

Corporate Transparency Act: What CPAs and Our Clients Need to Know

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Introduction

Corporate Transparency Act Reporting: What You and Your Clients Need to Know

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Importance of Corporate Transparency

- The CTA's Wide Reach: Compliance Impact on Your Clients
 - Highlighting the extensive scope of the Corporate Transparency Act (CTA)
 - Emphasizing the need for a significant number of your clients to comply with the Act
- Raising Client Awareness: Educating Clients about the CTA
 - Addressing the lack of awareness among most clients regarding the impending compliance requirements
 - Recognizing the role of CPAs in educating and preparing clients for the reporting obligations

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Importance of Corporate Transparency

- Potential Penalties: Assessing the Risks and Leniency Factors
 - Understanding the substantial penalties associated with non-compliance
 - Discussing the uncertainty surrounding FinCEN's enforcement approach and potential leniency
 - Examining factors that may influence penalties and relief decisions

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Overview of the Corporate Transparency Act (CTA)

- On January 1, 2021, enacted as part of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021
- Enacted at the behest of law enforcement
- Final rule for reporting was issued in September of 2022
- Reporting will begin in 2024, though for entities existing as of the end of 2023 the initial report isn't due until January 1, 2025

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Filing Requirements

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FinCEN March FAQ and Documents

- FAQ issued by FinCEN on March 24, 2023
- One page PDF of key reporting dates
- Second one page PDF on beneficial ownership reporting

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BENEFICIAL OWNERSHIP INFORMATION REPORT FILING DATES



FinCEN will begin accepting beneficial ownership information reports from reporting companies¹ that are not exempt² on January 1, 2024, the effective date of the reporting requirement.



INITIAL REPORTS



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.

Reports due by **January 1, 2025**.



Created or registered to do business in the United States on or after January 1, 2024.

Reports due within **30 calendar days** of receiving actual or public notice that the creation or registration of the reporting company is effective.



UPDATED REPORTS

Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.



Updated reports due within **30 calendar days** after a change occurs.



CORRECTED REPORTS

Required when previously reported information was inaccurate when filed.



Corrected reports due within **30 calendar days** after the reporting company becomes aware or has reason to know of an inaccuracy.

More information can be found at www.fincen.gov/boi.

¹ There are two types of reporting companies: domestic and foreign. A **domestic reporting company** is any entity that is a corporation, a limited liability company (LLC), or created by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe. A **foreign reporting company** is any entity that is a corporation, LLC, or other entity that is formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

² There are 22 categories of entities that are exempt from the definition of reporting company. Please review FinCEN's final beneficial ownership information reporting rule, as well as FinCEN's reference materials published on www.fincen.gov/boi, for more details.



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BENEFICIAL OWNERSHIP REPORTING – KEY QUESTIONS

This document is explanatory only and does not supplement or modify any obligations imposed by statute or regulation. Please refer to the beneficial ownership information reporting final rule, available at www.fincen.gov/boir, for details on specific provisions.

- 1. Does my company have to report its beneficial owners?**

While certain types of entities are exempt, if you are a small corporation or LLC, you will likely be required to report your beneficial ownership information to FinCEN. A key factor in determining whether your company will have to report is whether you had to file a document with your state's secretary of state or a similar office to create your company or, for foreign companies, register it to do business in the United States.
- 2. Who is a beneficial owner of my company?**

A beneficial owner is any individual who exercises substantial control over your company, or who owns or controls at least 25 percent of your company.
- 3. Does my company have to report its company applicants?**

There can be up to two individuals who qualify as company applicants — (1) the individual who directly files the document that creates, or first registers, the reporting company; and (2) the individual that is primarily responsible for directing or controlling the filing of the relevant document. Your company is only required to report its company applicants if it is created or registered on or after January 1, 2024.
- 4. What specific information does my company need to report?**

A reporting company will need to provide: (1) its legal name and any trade name or DBA; (2) its address; (3) the jurisdiction in which it was formed or first registered, depending on whether it's a U.S. or foreign company; and (4) its Taxpayer Identification Number (TIN).

For each of your company's beneficial owners and each company applicant (if required), your company will need to provide the individual's: (1) legal name; (2) birthdate; (3) address (in most cases, a home address); and (4) an identifying number from a driver's license, passport, or other approved document for each individual, as well as an image of the document that the number is from.
- 5. When and how should my company file its initial report?**

If your company is created or registered before January 1, 2024, file by January 1, 2025. Otherwise, file within 30 calendar days of receiving actual or public notice from your state's secretary of state or similar office that your company was created or registered. FinCEN will accept reports electronically beginning January 1, 2024.
- 6. What if there are changes to or inaccuracies in reported information?**

Your company will have 30 days to report any changes to reported information. For updates, the 30 days start from when the relevant change occurs. For corrections, the 30 days start after you become aware of, or have reason to know of, an inaccuracy in a prior report.


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Filing Requirements

- Reporting companies are required to file these reports 31 USC §5336(b)(1)
- What entity types are covered?
 - LLCs
 - Corporations
 - Other entities required to register with a state, tribe, etc. or created by filing a document with the same governments
 - However, may be exempt from filing

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When Are Initial Reports to Be Filed?

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Explanation of the filing requirements under the Corporate Transparency Act

- Cannot file reports now - have to until January 1, 2024 (at least)
- When initial reports are required to be filed
 - A reporting company created or registered to do business before January 1, 2024 - **January 1, 2025**
 - A reporting company created or registered on or after January 1, 2024 - **30-day deadline** runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier

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Explanation of the filing requirements under the Corporate Transparency Act

- Previously exempt entity becomes no longer exempt - **file a report within 30 calendar days** after the date that it no longer meets the criteria for any exemption

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Proposed FinCEN Rule – 2024 Entities

- RIN: 1506-AB62, “Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024”, September 28, 2023
 - For entities formed in **2024 only**:
 - Will delay initial filing deadline by 60 days
 - Now will have 90 days to file the initial report, up from 30 days
 - Does not change initial report due date for entities formed in other years
 - Formed before 2024: **January 1, 2025**
 - Formed after 2024: **30 days after the formation of the entity**

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Explanation of the filing requirements under the Corporate Transparency Act

- So key thing to note is that:
 - The January 1, 2025 date only applies if the *entity exists by the end of 2023*
 - Any entity formed in 2024 will only have 30 days to file that same initial report - and that's where things are first likely to go wrong
 - If counsel is involved in forming the entity, most likely the client will be advised to file
 - However, if a client decides to follow a "form your own LLC" TikTok video or otherwise does it on their own the risks are far higher
- Also, it appears that if an existing entity files early in 2024, they would immediately be subject to the update requirements we'll discuss later

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EXAMPLE - ENTITY CREATED IN 2024

ABC, LLC received actual notice of its creation from the appropriate state authority on December 31, 2023. ABC, LLC's deadline to file its initial report is **January 1, 2025** as the entity was in existence before January 1, 2024.

XYZ, LLC received actual notice of its creation on January 2, 2024 from the appropriate state authority. While formed just two days later than ABC, LLC, this LLC's deadline is much earlier, needing to file within 30 days after the date of formation, or by **February 1, 2024**.

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Reporting Company

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Categories of Reporting Companies

Type	Definition
Domestic reporting company	Any entity that is: (A) a corporation; (B) a limited liability company; or (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. ¹⁶
Foreign reporting company	Any entity that is: (A) a corporation, limited liability company, or other entity; (B) formed under the law of a foreign country; and (C) registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe. ¹⁷

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Definition and Characteristics of a Reporting Company

- Domestic reporting company -
 - a corporation,
 - a limited liability company, or
 - any other entity 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.

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Definition and Characteristics of a Reporting Company

- Foreign reporting company -
 - a corporation, limited liability company, or other entity formed under the law of a foreign country, **and**
 - registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

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Definition and Characteristics of a Reporting Company

- A “state” means
 - any state of the United States,
 - the District of Columbia,
 - the Commonwealth of Puerto Rico,
 - the Commonwealth of the Northern Mariana Islands,
 - American Samoa,
 - Guam,
 - the U.S. Virgin Islands, and
 - any other commonwealth, territory, or possession of the United States.

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Exempt Entities

- The statute provides for 23 types of entities that are exempt from the requirements to file reports even though they otherwise would be a reporting company
- Important to note that ***there is no small business exemption from the filing requirements.***
- The main concern is all about small, non-operating companies or companies with minimal operations that exist primarily to confuse the ownership chain

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Exempt Entities

- Certain types of securities reporting issuers.
- A U.S. governmental authority.
- Certain types of banks.
- Federal or state credit unions as defined in section 101 of the Federal Credit Union Act.
- Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act.

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Exempt Entities

- Certain types of money transmitting or money services businesses.
- Any broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act (15 U.S.C. 78o).
- Securities exchanges or clearing agencies as defined in section 3 of the Securities Exchange Act of 1934, and that is registered under sections 6 or 17A of that Act.
- Certain other types of entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

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Exempt Entities

- Certain types of investment companies as defined in section 3 of the Investment Company Act of 1940, or investment advisers as defined in section 202 of the Investment Advisers Act of 1940.
- Certain types of venture capital fund advisers.
- Insurance companies defined in section 2 of the Investment Company Act of 1940.

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Exempt Entities

- State-licensed insurance producers with an operating presence at a physical office within the United States, and authorized by a State, and subject to supervision by a State's insurance commissioner or a similar official or agency.
- Commodity Exchange Act registered entities.
- Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.

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Exempt Entities

- Certain types of regulated public utilities.
- Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.
- Certain pooled investment vehicles.
- Certain types of tax-exempt entities.
- Entities assisting a tax-exempt entity described in the prior bullet

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Exempt Entities

- Large operating companies with at least 20 full-time employees, more than \$5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States. **(This the exception that has the broadest applicability.)**
- The subsidiaries of certain exempt entities.
- Certain types of inactive entities that were in existence on or before January 1, 2020

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Exempt Entities

- Remember these exemptions are to be interpreted narrowly - so you must look at the details for any exemption you believe cover a particular organization
- These details are found in the Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c)(2)
- We'll next consider some of the categories you are more likely to run into

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Large Operating Company

- Must meet *all* of the following requirements:
 - Employ more than 20 employees on a full time basis in the United States
 - Filed federal income tax returns in the previous year that reported more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of
 - other entities owned by the entity; and
 - other entities through which the entity operates
 - Has an operating presence at a physical office in the United States

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Large Operating Company

- Counting employees for this test
 - Borrows definitions found in the regulations for the applicable large employer (ALE) provisions of the Affordable Care Act (ACA) for full time employees (does not count full time equivalents)
 - These regulations are found at
 - Treasury Reg. §54.4980H-1(a) (which provides definitions of employees and full time employees) and
 - Treasury Reg. §54.4980H-3 (which determines full time employees under the ACA for the ALE rules)

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Large Operating Company

- Counting employees for this test
 - Employer ALE regulations allows aggregating certain group of related entities as a single employer
 - Full time employee
 - generally is an employee who is employed an average of at least 30 hours a week in a calendar month,
 - working 130 hours per month being treated as equivalent of being employed on average at least 30 hours a week in a calendar month

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Large Operating Company

- Counting employees for this test
 - Definition of “United States” is modified from the ACA one. For this purpose, the “United States” is made up of:
 - The States of the United States,
 - the District of Columbia,
 - **the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and**
 - **the Territories and Insular Possessions of the United States.**
 - The last two categories are not part of the United States for ACA purposes.

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Large Operating Company

- \$5,000,000 test
 - 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, as reported as gross receipts or sales (net of returns and allowances) on the entity's
 - Form 1120 (including consolidated returns)
 - Form 1120-S,
 - Form 1065 or
 - Other applicable form

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Large Operating Company

- \$5,000,000 test
 - Excludes gross receipts or sales from sources outside the United States, as determined under Federal income tax principles.
 - For corporations that file a consolidated return, the test will apply to the amount reported on the consolidated return for the group

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Inactive Entity

- All of these had to have existed on January 1, 2020 (so over time we will have fewer of these)
- Is not engaged in active business;
- Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- Has not experienced any change in ownership in the preceding twelve month period;

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Inactive 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; 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.

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Beneficial Owner

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Definition of a Beneficial Owner

- If not otherwise excluded (see next major section), with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—
 - exercises **substantial control** over the entity; or
 - **owns or controls not less than 25 percent** of the ownership interests of the entity

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Substantial Control

- Note - don't need to have *any* ownership to be in this category.
- An individual exercises substantial control if the individual:
 - Serves as a senior officer of the reporting company;
 - Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);

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Substantial Control

- An individual exercises substantial control if the individual:
 - Directs, determines, or has substantial influence over **important decisions** made by the reporting company, **including** decisions regarding (not an exclusive list):
 - The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - The reorganization, dissolution, or merger of the reporting company;
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
 - The selection or termination of business lines or ventures, or geographic focus, of the reporting company;

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Substantial Control

- An individual exercises substantial control if the individual:
 - Directs, determines, or has substantial influence over **important decisions** made by the reporting company, **including** decisions regarding (not an exclusive list):
 - Compensation schemes and incentive programs for senior officers;
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
 - 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; or

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Substantial Control

- An individual exercises substantial control if the individual:
 - Has any other form of substantial control over the reporting company. (Catch-all category based on facts and circumstances of the situation).

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Substantial Control

- Substantial control can be exercised (directly or indirectly) in any of the following manners:
 - Board representation;
 - Ownership or control of a majority of the voting power or voting rights of the reporting company;
 - Rights associated with any financing arrangement or interest in a company;
 - Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;

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Substantial Control

- Substantial control can be exercised (directly or indirectly) in any of the following manners:
 - Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or
 - any other contract, arrangement, understanding, relationship, or otherwise.

