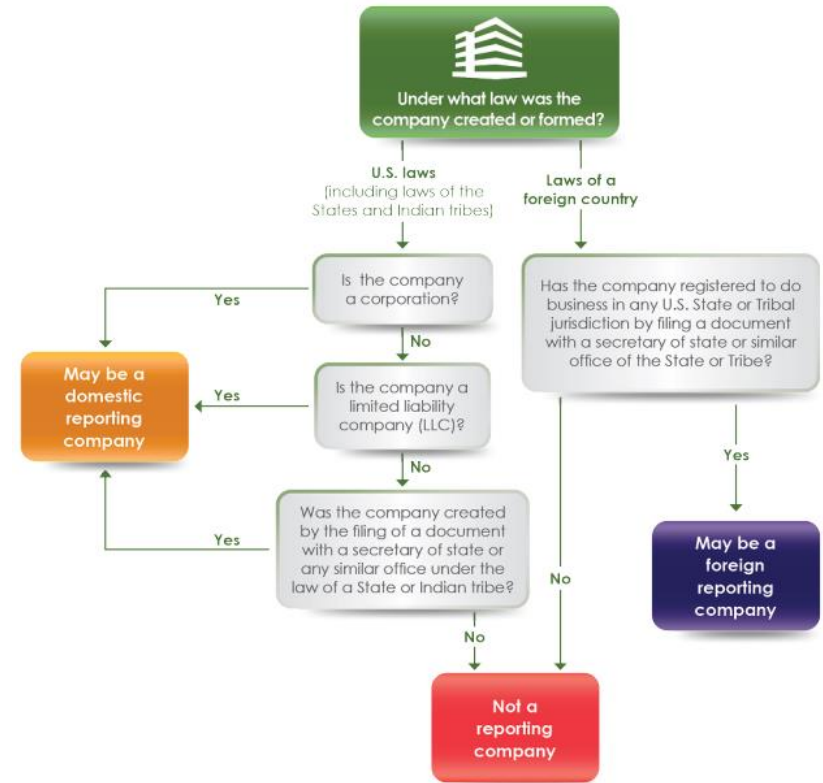
How Does this Impact Me?

- Although the CTA is intended to assist law enforcement in its anti-money laundering and counter-terrorism efforts, it is widely applicable, with very limited exceptions, all U.S. registered corporations, LLCs, or similar entities, whether foreign or domestic.
- FinCEN estimates that 32.6 million entities will be subject to the CTA reporting rules when they go into effect on January 1, 2024, and that an additional 5 million entities will be required to comply with the CTA each year thereafter.
- Civil and criminal penalties apply to the failure to report complete or updated beneficial ownership information reports, including penalties of up to \$500 per day and criminal penalties of up to \$10,000, two years' imprisonment, or both.
- Beneficial ownership information reporting is not an annual requirement. Unless a company needs to update or correct information, a report only needs to be submitted once.

Who Has to Report?

- Corporations, limited liability companies (LLCs), or other companies created in the United States by filing with a secretary of state or any similar office under the law of a state or Indian tribe
- Foreign companies that are registered to do business in any US state or Indian tribe

Chart 1 – Reporting company definition



Who Does Not Have to Report?

- 23 types of entities are exempt from beneficial ownership information reporting requirements, including publicly traded companies, nonprofits, and certain large operating companies
- Refer to checklists provided at https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf to review definitions of each exemption and the requirements to meet each

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

Large Operating Company (Exemption #21)