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Ownership Interests

- Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;
- Any capital or profit interest in an entity;

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Ownership Interests

- Any instrument convertible, with or without consideration, into any share or instrument described in the prior two bullets, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in the prior two bullets, regardless of whether characterized as debt;

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Ownership Interests

- Any put, call, straddle, or other option or privilege of buying or selling any of the items described in the first three bullets without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or
- Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

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Ownership or Control of an Ownership Interest

- Direct or indirect through any contract, arrangement, understanding, relationship, or otherwise, **including** (again, not an exhaustive list):
 - Joint ownership with one or more other persons of an undivided interest in such ownership interest;
 - Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;

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Ownership or Control of an Ownership Interest

- Direct or indirect through any contract, arrangement, understanding, relationship, or otherwise, **including** (again, not an exhaustive list):
 - With regard to a trust or similar arrangement that holds such ownership interest:
 - As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;
 - As a beneficiary who:
 - Is the sole permissible recipient of income and principal from the trust; or
 - Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or

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Ownership or Control of an Ownership Interest

- Direct or indirect through any contract, arrangement, understanding, relationship, or otherwise, **including** (again, not an exhaustive list):
 - With regard to a trust or similar arrangement that holds such ownership interest:
 - As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or
 - Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.

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Calculation of Total Ownership Interests

- Calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:
 - Ownership interests of the individual shall be calculated at the present time, and any options or similar interests of the individual shall be treated as exercised;
 - For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;

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Calculation of Total Ownership Interests

- Calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:
 - For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:
 - the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or
 - the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and

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Calculation of Total Ownership Interests

- Calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:
 - If the facts and circumstances do not permit the calculations described the prior two bullets to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

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Senior Officers

- Holding the position *or exercising the authority* of a:
 - president,
 - chief financial officer,
 - general counsel,
 - chief executive officer,
 - chief operating officer,
 - or any other officer, regardless of official title, who performs a similar function.

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FinCEN Example 1

EXAMPLE 1 – FAQ QUESTION 9

Example 1: The reporting company is a limited liability company (LLC). You are the sole owner and president of the company and make important decisions for the company. No one else owns or controls ownership interests in your company or exercises substantial control over your company.

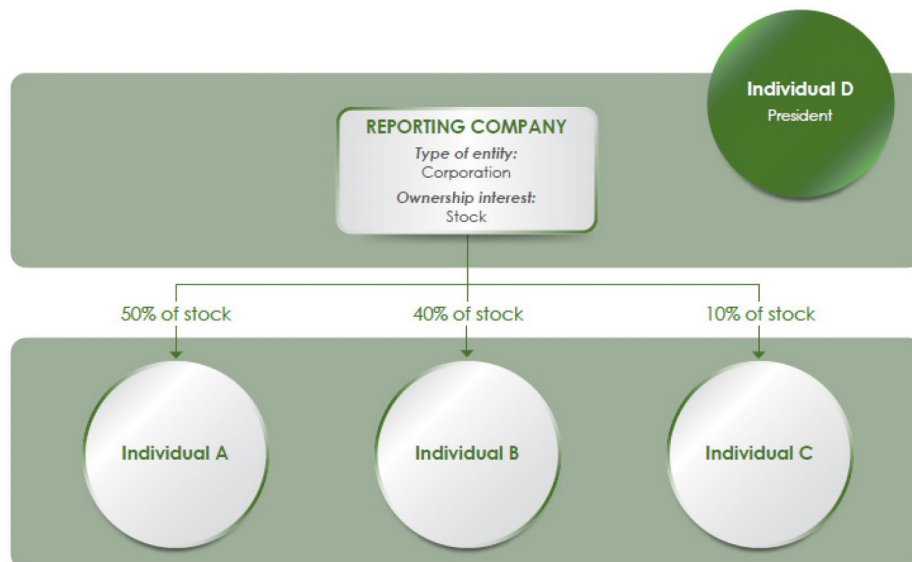
You are a beneficial owner of the reporting company in two different ways, assuming no other facts. First, you exercise substantial control over the company because you are a senior officer of the company (the president) and because you make important decisions for the company. Second, you are also a beneficial owner because you own 25 percent or more of the reporting company's ownership interests.

Because no one else owns or controls ownership interests in your LLC or exercises substantial control over it, and assuming there are no other facts to consider, you are the only beneficial owner of this reporting company, and your information must be reported to FinCEN.

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FinCEN Example 2



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FinCEN Example 2

EXAMPLE 2 – FAQ QUESTION 9

Example 2: The reporting company is a corporation. The company's total outstanding ownership interests are shares of stock. Three people (Individuals A, B, and C) own 50 percent, 40 percent, and 10 percent of the stock, respectively, and one other person (Individual D) acts as the President for the company, but does not own any stock.

Assuming there are no other facts, Individuals A, B, and D are all beneficial owners of the company and their information must be reported. Individual C is not a beneficial owner.

Individual A owns 50 percent of the company's stock and therefore is a beneficial owner because they own 25 percent or more of the company's ownership interests. Individual B owns 40 percent of the company's stock and therefore is a beneficial owner because they own 25 percent or more of the company's ownership interests.

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FinCEN Example 2

Individual C is not a company officer and does not directly or indirectly exercise any substantial control over the company. Individual C also owns 10 percent of your company's stock, which is less than the 25 percent or greater interest needed to qualify as a beneficial owner by virtue of ownership interests. Individual C is therefore not a beneficial owner of the company.

Individual D is president of the company and is therefore a beneficial owner. As a senior officer of the company, Individual D exercises substantial control, regardless of whether the individual owns or controls 25 percent or more of the company's ownership interests.

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FinCEN Example 3

EXAMPLE 3 – FAQ QUESTION 9

Example 3: The reporting company is a corporation owned by four individuals who each own 25 percent of the company's ownership interests (e.g., shares of stock). Four other individuals serve as the reporting company's CEO, CFO, COO, and general counsel, respectively, none of whom hold any of the company's ownership interests.

In this example, there are eight beneficial owners. All four of the individuals who each own 25 percent of the company's ownership interests are beneficial owners of the company by virtue of their holdings in it, even if they exercise no substantial control over it. The CEO, CFO, COO, and general counsel are all senior officers and therefore exercise substantial control over the reporting company, making them beneficial owners as well.

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Individuals Not Treated as Beneficial Owners

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Excluded Individuals (Not a Beneficial Owner)

- A minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

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Excluded Individuals (Not a Beneficial Owner)

- An individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person (does not cover senior officers);
- An individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance (future interest only); or

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Excluded Individuals (Not a Beneficial Owner)

- A creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of ownership discussed earlier (that is, simply being a creditor won't make someone a beneficial owner).

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Company Applicants

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Company Applicant

- Only required for entities created or registered on or after January 1, 2024
- Company applicant is:
 - For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company;
 - For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company; and
 - Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.

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No More than 2 Company Applicants

- The two would be:
 - the individual who directly files the document that creates, or first registers, the reporting company; and
 - the individual that is primarily responsible for directing or controlling the filing of the relevant document.
- If only one person was involved in filing the relevant document, then only that person should be reported as a company applicant.

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FinCEN Company Applicant Examples

EXAMPLE – FAQ QUESTION 11

Example 1: Individual A is creating a new company. Individual A prepares the necessary documents to create the company and files them with the relevant state or Tribal office, either in person or using a self-service online portal. No one else is involved in preparing, directing, or making the filing.

Individual A is a company applicant because Individual A directly filed the document that created the company. Because Individual A is the only person involved in the filing, Individual A is the only company applicant. State or Tribal employees who receive and process the company creation or formation documents should not be reported as company applicants.

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FinCEN Company Applicant Examples

EXAMPLE – FAQ QUESTION 11

Example 2: Individual A is creating a company. Individual A prepares the necessary documents to create the company and directs Individual B to file the documents with the relevant state or Tribal office. Individual B then directly files the documents that create the company.

Individuals A and B are both company applicants—Individual B directly filed the documents, and Individual A was primarily responsible for directing or controlling the filing. Individual B could, for example, be Individual A's spouse, business partner, attorney, or accountant; in all cases, Individuals A and B are both company applicants in this scenario.

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Information to Be Provided

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Information About the Entity

- The full legal name of the reporting company;
- Any trade name or “doing business as” name of the reporting company;
- A complete current address consisting of:
 - In the case of a reporting company with a principal place of business in the United States, the **street address** of such principal place of business; and
 - In all other cases, the **street address** of the primary location in the United States where the reporting company conducts business
- The State, Tribal, or foreign jurisdiction of formation of the reporting company

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Information About the Entity

- For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and
- The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

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Information About the Entity

- Entity must also indicate if is filing:
 - An initial report,
 - A correction of a prior report or
 - An update to a prior report

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Information to Be Provided for Beneficial Owners and Company Applicants

- The full legal name of the individual;
- The date of birth of the individual;
- A complete current address consisting of:
 - In the case of a **company applicant** who forms or registers an entity in the course of such company applicant's business, the **street address of such business**; or
 - In any other case, the individual's **residential street address**

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Information to Be Provided for Beneficial Owners and Company Applicants

- A unique identifying number and the issuing jurisdiction from one of the following documents:
 - A non-expired passport issued to the individual by the United States government;
 - A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;
 - A non-expired driver's license issued to the individual by a State; or
 - A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the prior three documents
- An image of the document from which the unique identifying number was obtained.

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Identification Documents

- A non-expired driver's license issued by a U.S. state. A "U.S. state" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States.

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Identification Documents

- A non-expired identification document issued by a U.S. state or local government, or Indian Tribe that is issued for the purpose of identifying the individual. For example, a non-driver identification card issued by a state Department of Motor Vehicles would qualify because it is issued for identification purposes.

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Identification Documents

- A non-expired passport issued by the U.S. government; or
- **If the individual does not have any of the three forms of identification document described above**, the reporting company may provide the identifying number from a non-expired passport issued by a foreign government.

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Updated Reports

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General Rules for Update Reports

- If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report in the form and manner specified **within 30 calendar days** after the date on which such change occurs.

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General Rules for Update Reports

- An updated report required to be filed shall reflect **any change with respect to required information previously submitted** to FinCEN concerning a **reporting company** or its **beneficial owners**
- **Newly exempt entities** - An updated report required to be filed shall indicate that the filing entity is no longer a reporting company.

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General Rules for Update Reports

- **Death of a beneficial owner** - If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and such individual dies, a change with respect to required information will be deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.

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General Rules for Update Reports

- **Formerly a minor child** - If a reporting company has reported information with respect to a parent or legal guardian of a minor child, a change with respect to required information will be deemed to occur when the minor child attains the age of majority.
- **Changes to identifying document** - With respect to an image of an identifying document required to be reported, a change with respect to required information will be deemed to occur when the name, date of birth, address, or unique identifying number on such document changes

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General Rules for Update Reports

- **And everything else:**
 - Address change
 - Gifting interests to another party
 - Sale of interest
 - Anything either
 - On report that is now different
 - Not on initial report but now should be there
 - On report that no longer should be there

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Corrected Reports

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Corrected Reports

- When an error is made in an initial or updated report, a corrected report is required
 - If any report under this section was inaccurate when filed and remains inaccurate, the reporting company shall file a corrected report within 30 calendar days after the date on which such reporting company becomes aware or has reason to know of the inaccuracy.
 - A corrected report filed within this 30-day period shall be deemed to satisfy the rules for a proper first report if filed within 90 calendar days after the date on which the inaccurate report was filed.
 - Note these are two different provisions - being outside either time limit can lead to penalties

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FinCEN Identifier

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FinCEN Identifier

- Allows getting a single FinCEN identifier for an individual that can be used for all filings
- Appears to allow just updating the information once and have it apply to all entities the individual is a beneficial owner or company applicant for
- Not a lot of information available on this program as of right (large block “reserved” in the final rule)

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Penalties for Reporting Violations

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Reporting Violation

- Subject to potential civil and/or criminal penalties - it is unlawful for any person to
 - willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with these requirements or
 - willfully fail to report complete or updated beneficial ownership information to FinCEN

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Reporting Violation

- A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application

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Civil Penalties

- The civil penalty is not more than \$500 for each day that the violation continues or has not been remedied
- Note that there is no limit found in the statute for the amount of a civil penalty (you'll see some references to a \$10,000 cap, but that is only the criminal fine we'll talk about next)

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Criminal Penalties

- The criminal penalties are:
 - A fine of not more than \$10,000;
 - Imprisonment for not more than 2 years or
 - Both

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How Reports Will Be Filed

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Filing Reports

- Reports will be filed electronically through a secure filing system available via FinCEN's website.
- The system is currently being developed so we don't know a lot about it.

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Entities with Access to Beneficial Ownership Information

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Who Can Access this Data?

- Is **not** data available to the general public
- Rather the data will only be available to six types of requesters

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Requesters Who Can Have Access to Beneficial Ownership Data

- U.S. Federal agencies engaged in national security, intelligence, and law enforcement activities;
- State, local, and Tribal law enforcement agencies with court authorization;
- The U.S. Department of the Treasury;
- Financial institutions using beneficial ownership information to conduct legally required customer due diligence, provided the financial institutions have their customer consent to retrieve the information;

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Requesters Who Can Have Access to Beneficial Ownership Data

- Federal and state regulators assessing financial institutions for compliance with legally required customer due diligence obligations; and
- Foreign law enforcement agencies and certain other foreign authorities who submit qualifying requests for the information through a U.S. Federal agency.

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Protection of Data

- The law imposes access requirements and safeguards on each group of requesters.
- FinCEN required under the law to:
 - implement protocols to safeguard beneficial ownership information;
 - build a secure IT system to store the information; and
 - establish processes and procedures to ensure that only authorized users can access beneficial ownership information for authorized purposes.

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Summary and Conclusion

Corporate Transparency Act Reporting: What You and Your Clients Need to Know

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Corporate Transparency Act: What CPAs and Our Clients Need to Know

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Corporate Transparency Act

31 USC §5663

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LEARNING OBJECTIVES

- Explain to clients the reasons Congress used to justify the requirements to establish the beneficial ownership reporting requirements.
- Identify whether a particular corporation or LLC qualifies as an exempted large operating company
- List the information required to be provided in the initial and update reports on behalf of the entity, beneficial owners and company applicants.

On January 1st, 2021, a new law was born. Buried in the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, this law - also known as the “Corporate Transparency Act” - requires corporations, LLCs, and other entities to report beneficial owner information to the Financial Crimes Enforcement Network (FinCEN). This data will be collected in a database for future reference.

Fast forward to September 2022, when FinCEN released the final regulations¹ for the law. Reporting will officially begin on January 1st, 2024. However, it’s worth noting that there will be different rules for entities that existed before 2024 and those created in or after that year.

Though there are some exceptions to these requirements, many advisers will find that most of the small, closely held LLCs and corporations they work with will need to file these reports. And to top it off, any changes to the information provided must be updated within 30 days.

In short, this is a law that will impact many businesses across the country, so it’s important to stay informed and up-to-date on its requirements.

WHY DID CONGRESS SEE THE NEED TO ENACT THESE RULES

Section 6402 of the Thornberry Act outlines the “Sense of Congress” regarding the justification for these provisions. That section notes, in part, that:

- More than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year;²
- Most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State;³
- 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;⁴ 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.⁵

¹ Federal Register, Vol. 87, No. 189, 87 FR 59498, September 30, 2023, <https://www.federalregister.gov/d/2022-21020> (retrieved April 29, 2023)

² Thornberry Act §6402(1)

³ Thornberry Act §6402(2)

⁴ Thornberry Act §6402(3)

⁵ Thornberry Act §6402(4)

The Section goes on to explain why this situation requires Federal intervention:

- Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed to—
 - set a clear, Federal standard for incorporation practices;
 - protect vital United States national security interests;
 - protect interstate and foreign commerce;
 - better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and
 - bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards.⁶

Congress explains next how this information will be used:

- Beneficial ownership information collected under the amendments made by this title is sensitive information and will be directly available only to authorized government authorities, subject to effective safeguards and controls, to—
 - facilitate important national security, intelligence, and law enforcement activities; and
 - confirm beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.⁷

The program is to be handled by the Treasury Department with Congress providing:

- Consistent with applicable law, the Secretary of the Treasury shall—
 - maintain the information obtained in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level; and
 - take all steps, including regular auditing, to ensure that government authorities accessing beneficial ownership information do so only for authorized purposes consistent with this title; and

⁶ Thornberry Act §6402(5)

⁷ Thornberry Act §6402(6)

- in prescribing regulations to provide for the reporting of beneficial ownership information, the Secretary shall, to the greatest extent practicable consistent with the purposes of this title—
 - seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information;
 - provide clarity to reporting companies concerning the identification of their beneficial owners; and
 - collect information in a form and manner that is reasonably designed to generate a database that is highly useful to national security, intelligence, and law enforcement agencies and Federal functional regulators.⁸

Note that while Treasury is required to “seek” to minimize the burden, that doesn’t mean the burden will be minimal (the fact the agency seeks something doesn’t mean they will find a way to do it). Contrast this with the final charge which doesn’t have such a modifier, but rather requires the agency to create a “highly useful” database for the intended users of the information.

In an FAQ issued on March 24, 2023,⁹ FinCEN summarized the reasons why this information must be reported to the Treasury Department:

Very few U.S. states or territories require companies to disclose information about their beneficial owners—the individuals who own or control companies. This lack of transparency allows criminals, corrupt officials, and other bad actors to hide their identities and launder illicit funds through the United States using shell and front companies. This in turn hurts ordinary Americans because the lack of transparency results in an uneven playing field for honest and legitimate U.S. businesses. The inaccessibility of beneficial ownership information also makes it hard for law enforcement to track and prosecute criminal activity.

In 2021, Congress, with bipartisan support, enacted the Corporate Transparency Act to address this problem. The Corporate Transparency Act requires certain types of U.S. and foreign entities to report information about their beneficial owners to the Treasury Department’s Financial Crimes Enforcement Network, commonly known as FinCEN. FinCEN is responsible for safeguarding the U.S. financial system from illicit use. Subject to strict safeguards and controls, FinCEN will disclose the reported beneficial ownership information to certain authorized government authorities, financial institutions, and other authorized users.

By collecting beneficial ownership information and sharing it with law enforcement, financial institutions, and other authorized users, FinCEN is making it harder for

⁸ Thornberry Act §6402(7) and (8)

⁹ “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, https://www.fincen.gov/sites/default/files/shared/BOI_FAQs_FINAL_508.pdf (retrieved April 28, 2023)

bad actors to hide or benefit from their ill-gotten gains. Companies that report beneficial ownership information will contribute to this important goal.¹⁰

We will look at the rules that were issued as part of the reporting regulations issued in September of 2022, as well as the additional guidance published by the agency in March of 2023 on the FinCEN website.

FILING REQUIREMENTS

The FAQ cited above is FinCEN's attempt to provide a plain English explanation of the law and how it will impact entities required to file. In addition to the FAQ, at the same time FinCEN published two other single page documents that provide summaries of key issues.

¹⁰ "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, pp. 1-2

The first item is a one page PDF¹¹ showing the key reporting dates under this program:

BENEFICIAL OWNERSHIP INFORMATION REPORT FILING DATES



FinCEN will begin accepting beneficial ownership information reports from reporting companies¹ that are not exempt² on January 1, 2024, the effective date of the reporting requirement.



INITIAL REPORTS



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.
Reports due by **January 1, 2025**.



Created or registered to do business in the United States on or after January 1, 2024.
Reports due within **30 calendar days** of receiving actual or public notice that the creation or registration of the reporting company is effective.



UPDATED REPORTS

Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.



Updated reports due within **30 calendar days** after a change occurs.



CORRECTED REPORTS

Required when previously reported information was inaccurate when filed.



Corrected reports due within **30 calendar days** after the reporting company becomes aware or has reason to know of an inaccuracy.

More information can be found at www.fincen.gov/boi.

- ¹ There are two types of reporting companies: domestic and foreign. A **domestic reporting company** is any entity that is a corporation, a limited liability company (LLC), or created by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe. A **foreign reporting company** is any entity that is a corporation, LLC, or other entity that is formed under the law of a foreign country and registered to do business in any U.S. state or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.
- ² There are 23 categories of entities that are exempt from the definition of reporting company. Please review FinCEN's final beneficial ownership information reporting rule, as well as FinCEN's reference materials published on www.fincen.gov/boi for more details.



Financial Crimes Enforcement Network

VERSION 1 - Published 3/24/23

The second one page document outlines a number of key questions¹² to be answered.

¹¹ "Beneficial Ownership Interest Report Filing Dates," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Filing_Dates-Published03.24.23_508C.pdf (retrieved April 28, 2023)

¹² "Beneficial Ownership Reporting – Key Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, https://www.fincen.gov/sites/default/files/shared/BOI_Reporting_Key_Questions_Published_508C.pdf (retrieved April 28, 2023)

BENEFICIAL OWNERSHIP REPORTING – KEY QUESTIONS

This document is explanatory only and does not supplement or modify any obligations imposed by statute or regulation. Please refer to the beneficial ownership information reporting final rule, available at www.fincen.gov/boi, for details on specific provisions.



1. Does my company have to report its beneficial owners?

While certain types of entities are exempt, if you are a small corporation or LLC, you will likely be required to report your beneficial ownership information to FinCEN. A key factor in determining whether your company will have to report is whether you had to file a document with your state's secretary of state or a similar office to create your company or, for foreign companies, register it to do business in the United States.



2. Who is a beneficial owner of my company?

A beneficial owner is any individual who exercises *substantial control* over your company, or who owns or controls at least 25 percent of your company.



3. Does my company have to report its company applicants?

There can be up to two individuals who qualify as company applicants — (1) the individual who directly files the document that creates, or first registers, the reporting company; and (2) the individual that is primarily responsible for directing or controlling the filing of the relevant document.

Your company is only required to report its company applicants if it is created or registered on or after January 1, 2024.



4. What specific information does my company need to report?

A reporting company will need to provide: (1) its legal name and any trade name or DBA; (2) its address; (3) the jurisdiction in which it was formed or first registered, depending on whether it's a U.S. or foreign company; and (4) its Taxpayer Identification Number (TIN).

For each of your company's beneficial owners and each company applicant (if required), your company will need to provide the individual's: (1) legal name; (2) birthdate; (3) address (in most cases, a home address); and (4) an identifying number from a driver's license, passport, or other approved document for each individual, as well as an image of the document that the number is from.



5. When and how should my company file its initial report?

If your company is created or registered before January 1, 2024, file by January 1, 2025. Otherwise, file within 30 calendar days of receiving actual or public notice from your state's secretary of state or similar office that your company was created or registered. FinCEN will accept reports electronically beginning January 1, 2024.



6. What if there are changes to or inaccuracies in reported information?

Your company will have 30 days to report any changes to reported information. For updates, the 30 days start from when the relevant change occurs. For corrections, the 30 days start after you become aware of, or have reason to know of, an inaccuracy in a prior report.



Financial Crimes Enforcement Network

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We will look at the FAQ, which has more detailed information, below, along with citing back to the law and regulations underlying the FAQ's answers.

When Are Initial Reports to Be Filed?

A key issue to note is that no reports will need to be filed until 2024. FAQ Question 3 provides:

3. Should my company report beneficial ownership information now?

No. No one needs to report beneficial ownership information to FinCEN until January 1, 2024. FinCEN is currently not accepting any beneficial ownership information reports.¹³

While Reg. 31 CFR 1010.380(a)(1) provides the detail for initial reports, the FAQ provides a more simplified description of the initial filing dates:

4. When do I need to report my company's beneficial ownership information to FinCEN?

A reporting company created or registered to do business before January 1, 2024, will have until **January 1, 2025** to file its initial beneficial ownership information report.

A reporting company created or registered on or after **January 1, 2024**, will have 30 days to file its initial beneficial ownership information report. This 30-day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.¹⁴

This explanation omits what happens if an entity that is exempt from filing (classes that will be listed later) no longer meets the criteria for exemption, providing:

Any entity that no longer meets the criteria for any exemption under paragraph (c)(2) of this section shall file a report within 30 calendar days after the date that it no longer meets the criteria for any exemption.¹⁵

¹³ "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 2

¹⁴ "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 2

¹⁵ 31 CFR 1010.380(a)(1)(iv)

It is important to note that while entities in existence before 2024 can file initial reports as late as January 1, 2025, entities formed in 2024 will not be able to wait until that date.

EXAMPLE – ENTITY CREATED IN 2024

ABC, LLC received actual notice of its creation from the appropriate state authority on December 31, 2023. ABC, LLC’s deadline to file its initial report is **January 1, 2025** as the entity was in existence before January 1, 2024.

XYZ, LLC received actual notice of its creation on January 2, 2024 from the appropriate state authority. While formed just two days later than ABC, LLC, this LLC’s deadline is much earlier, needing to file within 30 days after the date of formation, or by **February 1, 2024**.

Proposed Extension of Time to File for Entities Formed in 2024

The Financial Crimes Enforcement Network (FinCEN) has issued a proposed rule¹⁶ extending the deadline for covered entities formed in 2024 to file their initial beneficial ownership information reports under the Corporate Transparency Act. The new deadline is 90 days after formation, an increase from the previous 30-day requirement.

Concurrently, the agency issued a news release¹⁷ detailing the new proposed rule.

The news release outlines the proposed revision of the rule as follows:

The Financial Crimes Enforcement Network (FinCEN) is issuing a Notice of Proposed Rulemaking (NPRM) to extend the deadline for certain reporting companies to file their initial beneficial ownership information (BOI) reports. FinCEN is proposing to amend its final BOI Reporting Rule to provide 90 days for reporting companies created or registered in 2024 to file their initial reports, instead of 30 days.¹⁸

The release further clarifies that this rule change would solely impact entities created or registered in 2024. Due dates for initial reports for entities created or registered before or after 2024 would remain unchanged.

The proposed rule would not make any other changes to the final BOI Reporting Rule: reporting companies created or registered before January 1, 2024, would have until January 1, 2025, to file their initial BOI reports with FinCEN, and entities

¹⁶ RIN: 1506-AB62, “Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024,” September 27, 2023 (to be published in the Federal Register on September 28, 2023), <https://public-inspection.federalregister.gov/2023-21226.pdf> (Retrieved September 27, 2023)

¹⁷ “FinCEN issues a Notice of Proposed Rulemaking to extend the deadline for certain companies to file their beneficial ownership information reports,” FinCEN website, September 27, 2023, <https://www.fincen.gov/news/news-releases/fincen-issues-notice-proposed-rulemaking-extend-deadline-certain-companies-file> (retrieved September 27, 2023)

¹⁸ “FinCEN issues a Notice of Proposed Rulemaking to extend the deadline for certain companies to file their beneficial ownership information reports,” FinCEN website, September 27, 2023

created or registered on or after January 1, 2025, would have 30 days to file their initial BOI reports.¹⁹

FinCEN's press release provides the following rationale for this proposed change:

FinCEN believes the proposed extension will have significant benefits. An extension will give reporting companies created or registered in 2024 additional time to understand their regulatory obligations under the Reporting Rule and obtain the required information. They will also have additional time to become familiar with FinCEN's guidance and educational materials located at www.fincen.gov/boi and resolve questions that may arise in the process of completing their initial BOI reports. After January 1, 2025, however, reporting companies should be familiar with BOI reporting requirements and be in a better position to file required BOI reports on a timely basis.²⁰

In its explanation of the proposed rule, the Agency acknowledges that the delay will result in a less immediate availability of a complete database of entities for law enforcement access compared to the original rule. This statement suggests that the agency may be disinclined to further postpone such reporting due to law enforcement considerations. Moreover, the agency is actively soliciting comments on the perceived low impact of this delay on law enforcement interests, as well as any other potential adverse effects of this postponement.