An entity qualifies for this exemption if all 6 of the criteria apply

1. The entity employs more than 20 full time employees, when applying the meaning of full-time employee provided in [26 CFR 54.4980H-1\(a\)](#) and [54.4980H-3](#). In general, “full-time employee” means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer.
2. More than 20 full-time employees of the entity are employed in the “United States,” as that term is defined in [31 CFR 1010.100\(hhh\)](#).
3. The entity has an operating presence at a physical office within the United States. “Operating presence at a physical office within the United States” means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.
4. The entity entity filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales. If the entity is part of an affiliated group of corporations within the meaning of [26 U.S.C. 1504](#), refer to the consolidated return for such group.
5. The entity reported this greater-than-\$5,000,000 amount as gross receipts or sales (net of returns and allowances) on the entity’s [IRS Form 1120](#), consolidated [IRS Form 1120](#), [IRS Form 1120-S](#), [IRS Form 1065](#), or other applicable IRS form.
6. When gross receipts or sales from sources outside the United States, as determined under Federal income tax principle, are excluded from the entity’s amount of gross receipts or sales, the amount remains greater than \$5,000,000.

Inactive Entity (Exemption #23)

An entity qualifies for this exemption if all 6 of the criteria apply

1. The entity was in existence on or before January 1, 2020.

2. The entity is not engaged in active business.

3. The entity is not owned by a foreign person, whether directly or indirectly, wholly or partially. "Foreign person" means a person who is not a United States person. A United States person is defined in section 7701(a)(30) of the [Internal Revenue Code of 1986](#) as a citizen or resident of the United States, domestic partnership and corporation, and other estates and trusts.

4. The entity has not experienced any change in ownership in the preceding twelve-month period.

5. The entity 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.

6. The entity 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.

When Do I Report?

If your company was created or registered prior to January 1, 2024, you will have until January 1, 2025 to report BOI

If your company is created or registered in 2024, you must report BOI within 90 calendar days after receiving actual or public notice that your company's creation or registration is effective

If your company is created or registered on or after January 1, 2025, you 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 you previously filed with FinCEN must be submitted within 30 days

What are the Penalties for Not Reporting by the Deadline?

- If a person has reason to believe that a report filed with FinCEN contains inaccurate information and voluntarily submits a report correcting the information within 90 days of the deadline for the original report, then the Corporate Transparency Act creates a safe harbor from penalty.
- However, should a person willfully fail to report complete or updated beneficial ownership information to FinCEN as required under the Reporting Rule, FinCEN will determine the appropriate enforcement response in consideration of its published enforcement factors.
- **The willful failure to report complete or updated beneficial ownership information to FinCEN, or the willful provision of or attempt to provide false or fraudulent beneficial ownership information may result in a civil or criminal penalties, including civil penalties of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000. Senior officers of an entity that fails to file a required BOI report may be held accountable for that failure.**
- Additionally, a person may be subject to civil and/or criminal penalties for willfully causing a company not to file a required BOI report or to report incomplete or false beneficial ownership information to FinCEN.

What Information Has to be Reported?

Reporting Company

- Full legal name
- Any trade name or "doing business as" (DBA) name
 - » Report all trade names or DBAs.
- Complete current U.S. address
 - » Report the address of the principal place of business in United States, or, if the reporting company's principal place of business is not in the United States, the primary location in the United States where the company conducts business.
- State, Tribal, or foreign jurisdiction of formation
- For a foreign reporting company only**, State or Tribal jurisdiction of first registration
- Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))
 - » **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.

Each Beneficial Owner and Company Applicant

Not all reporting companies are required to report information about company applicants. See Chapter 3 for assistance in identifying whether your company is required to report company applicant information.

- Full legal name
- Date of birth
- Complete current address
 - » Report the individual's residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- 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 the previous documents**, foreign passport