Although FinCEN believes that providing this additional time and flexibility for reporting companies created or registered in 2024 to file their initial BOI reports will benefit reporting companies and their service providers, FinCEN recognizes that the extension could cause a delay in submissions to the BOI database in the first year of its operation. For example, under the proposed rule, if entities are created or registered on December 31, 2024, they would have until April 1, 2025 (90 days after December 31, 2024) to submit their initial BOI reports. In contrast, under the Reporting Rule, law enforcement could expect all compliant reporting companies created or registered on or before December 31, 2024, to have submitted their initial BOI reports by January 30, 2025 (30 days after December 31, 2024). With all of that taken into account, FinCEN still believes that the potential adverse effects of any such delay in the first year of the program are outweighed by the relief they will provide for small businesses, as explained above. FinCEN solicits comment on this assessment, and on whether there are any other potential consequences of the extension that it has not identified.²¹

¹⁹ "FinCEN issues a Notice of Proposed Rulemaking to extend the deadline for certain companies to file their beneficial ownership information reports," FinCEN website, September 27, 2023

²⁰ "FinCEN issues a Notice of Proposed Rulemaking to extend the deadline for certain companies to file their beneficial ownership information reports," FinCEN website, September 27, 2023

²¹ RIN: 1506-AB62, "Beneficial Ownership Information Reporting Deadline Extension for Reporting Companies Created or Registered in 2024," September 27, 2023

As revised, CTA rule §1010.380(a) would read as follows:

(a) Reports required; timing of reports—

(1) Initial report. Each reporting company shall file an initial report in the form and manner specified in paragraph (b) of this section as follows:

(i) (A) Any domestic reporting company created on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(B) Any domestic reporting company created on or after January 1, 2025, shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that its creation has become effective or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the domestic reporting company has been created.

(ii) (A) Any entity that becomes a foreign reporting company on or after January 1, 2024, and before January 1, 2025, shall file a report within 90 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.

(B) Any entity that becomes a foreign reporting company on or after January 1, 2025, shall file a report within 30 calendar days of the earlier of the date on which it receives actual notice that it has been registered to do business or the date on which a secretary of state or similar office first provides public notice, such as through a publicly accessible registry, that the foreign reporting company has been registered to do business.²²

Reporting Company

The law requires certain entities to file these reports. Roughly reporting companies can be divided into two broad categories:

Type	Definition
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²² Proposed Rule §1010.380(a)(1), September 27, 2023

Domestic reporting company	Any entity that is: (A) a corporation; (B) a limited liability company; or (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. ²³
Foreign reporting company	Any entity that is: (A) a corporation, limited liability company, or other entity; (B) formed under the law of a foreign country; and (C) registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe. ²⁴

The FAQ provides the following details on reporting companies:

7. What companies will be required to report beneficial ownership information to FinCEN?

Certain companies — referred to as “reporting companies” — will be required to report their beneficial ownership information to FinCEN. There are two types of reporting companies — domestic reporting companies and foreign reporting companies.

A domestic reporting company is defined as —

- a corporation,
- a limited liability company, or
- any other entity 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.

A foreign reporting company is any entity that is —

- a corporation, limited liability company, or other entity formed under the law of a foreign country, AND
- registered to do business in any U.S. state or in any Tribal jurisdiction, by the filing of a document with a secretary of state or any similar office under the law of a U.S. state or Indian tribe.

If you had to file a document with a state or Indian Tribal-level office such as a secretary of state to create your company, or to register it to do business if it is a foreign company, then your company is a reporting company, unless an exemption applies.

²³ 31 CFR 1010.380(c)

²⁴ 31 CFR 1010.380(c)

For the definitions of both domestic and foreign reporting companies, a “state” means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States.²⁵

Several entities are exempt from filing this report, but only during the period the entity qualifies for the exemption. The FAQ provides the following detail:

8. Are there exemptions from the reporting requirement?

Yes. The Corporate Transparency Act exempts 23 types of entities from the beneficial ownership information reporting requirement. Below is a list of the types of entities that are exempt —

- (i) Certain types of securities reporting issuers.
- (ii) A U.S. governmental authority.
- (iii) Certain types of banks.
- (iv) Federal or state credit unions as defined in section 101 of the Federal Credit Union Act.
- (v) Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners’ Loan Act.
- (vi) Certain types of money transmitting or money services businesses.
- (vii) Any broker or dealer, as defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act (15 U.S.C. 78o).
- (viii) Securities exchanges or clearing agencies as defined in section 3 of the Securities Exchange Act of 1934, and that is registered under sections 6 or 17A of that Act.
- (ix) Certain other types of entities registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.
- (x) Certain types of investment companies as defined in section 3 of the Investment Company Act of 1940, or investment advisers as defined in section 202 of the Investment Advisers Act of 1940.
- (xi) Certain types of venture capital fund advisers.

²⁵ “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 3

(xii) Insurance companies defined in section 2 of the Investment Company Act of 1940.

(xiii) State-licensed insurance producers with an operating presence at a physical office within the United States, and authorized by a State, and subject to supervision by a State's insurance commissioner or a similar official or agency.

(xiv) Commodity Exchange Act registered entities.

(xv) Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.

(xvi) Certain types of regulated public utilities.

(xvii) Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.

(xviii) Certain pooled investment vehicles.

(xix) Certain types of tax-exempt entities.

(xx) Entities assisting a tax-exempt entity described in (xix) above.

(xxi) Large operating companies with at least 20 full-time employees, more than \$5,000,000 in gross receipts or sales, and an operating presence at a physical office within the United States.

(xxii) The subsidiaries of certain exempt entities.

(xxiii) Certain types of inactive entities that were in existence on or before January 1, 2020, the date the Corporate Transparency Act was enacted.

Many of these exempt entities are already regulated by federal and/or state government, and many already disclose their beneficial ownership information to a governmental authority.

Additional information about the entities that are exempt can be found in the Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c)(2).

You should consult the text of the regulations, which include specific criteria for the exemptions, before concluding that an entity qualifies for an exemption.²⁶

²⁶ "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, pp. 3-5

The last paragraph of the answer to question 8 is one to pay attention to, as there are specific requirements for each of the categories. We will look at some of the exceptions you are more likely to run into below.

Large Operating Company

The exception that will apply most often is the one that applies to *large operating companies*, found at 31 CFR §1010.380(c)(2)(xxi) and 31 USC §5336(a)(11)(B)(xxi). To qualify for this exemption, all of the following three criteria must be met:

- Employ more than 20 employees on a full time basis in the United States;²⁷
- Filed federal income tax returns in the previous year that reported more than \$5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of
 - other entities owned by the entity; and
 - other entities through which the entity operates;²⁸ and
- Has an operating presence at a physical office in the United States.²⁹

The final rules provide more details on meeting the 20 full time employee test. The test borrows definitions found in the regulations for the applicable large employer (ALE) provisions of the Affordable Care Act (ACA) found at Treasury Reg. §§54.4980H-1(a) (which provides definitions of employees and full time employees) and 54.4980H-3 (which determines full time employees under the ACA for the ALE rules). Some key issues to note are:

- The definition of an *employer* under Reg. §54-4980H-1(a)(16) provides for treating all members of certain related party groups as employing all members of the related party group. Specifically, the regulation provides “For purposes of determining whether an employer is an applicable large employer, all persons treated as a single employer under section 414(b), (c), (m), or (o) are treated as a single employer. Thus, all employees of a controlled group of entities under section 414(b) or (c), an affiliated service group under section 414(m), or an entity in an arrangement described under section 414(o), are taken into account in determining whether the members of the controlled group or affiliated service group together are an applicable large employer.”
- A *full time employee* is defined generally as an employee who is employed an average of at least 30 hours a week in a calendar month,³⁰ with 130 hours per month being treated as equivalent of being employed on average at least 30 hours a week in a calendar month.³¹

²⁷ 31 USC §5336(a)(11)(B)(xxi)(I)

²⁸ 31 USC §5336(a)(11)(B)(xxi)(II)

²⁹ 31 USC §5336(a)(11)(B)(xxi)(I)(III)

³⁰ Treasury Reg. §54-4980H-1(a)(21)(i)

³¹ Treasury Reg. §54-4980H-1(a)(21)(ii)

One modification to the ACA rules that the definition of United States is changed to use the definition found at 31 USC §1010(hhh). That definition defines the United States as “[t]he States of the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.” Under the ACA the definition of United States is the one found at IRC §7701(a)(9)³² which limits the definition to only the States of the United States and the District of Columbia.

The final rule also provides more details on the \$5,000,000 test found in the statute. 31 CFR §1010.380(c)(2)(xxi)(C) provides:

(C) 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, as reported 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, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504 that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

Subsidiary of Certain Exempt Entities

Another exempt category consists of any entity whose ownership interests are controlled or owned, directly or indirectly, by one of the following entities that qualify on their own for exemption under the law and regulations:³³

- Securities reporting issuer;
- Governmental authority;
- Bank;
- Credit union;
- Depository institution holding company;
- Money services business;
- Broker or dealer in securities;
- Securities exchange or clearing agency;
- Other Exchange Act registered entity;
- Investment company or investment adviser;

³² Treasury Reg. §54-4980H-1(a)(48)

³³ 31 USC §5336(a)(11)(B)(xxii)

- Venture capital fund adviser;
- Insurance company;
- State-licensed insurance producer;
- Commodity Exchange Act registered entity;
- Accounting firm (registered under Section 102 of the Sarbanes-Oxley Act);
- Public utility;
- Financial market utility;
- Tax-exempt entity; or
- Large operating company.³⁴

Note that each of those definitions have detailed technical requirements, so be sure to consult the final rule to determine whether the owning entity in fact is itself exempt.

Inactive Entity

A special category which exists solely to create a category of “grandfathered” exempt entities to avoid having long forgotten entities run afoul of these rules is the inactive entity category. Such an entity must meet *all* of the following criteria:

- Was in existence on or before January 1, 2020; (thus, no more entities of this type can be created)
- Is not engaged in active business;
- Is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- 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.³⁵

³⁴ 31 USC §5336(a)(11)(B)(xxii)

³⁵ 31 USC §5336(a)(11)(B)(xxiii)

If an individual created or creates a new LLC or corporation on or after January 1, 2020, that entity will need to comply with the registration rules until the entity is dissolved unless it is otherwise exempt. The fact that it does nothing and never will do anything will not exempt such entities from facing potential consequences if they fail to comply with this law.

Beneficial Owner

Under the law, information about each “beneficial owner” of a non-exempt entity must be reported to FinCEN, with any changes in that information timely reported as well. So a key issue is the definition of a beneficial owner, found at 31 USC §5663(a)(3)(A). That law provides:

(3) Beneficial owner.— The term “ beneficial owner ”—

(A) means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

(i) exercises substantial control over the entity; or

(ii) owns or controls not less than 25 percent of the ownership interests of the entity;

The final rule provides the following definition of what constitutes *substantial control*:

(1) **Substantial control**—(i) Definition of substantial control. An individual exercises substantial control over a reporting company if the individual:

(A) Serves as a senior officer of the reporting company;

(B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);

(C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:

(1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;

(2) The reorganization, dissolution, or merger of the reporting company;

(3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

(4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;

(5) Compensation schemes and incentive programs for senior officers;

(6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;

(7) 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; or

(D) Has any other form of substantial control over the reporting company.³⁶

Per the final rule, such substantial control can be exercised in any of the following manners:

(ii) Direct or indirect exercise of substantial control. An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

(A) Board representation;

(B) Ownership or control of a majority of the voting power or voting rights of the reporting company;

(C) Rights associated with any financing arrangement or interest in a company;

(D) Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;

(E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or

(F) any other contract, arrangement, understanding, relationship, or otherwise.³⁷

The final rule also provides detail about what constitutes ownership for purposes of determining if someone is a beneficial owner:

(2) Ownership Interests—(i) Definition of ownership interest. The term “ownership interest” means:

(A) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate

³⁶ 31 CFR 1010.380(d)(1)(i)

³⁷ 31 CFR 1010.380(d)(1)(ii)

of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;

(B) Any capital or profit interest in an entity;

(C) Any instrument convertible, with or without consideration, into any share or instrument described in paragraph (d)(2)(i)(A), or (B) of this section, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in paragraph (d)(2)(i)(A), or (B) of this section, regardless of whether characterized as debt;

(D) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (d)(2)(i)(A), (B), or (C) of this section without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

(E) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.³⁸

A person's ownership or control of an interest can be established by any of the following:

(ii) Ownership or control of ownership interest. An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:

(A) Joint ownership with one or more other persons of an undivided interest in such ownership interest;

(B) Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;

(C) With regard to a trust or similar arrangement that holds such ownership interest:

(1) As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;

(2) As a beneficiary who:

(i) Is the sole permissible recipient of income and principal from the trust; or

³⁸ 31 CFR 1010.380(d)(2)(i)

(ii) Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or

(3) As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or

(D) Through ownership or control of one or more intermediary entities, or ownership or control of the ownership interests of any such entities, that separately or collectively own or control ownership interests of the reporting company.³⁹

The calculation of the percentage of such ownership interests is also provided for in the final rule:

(iii) Calculation of the total ownership interests of a reporting company. In determining whether an individual owns or controls at least 25 percent of the ownership interests of a reporting company, the total ownership interests that an individual owns or controls, directly or indirectly, shall be calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:

(A) Ownership interests of the individual shall be calculated at the present time, and any options or similar interests of the individual shall be treated as exercised;

(B) For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;

(C) For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:

(1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or

(2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and

(D) If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any

³⁹ 31 CFR 1010.380(d)(2)(ii)

class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.⁴⁰

EXAMPLE – OWNERSHIP INTEREST OF A CORPORATION

An individual currently owns 35% of the voting stock of the corporation. However, he also has an option to obtain another 10% interest that he can exercise at any time over the next five years but hasn't exercised yet.

To calculate the individual's total ownership interest in the reporting company, we need to consider the regulations issued by FinCEN for the Beneficial Owner Reporting rules found in the Corporate Transparency Act.

Since the corporation issues shares of stock, we need to apply 31 CFR §1010.380(d)(2)(iii)(C) to calculate the individual's ownership percentage. We need to determine whether the individual's total combined voting power of all classes of ownership interests or the total combined value of the ownership interests is greater.

As the individual currently owns 35% of the voting stock of the corporation, we can calculate his total combined voting power as:

Total combined voting power = 35%

If the individual exercises his option to obtain another 10% interest, his total combined voting power would be:

Total combined voting power = 35% + 10% = 45%

Thus, under 31 CFR §1010.380(d)(2)(iii)(C), the individual's ownership interest in the reporting company would be the greater of the total combined voting power or the total combined value of the ownership interests.

Therefore, if the corporation has only one class of stock outstanding and each share of stock has the same voting power and value, the individual's ownership interest in the reporting company would be 45%.

The FAQ provides the following information on beneficial interests:

9. Who is a beneficial owner of a reporting company?

In general, a beneficial owner is any individual (1) who directly or indirectly exercises “substantial control” over the reporting company, or (2) who directly or indirectly owns or controls 25 percent or more of the “ownership interests” of the reporting company.

Whether an individual has “substantial control” over a reporting company depends on the power they may exercise over a reporting company. For example, an individual will have substantial control of a reporting company if they direct, determine, or exercise substantial influence over, important decisions the reporting company makes. In addition, any senior officer is deemed to have substantial control over a reporting company. Other rights or responsibilities may also constitute substantial control. Additional information about the definition of substantial control and who qualifies as exercising substantial control can be found in the

⁴⁰ 31 CFR 1010.380(d)(2)(iii)

Beneficial Ownership Information Reporting Regulations at 31 CFR §1010.380(d)(1).

“Ownership interests” generally refer to arrangements that establish ownership rights in the reporting company, including simple shares of stock as well as more complex instruments. Additional information about ownership interests, including indirect ownership, can be found in the Beneficial Ownership Information Reporting Regulations at 31 CFR §1010.380(d)(2).⁴¹

The FAQ, in a footnote, clarifies the definition of a “senior officer”:

The term “senior officer” means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer, regardless of official title, who performs a similar function. 31 CFR 1010.380(f)(8).⁴²

FinCEN provides some examples in the FAQ of applying these rules:

EXAMPLE 1 – FAQ QUESTION 9

Example 1: The reporting company is a limited liability company (LLC). You are the sole owner and president of the company and make important decisions for the company. No one else owns or controls ownership interests in your company or exercises substantial control over your company.

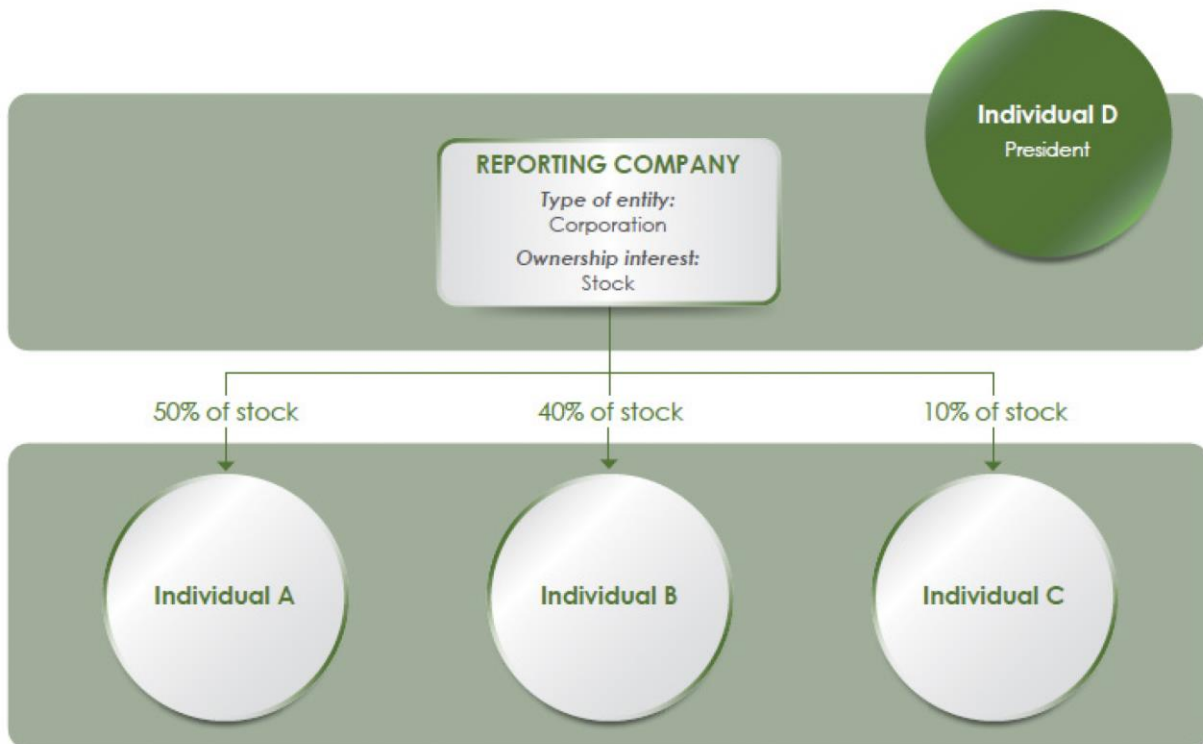
You are a beneficial owner of the reporting company in two different ways, assuming no other facts. First, you exercise substantial control over the company because you are a senior officer of the company (the president) and because you make important decisions for the company. Second, you are also a beneficial owner because you own 25 percent or more of the reporting company’s ownership interests.

Because no one else owns or controls ownership interests in your LLC or exercises substantial control over it, and assuming there are no other facts to consider, you are the only beneficial owner of this reporting company, and your information must be reported to FinCEN.

⁴¹ “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 5

⁴² “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 14

The second example uses the following illustration to help show the entity's structure:



EXAMPLE 2 – FAQ QUESTION 9

Example 2: The reporting company is a corporation. The company's total outstanding ownership interests are shares of stock. Three people (Individuals A, B, and C) own 50 percent, 40 percent, and 10 percent of the stock, respectively, and one other person (Individual D) acts as the President for the company, but does not own any stock.

Assuming there are no other facts, Individuals A, B, and D are all beneficial owners of the company and their information must be reported. Individual C is not a beneficial owner.

Individual A owns 50 percent of the company's stock and therefore is a beneficial owner because they own 25 percent or more of the company's ownership interests. Individual B owns 40 percent of the company's stock and therefore is a beneficial owner because they own 25 percent or more of the company's ownership interests.

Individual C is not a company officer and does not directly or indirectly exercise any substantial control over the company. Individual C also owns 10 percent of your company's stock, which is less than the 25 percent or greater interest needed to qualify as a beneficial owner by virtue of ownership interests. Individual C is therefore not a beneficial owner of the company.

Individual D is president of the company and is therefore a beneficial owner. As a senior officer of the company, Individual D exercises substantial control, regardless of whether the individual owns or controls 25 percent or more of the company's ownership interests.

EXAMPLE 3 – FAQ QUESTION 9

Example 3: The reporting company is a corporation owned by four individuals who each own 25 percent of the company's ownership interests (e.g., shares of stock). Four other individuals serve as the reporting company's

CEO, CFO, COO, and general counsel, respectively, none of whom hold any of the company's ownership interests.

In this example, there are eight beneficial owners. All four of the individuals who each own 25 percent of the company's ownership interests are beneficial owners of the company by virtue of their holdings in it, even if they exercise no substantial control over it. The CEO, CFO, COO, and general counsel are all senior officers and therefore exercise substantial control over the reporting company, making them beneficial owners as well.

Individuals Not Treated as Beneficial Owners

Even if an individual would qualify as a beneficial owner under the above rules, they may be in an excluded class found in 31 USC §5663(a)(3)(B). Those excluded are:

- A minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
- An individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person;
- An individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance; or
- A creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of ownership discussed earlier (that is, simply being a creditor won't make someone a beneficial owner).⁴³

The final rules provides clarification on the application of these exclusions. First, the determination of whether an individual is a minor child is made under the law of the State or Indian tribe in which a domestic reporting company is created or a foreign reporting company is first registered.⁴⁴

The employee exception will not apply if the individual is a senior officer as described in the FAQ footnote cited earlier and 31 CFR 1010.380(f)(8).⁴⁵

The right of inheritance rule only applies to a *future* interest—it would not serve to exclude the person from being a beneficial owner once the interest has passed to the individual.⁴⁶

⁴³ 31 USC §5663(a)(3)(B)

⁴⁴ 31 CFR 1010.380(d)(3)(i)

⁴⁵ 31 CFR 1010.380(d)(3)(iii)

⁴⁶ 31 CFR 1010.380(d)(3)(iv)

The final rule also clarified that someone is considered a creditor “solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.”⁴⁷

Company Applicants

Information on “company applicants” will need to be reported about its company applicants if the entity is created or registered on or after January 1, 2024, but such information is not required to be submitted for entities created before that date.⁴⁸

A *company applicant* is defined as follows in the final rule:

(e) **Company applicant.** For purposes of this section, the term “company applicant” means:

- (1) For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company as described in paragraph (c)(1)(i) of this section;
- (2) For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company as described in paragraph (c)(1)(ii) of this section; and
- (3) Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.⁴⁹

The FAQ provides:

10. Will a reporting company need to report any other information in addition to information about its beneficial owners?

Yes. The information that needs to be reported, however, depends on when the company was created or registered.

- If a reporting company is created or registered on or after January 1, 2024, the reporting company will need to report information about itself, its beneficial owners, and its company applicants.
- If a reporting company was created or registered before January 1, 2024, the reporting company only needs to provide information about itself and its

⁴⁷ 31 CFR 1010.380(d)(3)(v)

⁴⁸ 31 CFR 1010.380(b)(1)(ii) and (b)(2)(iv)

⁴⁹ 31 CFR 1010.380(e)

beneficial owners. The reporting company does not need to provide information about its company applicants.

11. Who is a company applicant of a reporting company?

There can be up to two individuals who qualify as company applicants —

- the individual who directly files the document that creates, or first registers, the reporting company; and
- the individual that is primarily responsible for directing or controlling the filing of the relevant document.

No reporting company will have more than two company applicants. If only one person was involved in filing the relevant document, then only that person should be reported as a company applicant.

Only reporting companies formed or registered on or after January 1, 2024, will have to report their company applicants. Companies created or registered before January 1, 2024, do not have to report their company applicants.⁵⁰

FinCEN provided examples of applying these provisions in the FAQ.

EXAMPLE – FAQ QUESTION 11

Example 1: Individual A is creating a new company. Individual A prepares the necessary documents to create the company and files them with the relevant state or Tribal office, either in person or using a self-service online portal. No one else is involved in preparing, directing, or making the filing.

Individual A is a company applicant because Individual A directly filed the document that created the company. Because Individual A is the only person involved in the filing, Individual A is the only company applicant. State or Tribal employees who receive and process the company creation or formation documents should not be reported as company applicants.

EXAMPLE – FAQ QUESTION 11

Example 2: Individual A is creating a company. Individual A prepares the necessary documents to create the company and directs Individual B to file the documents with the relevant state or Tribal office. Individual B then directly files the documents that create the company.

Individuals A and B are both company applicants—Individual B directly filed the documents, and Individual A was primarily responsible for directing or controlling the filing. Individual B could, for example, be Individual A's spouse, business partner, attorney, or accountant; in all cases, Individuals A and B are both company applicants in this scenario.

⁵⁰ “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, pp. 7-8

Information to Be Provided

Information will need to be provided and kept up to date about the entity itself, each beneficial owner and, if formed on or after January 1, 2024, each company applicant.

Information to Be Provided About the Entity

The initial report will contain the following information about the company:

- The full legal name of the reporting company;
- Any trade name or “doing business as” name of the reporting company;
- A complete current address consisting of:
 - In the case of a reporting company with a principal place of business in the United States, the street address of such principal place of business; and
 - In all other cases, the street address of the primary location in the United States where the reporting company conducts business;
- The State, Tribal, or foreign jurisdiction of formation of the reporting company;
- For a foreign reporting company, the State or Tribal jurisdiction where such company first registers; and
- The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.⁵¹

The FAQ provides as well that “[a] reporting company will also have to indicate the type of filing it is making (that is, whether it is filing an initial report, a correction of a prior report, or an update to a prior report).”⁵²

Information to Be Provided for Beneficial Owners and Company Applicants

Information will need to be provided on initial reports (and kept updated) for beneficial owners and, for entities formed on or after January 1, 2024, company applicants.

The information provided will consist of:

- The full legal name of the individual;

⁵¹ 31 CFR 1010.380(b)(1)(i)

⁵² “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 9

- The date of birth of the individual;
- A complete current address consisting of:
 - In the case of a company applicant who forms or registers an entity in the course of such company applicant’s business, the street address of such business; or
 - In any other case, the individual’s residential street address;
- A unique identifying number and the issuing jurisdiction from one of the following documents:
 - A non-expired passport issued to the individual by the United States government;
 - A non-expired identification document issued to the individual by a State, local government, or Indian tribe for the purpose of identifying the individual;
 - A non-expired driver’s license issued to the individual by a State; or
 - A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the prior three documents
- An image of the document from which the unique identifying number was obtained.⁵³

The FAQ contains the following specific information on the address supplied:

Address: For a beneficial owner, the reporting company must report the residential street address.