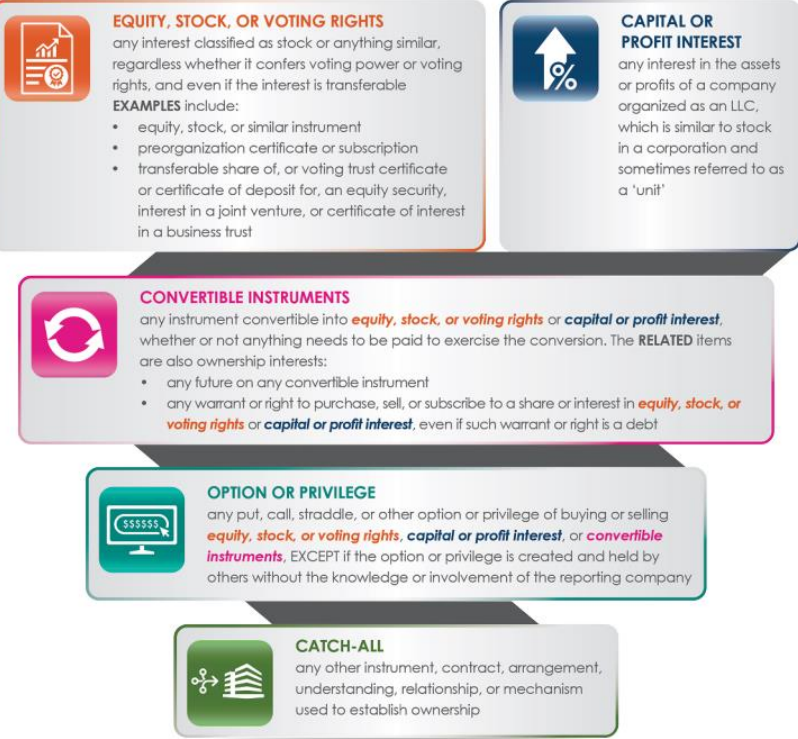
What is a Beneficial Owner?

- A beneficial owner is an individual who owns or controls at least 25% of a company or has substantial control over the company

What is Ownership Interest?

- Any of the following may be an ownership interest:
 - equity, stock, or voting rights
 - a capital or profit interest
 - convertible instruments
 - options or other non-binding privileges to buy or sell any of the foregoing
 - Any other instrument, contract, or other mechanism used to establish ownership

What is Ownership Interest?




Ownership interest question:	Answer	If response is "Yes":
1. Does your company issue equity, stock, or any similar instruments that confer voting power?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are equity, stock, or voting rights .
2. Does your company issue any pre-organization certificates or subscriptions?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does your company issue any transferable shares of, or voting trust certificates or certificates of deposit for: • an equity security, • interest in a joint venture, or • certificate of interest in a business trust?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
4. Do individuals hold capital or profit interests in your company (sometimes referred to as "units")?	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are capital or profit interests .
5. Does your company issue any instruments convertible into any share, equity, stock, voting rights, or capital or profit interest? Note: It does not matter whether anything must be paid to exercise the conversion.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are convertible instruments .
6. Does your company issue any future on any convertible instrument?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
7. Does your company issue any warrant or right to purchase, sell, or subscribe to a share or interest in equity, stock, or voting rights, or capital or profit interests? Note: It does not matter if such warrant or right is a debt.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
8. Does your company issue any non-binding put, call, straddle, or other option or privilege of buying or selling equity, stock, or voting rights, capital or profit interest, or convertible instruments? Note: Options or privileges created by others without the knowledge or involvement of your company do not apply.	<input type="checkbox"/> Yes <input type="checkbox"/> No	Your company has ownership interests that are options or privileges .
9. Does your company have any other instrument, contract, arrangement, understanding, relationship, or mechanism to establish ownership?	<input type="checkbox"/> Yes <input type="checkbox"/> No	The catch-all ownership interest applies to your company.

What is Substantial Control?

There is no limit to the number of individuals who can be reported for exercising substantial control. An individual exercises substantial control over a reporting company if the individual meets any of four general criteria:

1. The individual is a senior officer
2. The individual has authority to appoint or remove certain officers or a majority of directors of the reporting company
3. The individual is an important decision-maker
4. The individual has any other form of substantial control over the reporting company.


What is Substantial Control?