For a company applicant, the reporting company must report the individual’s residential street address. However, if an individual engages in the business of corporate formation (e.g., as an attorney or corporate formation agent) and files the formation or registration document in the course of that business, then the reporting company must report the current street address of the company applicant’s business. For example, if the company applicant is a paralegal who filed the document while working at a law firm, the reporting company must report the business address of the law firm where the paralegal worked when filing the document.⁵⁴

The FAQ goes on to provide more details about the identifying documents:

Identification Document: The list below sets out the forms of acceptable identification documents:

- A non-expired driver’s license issued by a U.S. state. A “U.S. state” means any state of the United States, the District of Columbia, the

⁵³ 31 CFR 1010.380(b)(1)(ii)

⁵⁴ “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 10

Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the U.S. Virgin Islands, and any other commonwealth, territory, or possession of the United States.

- A non-expired identification document issued by a U.S. state or local government, or Indian Tribe that is issued for the purpose of identifying the individual. For example, a non-driver identification card issued by a state Department of Motor Vehicles would qualify because it is issued for identification purposes.
- A non-expired passport issued by the U.S. government; or
- If the individual does not have any of the three forms of identification document described above, the reporting company may provide the identifying number from a non-expired passport issued by a foreign government.⁵⁵

⁵⁵ “Beneficial Ownership Information Reporting Frequently Asked Questions,” Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 10

Updated Reports

An entity's responsibility to file reports goes beyond the initial filings. In various situations an updated report must be filed with FinCEN. The table below, created with the assistance of ChatGPT 3.5, provides a general summary of situations where an updated report must be filed:

Situation	When the time to file an updated report begins
Change in required information previously submitted to FinCEN concerning a reporting company or its beneficial owners (with more specific examples provided in the following rows)	The date on which such change occurs
Reporting company meets the criteria for any exemption subsequent to the filing of an initial report	When the event occurs that causes the entity to meet the criteria.
Death of a beneficial owner	When the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.
Minor child attains the age of majority	When the minor child attains the age of majority
Change in information on an identifying document	When the name, date of birth, address, or unique identifying number on such document changes

In all of these situations, the reporting company must file an updated report in the form and manner specified in the final rule within 30 calendar days after the date on which such change occurs.

The final rule provides details on updated reporting requirements. FinCEN has required updates to be made 30 days after information that is required to be provided on the report has changed. The rule provides:

- (i) If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report in the form and manner specified in paragraph (b)(3) of this section within 30 calendar days after the date on which such change occurs.⁵⁶

⁵⁶ 31 CFR 1010.380(a)(2)

The final rule provides detail as well on the information to be provided in such updated reports:

- (i) Updated reports—in general. An updated report required to be filed pursuant to paragraph (a)(2) of this section shall reflect any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners.⁵⁷

One requirement found in the regulations that may surprise some professionals is the requirement to file a report to inform FinCEN that an organization now meets the requirements to be exempt from the filing requirements:

- (ii) Updated reports—newly exempt entities. An updated report required to be filed pursuant to paragraph (a)(2)(ii) of this section shall indicate that the filing entity is no longer a reporting company.⁵⁸

And the requirement to file that information is found earlier in the final rule:

- (ii) If a reporting company meets the criteria for any exemption under paragraph (c)(2) of this section subsequent to the filing of an initial report, this change will be deemed a change with respect to information previously submitted to FinCEN, and the entity shall file an updated report.⁵⁹

Similarly, if an entity that had been exempt now fails to meet the requirements, that entity will also need to file what will be an *initial* report within 30 days:

- (iv) Any entity that no longer meets the criteria for any exemption under paragraph (c)(2) of this section shall file a report within 30 calendar days after the date that it no longer meets the criteria for any exemption.⁶⁰

The final rule contains special rules that will take effect if a beneficial owner dies and his/her interest is transferred:

- (iii) If an individual is a beneficial owner of a reporting company by virtue of property interests or other rights subject to transfer upon death, and such individual dies, a change with respect to required information will be deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of the intestacy laws of a jurisdiction within the United States or through a testamentary deposition. The updated report shall, to the extent appropriate, identify any new beneficial owners.⁶¹

⁵⁷ 31 CFR 1010.380(b)(3)(i)

⁵⁸ 31 CFR 1010.380(b)(3)(ii)

⁵⁹ 31 CFR 1010.380(a)(2)(ii)

⁶⁰ 31 CFR 1010.380(a)(1)(iv)

⁶¹ 31 CFR 1010.380(a)(2)(iii)

Similarly, when a minor child reaches the age of majority, an updated report must be filed:

(iv) If a reporting company has reported information with respect to a parent or legal guardian of a minor child pursuant to paragraphs (b)(2)(ii) and (d)(3)(i) of this section, a change with respect to required information will be deemed to occur when the minor child attains the age of majority.⁶²

Finally, the regulation provides that if the identifying documents whose image was provided to FinCEN changes, that also will require an updated report:

(v) With respect to an image of an identifying document required to be reported pursuant to paragraph (b)(1)(ii)(E) of this section, a change with respect to required information will be deemed to occur when the name, date of birth, address, or unique identifying number on such document changes.⁶³

Corrected Reports

If an error is made in a filing, a corrected report must be filed within 30 days of when the reporting entity becomes aware of the error.

If any report under this section was inaccurate when filed and remains inaccurate, the reporting company shall file a corrected report in the form and manner specified in paragraph (b) of this section within 30 calendar days after the date on which such reporting company becomes aware or has reason to know of the inaccuracy.⁶⁴

The regulations also provide that the original filing won't be treated as a problem if the correction is made within 90 days of the original filing. This is a separate deadline from the 30 day requirement. Thus, if an error is discovered after 90 days, the correction must still be filed but FinCEN could take action to impose penalties:

A corrected report filed under this paragraph (a)(3) within this 30-day period shall be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate report was filed.⁶⁵

FinCEN Identifier

Individuals and companies are offered the option of obtaining a FinCEN identifier which contains the information required for the report. Presumably this would allow the individual filing a single update for any changed information rather than having to make the same change on each company report.

⁶² 31 CFR 1010.380(a)(2)(iv)

⁶³ 31 CFR 1010.380(a)(2)(v)

⁶⁴ 31 CFR 1010.380(a)(3)

⁶⁵ 31 CFR 1010.380(a)(3)

The final rule provides the following information on the application process:

(i) Application.

(A) An individual may obtain a FinCEN identifier by submitting to FinCEN an application containing the information about the individual described in paragraph (b)(1) of this section.

(B) A reporting company may obtain a FinCEN identifier by submitting to FinCEN an application at or after the time that the entity submits an initial report required under paragraph (b)(1) of this section.

(C) Each FinCEN identifier shall be specific to each such individual or reporting company, and each such individual or reporting company (including any successor reporting company) may obtain only one FinCEN identifier.⁶⁶

The final rule provides the following information on the use of the FinCEN identifier:

(ii) Use of the FinCEN identifier.

(A) If an individual has obtained a FinCEN identifier and provided such FinCEN identifier to a reporting company, the reporting company may include such FinCEN identifier in its report in lieu of the information required under paragraph (b)(1) of this section with respect to such individual.

(B) [Reserved]⁶⁷

The “reserved” section suggests that FinCEN has plans to add more information on the use of this identifier, perhaps to make it more attractive and powerful.

Update and correction rules for FinCEN identifiers are very similar to those for the entity filings:

(iii) Updates and corrections. (A) Any individual that has obtained a FinCEN identifier shall update or correct any information previously submitted to FinCEN in an application for such FinCEN identifier.

(1) If there is any change with respect to required information previously submitted to FinCEN in such application, the individual shall file an updated application reflecting such change within 30 calendar days after the date on which such change occurs.

(2) If any such application was inaccurate when filed and remains inaccurate, the individual shall file a corrected application correcting all

⁶⁶ 31 CFR 1010.380(b)(4)(i)

⁶⁷ 31 CFR 1010.380(b)(4)(ii)

inaccuracies within 30 calendar days after the date on which the individual becomes aware or has reason to know of the inaccuracy. A corrected application filed under this paragraph within this 30-day period will be deemed to satisfy 31 U.S.C. 5336(h)(3)(C)(i)(I)(bb) if filed within 90 calendar days after the date on which the inaccurate application was submitted.

(B) Any reporting company that has obtained a FinCEN identifier shall file an updated or corrected report to update or correct any information previously submitted to FinCEN. Such updated or corrected report shall be filed at the same time and in the same manner as updated or corrected reports filed under paragraph (a) of this section.⁶⁸

Penalties for Reporting Violations

Reporting violations are found at 31 USC 5663(h)(1) which reads:

(h) Penalties.—

(1) Reporting violations.— It shall be unlawful for any person to—

(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with subsection (b); or

(B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with subsection (b).

The final rule provides the following additional details regarding a reporting violation:

(g) Reporting violations. It shall be unlawful for any person to willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with this section, or to willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with this section. For purposes of this paragraph (g):

(1) The term “person” includes any individual, reporting company, or other entity.

(2) The term “beneficial ownership information” includes any information provided to FinCEN under this section.

⁶⁸ 31 CFR 1010.380(b)(4)(iii)

(3) A person provides or attempts to provide beneficial ownership information to FinCEN if such person does so directly or indirectly, including by providing such information to another person for purposes of a report or application under this section.

(4) A person fails to report complete or updated beneficial ownership information to FinCEN if, with respect to an entity:

(i) such entity is required, pursuant to title 31, United States Code, section 5336, or its implementing regulations, to report information to FinCEN;

(ii) the reporting company fails to report such information to FinCEN; and

(iii) such person either causes the failure, or is a senior officer of the entity at the time of the failure.⁶⁹

The penalties for a reporting violation are found at 31 USC §5663(h)(3)(A):

(3) Criminal and civil penalties.—

(A) Reporting violations.— Any person that violates subparagraph (A) or (B) of paragraph (1)—

(i) shall be liable to the United States for a civil penalty of not more than \$500 for each day that the violation continues or has not been remedied; and

(ii) may be fined not more than \$10,000, imprisoned for not more than 2 years, or both.

EXAMPLE

Under 31 USC §5663, a person may be subject to a civil penalty of up to \$500 for each day the report is not filed, is filed with improper information or is not timely updated. The taxpayer may also be fined, up to a maximum of \$10,000, and imprisoned for not more than 2 years or both. In this case, Joe willfully failed to file a beneficial ownership report for Joe's Store, LLC, and the report was due on June 30, 2025. Joe finally filed the report on December 12, 2025, which means that the report was overdue for a total of 165 days.

Since FinCEN has decided to impose the maximum per day financial penalty, the penalty imposed on Joe would be \$500 for each day the report was overdue, multiplied by 165 days. Therefore, the total penalty amount would be \$82,500.

The penalty amount was appropriate because Joe willfully failed to file the beneficial ownership report for Joe's Store, LLC, and the report was overdue for a significant period of time. Additionally, imposing the maximum per day financial penalty serves as a strong deterrent to others who may be tempted to willfully fail to file beneficial ownership reports in the future.

⁶⁹ 31 CFR 1010.380

The \$10,000 fine limit did not limit the civil penalty because it is only applicable to criminal penalties under the same section of law. In this case, FinCEN imposed a civil penalty, not a criminal penalty, for Joe's failure to file the beneficial ownership report.

How Reports Will Be Filed

The FAQ has information regarding how the reports will be filed. As is true of other FinCEN reports, such as the Foreign Bank Account Reporting (FBAR) filing, this report will be filed online:

14. How will I report my company's beneficial ownership information?

If you are required to report your company's beneficial ownership information to FinCEN, you will do so electronically through a secure filing system available via FinCEN's website. This system is currently being developed and will be available before your report must be filed.⁷⁰

Entities with Access to Beneficial Ownership Information

Clients will likely ask who will have access to this information, much of which they may consider private and sensitive. The FAQ has information on the limited list of those who will be able to request access to the information in this database:

15. Who will be able to access reported beneficial ownership information and for what purposes?

The Corporate Transparency Act authorizes FinCEN to disclose beneficial ownership information in certain circumstances to six types of requesters:

- U.S. Federal agencies engaged in national security, intelligence, and law enforcement activities;
- State, local, and Tribal law enforcement agencies with court authorization;
- The U.S. Department of the Treasury;
- Financial institutions using beneficial ownership information to conduct legally required customer due diligence, provided the financial institutions have their customer consent to retrieve the information;
- Federal and state regulators assessing financial institutions for compliance with legally required customer due diligence obligations; and

⁷⁰ "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 10

- Foreign law enforcement agencies and certain other foreign authorities who submit qualifying requests for the information through a U.S. Federal agency.

The Corporate Transparency Act imposes stringent access requirements and safeguards on each group of requesters.⁷¹

FinCEN ends the FAQs with a discussion of the steps being taken to protect this data:

16. How will FinCEN protect beneficial ownership information reported to it?

Protecting the security and confidentiality of beneficial ownership information is a top priority for FinCEN. Federal law requires FinCEN to implement protocols to safeguard beneficial ownership information, to build a secure IT system to store the information, and to establish processes and procedures to ensure that only authorized users can access beneficial ownership information for authorized purposes.

FinCEN is developing the policies and procedures that will govern access to and handling of beneficial ownership information. FinCEN is also building a secure and confidential IT system to store the information. Consistent with Federal law, the system will be cloud-based, and will meet the highest Federal Information Security Modernization Act (FISMA) level to keep beneficial ownership information secure.

FinCEN will work closely with those authorized to access beneficial ownership information to ensure that they understand their roles and responsibilities to ensure that the reported information is used only for authorized purposes and handled in a way that protects its security and confidentiality.⁷²

CHECKLIST OF STEPS TO ASSIST CLIENTS WITH BENEFICIAL OWNER REPORTING

Below is a checklist of items for a CPA to consider when advising their client on the beneficial ownership reporting provisions of the Corporate Transparency Act (CTA). Note that this checklist is not exhaustive and should be tailored to each client's specific situation. It's essential to stay updated on the latest regulatory guidance and requirements.

- Determine applicability:
 - Confirm if the client's entity is a "reporting company" under the CTA.

⁷¹ "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 11

⁷² "Beneficial Ownership Information Reporting Frequently Asked Questions," Financial Crimes Enforcement Network, United States Treasury, March 24, 2023, p. 11

- Identify any exemptions (e.g., publicly traded companies, banks, credit unions, investment companies, etc.).
- Identify beneficial owners:
 - Understand the CTA’s definition of a beneficial owner (i.e., individuals who own 25% or more of the entity or exercise substantial control).
 - Assist the client in identifying all qualifying beneficial owners.
 - Advise on reporting requirements for indirect ownership interests or multi-layered ownership structures.
- Collect required information:
 - Obtain full legal names, dates of birth, current residential or business addresses, and a unique identifying number and document image for each beneficial owner.
 - Ensure the accuracy and completeness of the collected information.
- Initial reporting:
 - Determine if an initial report is required upon the formation or registration of a new entity.
 - Prepare and submit the initial report to the Financial Crimes Enforcement Network (FinCEN) within the required timeframe.
- Updates and changes:
 - Advise clients on the obligation to report changes in beneficial ownership within 30 days after becoming aware of the changed information.
 - Establish procedures for monitoring and tracking beneficial ownership changes.
 - Assist with preparing and submitting reports to FinCEN for any changes.
- Recordkeeping requirements:
 - Help clients establish systems for maintaining accurate records of beneficial ownership information for at least five years after the entity’s dissolution or termination.
- Compliance programs and training:
 - Assist clients in developing a compliance program tailored to their specific risk profile and industry.

- Provide training on CTA requirements and reporting obligations.
- Penalties and enforcement:
 - Inform clients about the potential civil and criminal penalties for non-compliance, including fines and imprisonment.
 - Advise on the importance of timely reporting and accurate recordkeeping.
- Privacy and data security:
 - Educate clients on the privacy implications of reporting beneficial ownership information.
 - Assist in implementing data security measures to protect sensitive information.
- Monitor regulatory updates:
 - Stay informed about new guidance, regulations, or amendments to the CTA.
 - Update clients on any changes that may affect their reporting obligations.

Remember to consult with legal counsel and other experts as needed, as this checklist is for informational purposes only and does not constitute legal or professional advice.

Small Entity Compliance Guide



Beneficial Ownership
Information

Reporting Requirements



Financial Crimes Enforcement Network
U.S. Department of the Treasury
Version 1.0 September 2023

The reporting requirements discussed in this Guide are not in effect until January 1, 2024. No reports will be accepted prior to that date. Entities required to report will be able to do so on or after January 1, 2024.

Disclaimer: This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities comply with the beneficial ownership information reporting rule promulgated by the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN). This Guide is explanatory only and does not supplement or modify any obligations imposed by statute or regulation. Additionally, this Guide does not supersede more recent guidance documents issued by FinCEN. FinCEN may also revise this Guide to clarify or update content. For additional and latest information, consult www.fincen.gov/boi. For further assistance or to submit feedback about this Guide, contact FinCEN at www.fincen.gov/contact.

The original version of this document is written in English. FinCEN has prepared this translation as a convenience to readers; in the event of any discrepancy or uncertainty, the English version controls the meaning.

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Introduction

FinCEN is publishing this Small Entity Compliance Guide (Guide)¹ to help small entities comply with the requirements of the Beneficial Ownership Information Reporting Rule (referenced in this Guide as the Reporting Rule). In particular, small entities may have new requirements under the Reporting Rule. FinCEN is committed to ensuring that the small business community and other reporting companies have the tools they need to comply with the new requirements, and that the process is as smooth and streamlined as possible. FinCEN is striving to reduce the burden on small businesses by providing comprehensive guidance and communicating information about the reporting requirements in plain language.

The Reporting Rule requires certain entities to file beneficial ownership information (BOI) reports (referenced in this Guide as BOI reports or reports) to FinCEN. Reports contain information about the entity itself and two categories of individuals:

- 1. Beneficial owners**
- 2. Company applicants**

These terms will be described in detail later in this Guide, but in general, a beneficial owner is an individual who owns or controls at least 25 percent of a company or has substantial control over the company, and 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.

The [Reporting Rule](#),² issued on September 30, 2022, implements Section 6403 of the Corporate Transparency Act. The rule describes who must file BOI reports, what information they must provide, and when they must file the reports.

The Reporting Rule is found at 1010.380 in title 31 of the Code of Federal Regulations (CFR). An electronic version is also available through FinCEN's website. Specific sections of the Reporting Rule are cited throughout this Guide using the citation "1010.380[paragraph number]." Appendix A to this Guide provides an index of where this Guide cites to the different parts of the regulation. This Guide covers all the provisions of 1010.380.

¹ This Guide satisfies FinCEN's obligations under Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996, amended by Section 8302 of the Fair Minimum Wage Act of 2007. See Small Business Regulatory Enforcement Fairness Act of 1996, Pub. L. No. 104-121, § 212, 110 Stat. 857, 858 (1996), available at www.govinfo.gov/content/pkg/PLAW-104publ121/pdf/PLAW-104publ121.pdf.

² See Fair Minimum Wage Act of 2007, Pub. L. No. 110-28, § 8302, 121 Stat. 112, 204 (2007), available at www.govinfo.gov/content/pkg/PLAW-110publ28/pdf/PLAW-110publ28.pdf. This Guide summarizes and explains the Reporting Rule but is not a substitute for the Reporting Rule. The language of the Reporting Rule itself, not this Guide, establishes a person's legal obligations.

² All hyperlinks are current as of the date of the Guide's publication.

Starting on January 1, 2024, BOI reports must be filed electronically using FinCEN's secure filing system. FinCEN will store BOI reports in a centralized database and only share this information with authorized users for purposes specified by law. The database will use rigorous information security methods and controls typically used in the Federal government to protect non-classified yet sensitive information systems at the highest security level.

When do I need to file a report?

- Reports will be accepted starting on January 1, 2024.
- Reporting companies created or registered to do business before January 1, 2024, will have additional time — until January 1, 2025 — to file their initial BOI reports.
- Reporting companies created or registered on or after January 1, 2024, will have 30 days after receiving notice of their company's creation or registration to file their initial BOI reports.

Where can I find additional information about BOI reporting?

- Additional information about the Reporting Rule and guidance materials are available at www.fincen.gov/boi.
- FinCEN has issued and will continue to issue frequently asked questions to address specific questions on the topic. They can be found here: www.fincen.gov/boi-faqs.
- In addition, if you have any questions regarding BOI reporting obligations, you should contact FinCEN at www.fincen.gov/contact.

What does this Guide include?

There are six key questions to help you comply with the Reporting Rule. This Guide includes a chapter for each key question, listed below. This Guide includes interactive flowcharts, checklists, and other aids to help you determine whether your company needs to file a BOI report with FinCEN, and if so, how to comply with the reporting requirements. This Guide will be updated periodically with new or revised information.



01

Does my company have to report its beneficial owners?

[Click here to go to Chapter 1](#)



02

Who is a beneficial owner of my company?

[Click here to go to Chapter 2](#)



03

Does my company have to report its company applicants?

[Click here to go to Chapter 3](#)



04

What specific information does my company need to report?

[Click here to go to Chapter 4](#)



05

When and how should my company file its initial report?

[Click here to go to Chapter 5](#)



06

What if there are changes to or inaccuracies in reported information?

[Click here to go to Chapter 6](#)



01

Does my company have to report its beneficial owners?

Not all companies are required to report BOI to FinCEN under the Reporting Rule. Companies are required to report only if they meet the Reporting Rule’s definition of a “reporting company” and do not qualify for an exemption. This chapter will help you determine whether your company qualifies. This chapter covers the definition of reporting company, describes entities that are exempt, and explains what happens if the required information is not reported:

- 1.1 Is my company a “reporting company”?**
- 1.2 Is my company exempt from the reporting requirements?**
- 1.3 What happens if my company does not report BOI in the required timeframe?**

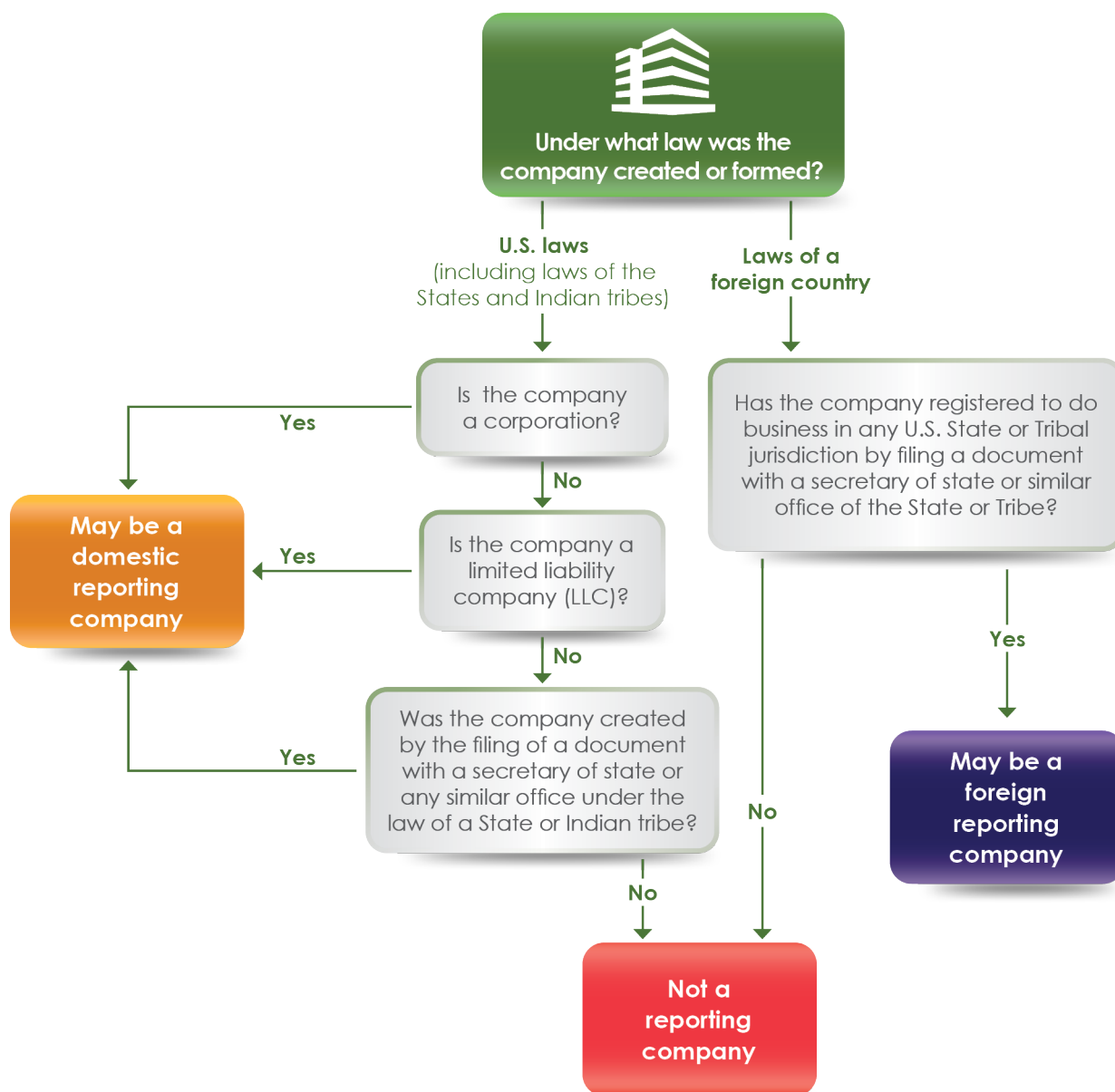
This chapter generally covers 1010.380(c), “Reporting company” and 1010.380(g) “Reporting violations”.

1.1 Is my company a “reporting company”?

The Reporting Rule requires that all “reporting companies” file BOI reports with FinCEN within the previously specified timeframes. A reporting company is any entity that meets the “reporting company” definition and does not qualify for an exemption. There are two categories of reporting companies: a “domestic reporting company” and a “foreign reporting company”. If your company is neither a “domestic reporting company” nor “foreign reporting company” because it does not meet either definition (as described below) or it qualifies for an exemption, then it is not required to file a BOI report with FinCEN.

The following chart shows how to analyze whether your company is a “reporting company”:

Chart 1 – Reporting company definition



FYI

Unless otherwise specified, States and Indian tribes have the following meanings in this Guide and the Reporting Rule.

- States means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.
- Indian tribes means any Indian or Alaska Native tribe, band, nation, pueblo, village or community that the Secretary of the Interior acknowledges to exist as an Indian tribe. (See section 102 of the Federally Recognized Indian Tribe List Act of 1994 ([25 U.S.C. 5130](#))).

1.2 Is my company exempt from the reporting requirements?

The Reporting Rule exempts twenty-three (23) specific types of entities from the reporting requirements listed in Chart 2 below. An entity that qualifies for any of these exemptions is not required to submit BOI reports to FinCEN.