SENIOR OFFICER
any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers




APPOINTMENT OR REMOVAL AUTHORITY
any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body



IMPORTANT DECISION-MAKER
any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. **Business**, such as:
 - Nature, scope, and attributes of the business
 - The selection or termination of business lines or ventures, or geographic focus
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. **Finances**, such as:
 - Sale, lease, mortgage, or other transfer of any principal assets
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
 - Compensation schemes and incentive programs for senior officers
3. **Structure**, such as:
 - Reorganization, dissolution, or merger
 - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures



CATCH-ALL
any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here

Substantial control question:	Answer	If response is "Yes":
1. Does your company have a president, chief financial officer, general counsel, chief executive officer, or chief operating officer?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are senior officers in your company.
2. Does your company have any other officers that perform functions similar to those of a President, chief financial officer, general counsel, chief executive officer, or chief operating officer? <i>Note:</i> One individual may perform one or more functions for a company, or a company may not have an individual who performs any of these functions.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does your company have a board of directors or similar body AND does any individual have the ability to appoint or remove a majority of that board or body?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are individuals with appointment or removal authority over your company.
4. Does any individual have the ability to appoint or remove a senior officer of your company?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are important decision-makers over your company.
5. Does any individual direct, determine, or have substantial influence over important decisions made by your company, including decisions regarding your company's business, finances, or structure? <i>Note:</i> Certain employees who might fit this description are nevertheless exempt from the beneficial owner definition. See section 2.4 for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
6. Are there any other individuals who have substantial control over your company in ways other than those identified in 1-5 above?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are individuals to whom the catch-all would apply.

Potential Beneficial Owner Exceptions

There are five exceptions to the definition of beneficial owner. When an individual who would otherwise be a beneficial owner of a reporting company qualifies for an exception, the reporting company does not have to report that individual as a beneficial owner in its BOI report to FinCEN.

1. Minor Child
2. Nominee, Intermediary, Custodian, or Agent
3. Employee
4. Inheritor
5. Creditor

Note: Each exemption listed has specific requirements that must be met by working through the checklist available at https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

What is a Company Applicant?

A company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company

Each reporting company that is required to report company applicants will have to identify and report to FinCEN at least one company applicant, and at most two. All company applicants must be individuals. Companies or legal entities cannot be company applicants.

There are two categories of company applicants – the “direct filer” and the individual who “directs or controls the filing action.”

- The first category (direct filer) must be identified by all reporting companies that have a company applicant reporting requirement.
- The second category (directs or controls the filing action) may not be applicable to all reporting companies that have a company applicant reporting requirement. The second category of company applicants is only required to be reported when more than one individual is involved in the filing of the document that created or first registered the company.
- If more than one individual is involved in the filing, then two company applicants must be reported.
- No reporting company will have more than two company applicants

Do I Need to Report Company Applicants?

A reporting company is required to report its company applicants if it is either a:

- domestic reporting company created on or after January 1, 2024; or
- foreign reporting company first registered to do business in the United States on or after January 1, 2024.

A reporting company is not required to report its company applicants if it is either a:

- domestic reporting company created before January 1, 2024; or
- foreign reporting company first registered to do business in the United States before January 1, 2024.

What is a FinCEN Identifier?

- A “FinCEN identifier” is a unique identifying number that FinCEN will issue to an individual or reporting company upon request after the individual or reporting company provides certain information to FinCEN.
- Your company may include FinCEN identifiers in its BOI report instead of certain required information about beneficial owners or company applicants.
- Individuals may electronically apply for FinCEN identifiers. In the application, an individual must provide their name, date of birth, address, unique identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document – the same four pieces of personal information and image reporting companies submit about beneficial owners and company applicants in BOI reports (section 4.1).
- After an individual submits an application, the individual will immediately receive a FinCEN identifier unique to that individual.
- **Once a beneficial owner or company applicant has obtained a FinCEN identifier, reporting companies may report it in place of the otherwise required four pieces of personal information about the individual in BOI reports.**

How Do I Report?

Filing Options:

1. Prepare Yourself
 - <https://www.fincen.gov/boi>
2. Engage an Attorney
 - Nate Orr, Spencer Fane
<https://www.spencerfane.com/professionals/nathan-a-orr/>
 - Jeff Coppaken, Coppaken Law Firm <https://www.coppakenlaw.com/meet-the-team/jeff-coppaken/>
 - Neil Miller, Kutak Rock <https://www.kutakrock.com/people/m/miller-neil-m>
3. Use an Online Service
 - CT Corporation <https://www.wolterskluwer.com/en/solutions/ct-corporation/beneficial-ownership-information>
 - LegalZoom <https://www.legalzoom.com/business/business-operations/beneficial-ownership-information-report.html>

How Do I Report?



The screenshot shows the website boiefiling.fincen.gov. At the top, there is a navigation bar with the URL and a link to learn more about the site. Below this is the logo for the Financial Crimes Enforcement Network (FinCEN). A dark blue navigation bar contains the links "BOI E-FILING", "FILE BOIR", and "HELP". The main content area is divided into several sections:

- Welcome to the BOI E-Filing System:** A central text block explaining that the system supports the electronic filing of Beneficial Ownership Information Reports (BOIR) under the Corporate Transparency Act (CTA). It notes that the CTA requires certain U.S. and foreign entities to report beneficial ownership information to FinCEN, a bureau of the U.S. Department of the Treasury.
- File BOIR:** A blue button with an icon of a house and an upward arrow, labeled "File BOIR" and "Need to file a BOIR? Click here!".
- Help:** A blue button with a "QA" icon, labeled "Help" and "Looking for more information? Click here!".
- Beneficial Ownership Information (BOI) Reporting:** A card with the "BOI E-Filing" logo, the text "Beneficial Ownership Information (BOI) Reporting", "Need to file a BOIR? Click here!", and a "GET STARTED" button.
- Bank Secrecy Act (BSA) Reporting:** A card with the "BSA E-Filing" logo, the text "Bank Secrecy Act (BSA) Reporting", "Need to file another type of BSA report? Click here!", and a "BSA E-FILING" button.
- News & Announcements:** A section with a date "Jan 04 2024" and a link: "Need assistance? Go to the Help section in the blue banner to find filing instructions and other guidance materials."

How Do I Report?

File the Beneficial Ownership Information Report (BOIR)

Select the filing method that works best for you:

 <p>PDF</p>	<h3>File PDF BOIR</h3> <ul style="list-style-type: none">◦ Adobe Reader is required◦ Prepare report offline at your own pace, save as you go◦ Reuse PDF BOIR when filing updates/corrections◦ Download BOIR transcript upon submission <p>Prepare BOIR Submit BOIR</p>
 <p>WEB</p>	<h3>File Online BOIR</h3> <ul style="list-style-type: none">◦ Adobe Reader NOT required◦ Prepare report online and submit now◦ Prepare new Online BOIR when filing updates/corrections◦ Download BOIR transcript upon submission <p>Prepare & Submit BOIR</p>

How Do I Report?

Beneficial Ownership Information Report (BOIR)

OMB No. 1506-0076

Complete the report in its entirety with all required information. Fields marked with an asterisk (*) symbol are the fields that, *at a minimum*, must be completed by all companies to file the report. Reporting companies, however, must include all information 31 CFR 1010.380(b) requires them to provide, regardless of whether a field is marked with an asterisk (*) symbol. These information requirements are summarized above under HELP.

Filing Information

Reporting Company

Company Applicant(s)

Beneficial Owner(s)

Submit

Filing Information

Need help?

*1. Type of filing:

- a. Initial report
- b. Correct prior report
- c. Update prior report
- d. Newly exempt entity

2. Date prepared (auto-filled)

01/28/2024

Previous

Next

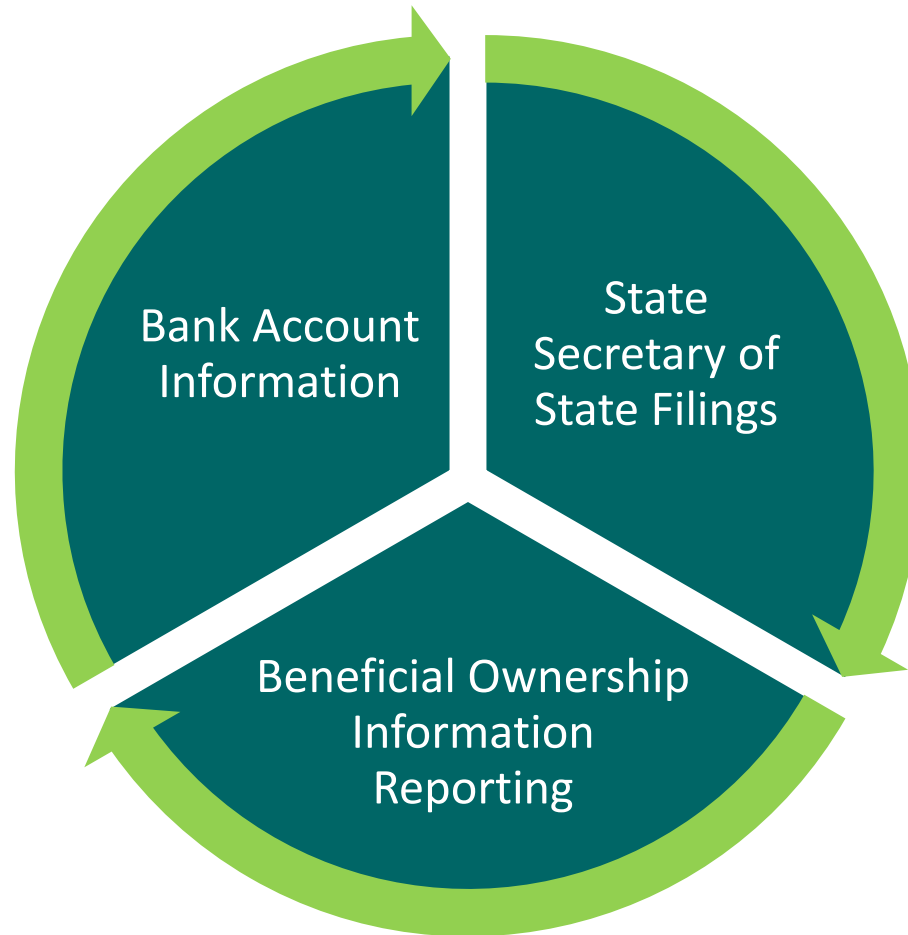
Tips for Completing BOI Online

- Work through tabs left to right
- Identify the list of all beneficial owners and company applicants that must be reported prior to getting started
- Consider having all beneficial owners and company applicants (if applicable) obtain their own FinCEN identifiers to avoid collection of drivers licenses or passports
- Have all beneficial owners and company applicant (if applicable) ID documents or FinCEN identifiers collected and available prior to starting
- Save PDF of e-filing transcript available for download after submitting the filing that will confirm filing successful

Resources

- <https://www.fincen.gov/boi>
- <https://boiefiling.fincen.gov/help>
- https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf
- <https://www.fincen.gov/sites/default/files/shared/BOI%20Informational%20Brochure%20508C.pdf>
- <https://www.fincen.gov/boi-faqs>
- <https://www.youtube.com/watch?v=Xy7eZuTyfz8>
- <https://www.youtube.com/watch?v=4qXv37hf4Dw>

Recommendations



Recommendations

1. Make a plan to comply with the deadlines that are applicable to your situation
2. Contact your business attorney (or engage one) to keep company legal documents up to date and consistent with BOI reporting
3. Formally dissolve inactive entities through Secretary of State offices
4. Add FinCEN BOI reporting to the list of updates required when there is a change in contact information for the reporting company and/or beneficial owners of the company
5. Create a standard process for notification and collection of contact information updates for beneficial owners to make sure updates are reported timely to FinCEN
6. Make sure information is consistent between state filings, FinCEN reporting, and bank accounts

Questions? We're here to help

Visit our website or click <https://calendly.com/ongandcompany> to select an available time for a virtual meeting with our team to discuss these updates and how they apply to your situation.

Contact Information

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