Chart 2 – Reporting company exemptions

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

Special rule for foreign pooled investment vehicles.

If an entity meets the criteria of Exemption #18 and is formed under the laws of a foreign country, the entity is subject to a separate reporting requirement. These companies are referred to as “foreign pooled investment vehicles” in the Reporting Rule and their reporting requirement is explained in [Chapter 4.2](#) of this Guide.

See special rule at 1010.380(b)(2)(iii).

The criteria for each exemption are provided in a check-box format in the following pages to assist your company in answering the question, “Is my company exempt from the reporting requirements?”

Securities reporting issuer (Exemption #1)

An entity qualifies for this exemption if **either** of the following two criteria apply:

1. The entity is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d)).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Governmental authority (Exemption #2)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Bank (Exemption #3)

An entity qualifies for this exemption if **any** of the following three criteria apply:

1. The entity is a “bank” as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is a “bank” as defined in section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-2(a)).	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The entity is a “bank” as defined in section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Credit Union (Exemption #4)

An entity qualifies for this exemption if **either** of the following two criteria apply:

1. The entity is a “Federal credit union” as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is a “State credit union” as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Depository institution holding company (Exemption #5)

An entity qualifies for this exemption if **either** of the following two criteria apply:

1. The entity is a “bank holding company” as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is a “savings and loan holding company” as defined in section 10(a) of the Home Owners’ Loan Act (12 U.S.C. 1467a(a)).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Money transmitter business (Exemption #6)

An entity qualifies for this exemption if **either** of the following two criteria apply:

1. The entity is a money transmitting business registered with FinCEN under 31 U.S.C. 5330 .	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is a money services business registered with FinCEN under 31 CFR 1022.380 .	<input type="checkbox"/> Yes <input type="checkbox"/> No

Broker or dealer in securities (Exemption #7)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is a “broker” or “dealer,” as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Securities exchange or clearing agency (Exemption #8)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is an “exchange” or “clearing agency,” as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is registered under sections 6 or 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78f, 78q-1).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Other Exchange Act registered entity (Exemption #9)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is not a securities reporting issuer as defined in Exemption #1 , broker or dealer in securities as defined in Exemption #7 , or securities exchange or clearing agency as defined in Exemption #8 .	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Investment company or investment adviser (Exemption #10)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is an “investment company” or “investment adviser” defined as either: <ul style="list-style-type: none">• An investment company in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a-3); or• An investment adviser in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is registered with the Securities and Exchange Commission under either of these authorities: <ul style="list-style-type: none">• The Investment Company Act of 1940 (15 U.S.C. 80a-1 et seq.); or• The Investment Advisers Act of 1940 (15 U.S.C. 80b-1 et seq.).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Venture capital fund adviser (Exemption #11)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is an investment adviser that is described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-3(l)).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Insurance company (Exemption #12)

An entity qualifies for this exemption if the following criterion applies:

1. The entity is an “insurance company” as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a-2).	<input type="checkbox"/> Yes <input type="checkbox"/> No
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State-licensed insurance producer (Exemption #13)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity has an <i>operating presence at a physical office within the United States</i> . The term “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.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Commodity Exchange Act registered entity (Exemption #14)

An entity qualifies for this exemption if **either** of the following two criteria apply:

1. The entity is a “registered entity” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a).	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is one of these entities registered with the Commodity Futures Trading Commission under the Commodity Exchange Act: <ul style="list-style-type: none">• “Futures commission merchant” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);• “Introducing broker” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);• “Swap dealer” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);• “Major swap participant” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);• “Commodity pool operator” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a);• “Commodity trading advisor” as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a); or <ul style="list-style-type: none">• “Retail foreign exchange dealer” as described in section 2(c)(2)(B) of the Commodity Exchange Act (7 U.S.C. 2(c)(2)(B)).	<input type="checkbox"/> Yes <input type="checkbox"/> No

Public accounting firm (Exemption #15)

An entity qualifies for this exemption if the following criterion applies:

1. The entity is a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212).	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Public utility (Exemption #16)

An entity qualifies for this exemption if **both** of the following criteria apply:

1. The entity is a “regulated public utility” as defined in 26 U.S.C. 7701(a)(33)(A) .	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Financial market utility (Exemption #17)

An entity qualifies for this exemption if the following criterion applies:

1. The entity is a financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463).	<input type="checkbox"/> Yes <input type="checkbox"/> No
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Pooled investment vehicle (Exemption #18)

An entity qualifies for this exemption if **both** of the following criteria apply:

<p>1. The entity is a pooled investment vehicle if either of these statements apply to the entity:</p> <ul style="list-style-type: none">• Is an investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a-3(a)); or• Is a company that would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is identified by its legal name by the applicable investment adviser in its Form ADV, (or successor form) filed with the Securities and Exchange Commission or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to rule 204-1 under the Investment Advisers Act of 1940 (17 CFR 275.204-1).	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. The entity is operated or advised by any of these types of exempt entities:</p> <ul style="list-style-type: none">• Bank, as defined in Exemption #3;• Credit union, as defined in Exemption #4;• Broker or dealer in securities, as defined in Exemption #7;• Investment company or investment adviser, as defined in Exemption #10; or• Venture capital fund adviser, as defined in Exemption #11.	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Tax-exempt entity (Exemption #19)

An entity qualifies for this exemption if **any** of the following four criteria apply:

1. The entity is an organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code .	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is an organization that is described in section 501(c) of the Code , and was exempt from tax under section 501(a) of the Code , but lost its tax-exempt status less than 180 days ago.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The entity is a political organization, as defined in section 527(e)(1) of the Code , that is exempt from tax under section 527(a) of the Code .	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The entity is a trust described in paragraph (1) or (2) of section 4947(a) of the Code .	<input type="checkbox"/> Yes <input type="checkbox"/> No

Entity assisting a tax-exempt entity (Exemption #20)

An entity qualifies for this exemption if all **four** of the following criteria apply:

1. The entity operates exclusively to provide financial assistance to, or hold governance rights over, any tax-exempt entity described by Exemption #19 .	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is a United States person as defined in section 7701(a)(30) of the Internal Revenue Code of 1986 .	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The entity is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence. “Lawfully admitted for permanent residence” is defined in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The entity derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Large operating company (Exemption #21)

An entity qualifies for this exemption if all **six** of the following 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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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) .	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Subsidiary of certain exempt entities (Exemption #22)

An entity qualifies for this exemption if the following criterion applies:

1. The entity's ownership interests are controlled or wholly owned, directly or indirectly, by any of these types of exempt entities:
 - Securities reporting issuer, as defined in [Exemption #1](#);
 - Governmental authority, as defined in [Exemption #2](#);
 - Bank, as defined in [Exemption #3](#);
 - Credit union, as defined in [Exemption #4](#);
 - Depository institution holding company, as defined in [Exemption #5](#);
 - Broker or dealer in securities, as defined in [Exemption #7](#);
 - Securities exchange or clearing agency, as defined in [Exemption #8](#);
 - Other Exchange Act registered entity, as defined in [Exemption #9](#);
 - Investment company or investment adviser, as defined in [Exemption #10](#);
 - Venture capital fund adviser, as defined in [Exemption #11](#);
 - Insurance company, as defined in [Exemption #12](#);
 - State-licensed insurance producer, as defined in [Exemption #13](#);
 - Commodity Exchange Act registered entity, as defined in [Exemption #14](#);
 - Accounting firm, as defined in [Exemption #15](#);
 - Public utility, as defined in [Exemption #16](#);
 - Financial market utility, as defined in [Exemption #17](#);
 - Tax-exempt entity, as defined in [Exemption #19](#); or
 - Large operating company, as defined in [Exemption #21](#).

☐ Yes ☐ No

Inactive entity (Exemption #23)

An entity qualifies for this exemption if all **six** of the following criteria apply:

1. The entity was in existence on or before January 1, 2020.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is not engaged in active business.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
4. The entity has not experienced any change in ownership in the preceding twelve-month period.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No
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.	<input type="checkbox"/> Yes <input type="checkbox"/> No

1.3 What happens if my company does not report BOI in the required timeframe?

FinCEN is issuing this Guide and other guidance, as well as conducting outreach, to ensure that all reporting companies are aware of their reporting obligations, including their obligations to update or correct beneficial ownership information. 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.

Providing false or fraudulent beneficial ownership information could include providing false identifying information about an individual identified in a BOI report, such as by providing a copy of a fraudulent identifying document.

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.

For example, an individual who qualifies as a beneficial owner or a company applicant might refuse to provide information, knowing that a company would not be able to provide complete beneficial ownership information to FinCEN without it. Also, an individual might provide false information to a company, knowing that information is meant to be reported to FinCEN.



02

Who is a beneficial owner of my company?

If your company is a reporting company, your next step is to identify its beneficial owners.

A beneficial owner is **any** individual who, directly or indirectly:

- Exercises **substantial control** over a reporting company;
- **OR**
- Owns or controls at least 25 percent of the **ownership interests** of a reporting company.

An individual might be a beneficial owner through substantial control, ownership interests, or both. Reporting companies are not required to report the reason (i.e., substantial control or ownership interests) that an individual is a beneficial owner.

A reporting company can have multiple beneficial owners. For example, a reporting company could have one beneficial owner who exercises substantial control over the reporting company, and a few other beneficial owners who own or control at least 25 percent of the ownership interests of the reporting company. A reporting company could have one beneficial owner who both exercises substantial control and owns or controls at least 25 percent of the ownership interests of the reporting company. There is no maximum number of beneficial owners who must be reported.

FinCEN expects that every reporting company will be substantially controlled by one or more individuals, and therefore that every reporting company will be able to identify and report at least one beneficial owner to FinCEN. The following four sections will assist you in determining your company's beneficial owners. If an individual qualifies as a beneficial owner, information about that individual must be reported to FinCEN in a reporting company's BOI report.

2.1 What is substantial control?

2.2 What is an ownership interest?

2.3 What steps can I take to identify my company's beneficial owners?

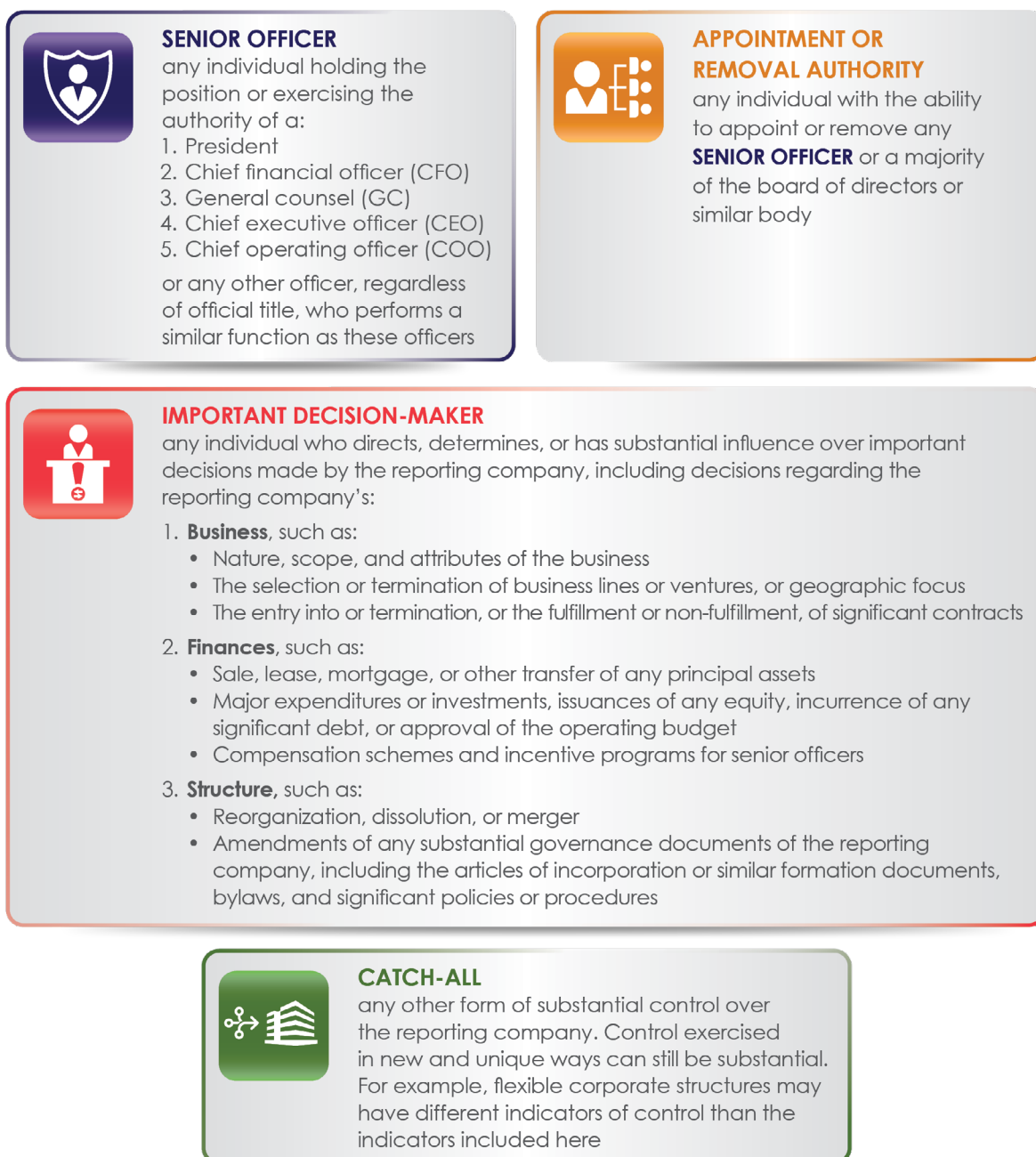
2.4 Who qualifies for an exception from the beneficial owner definition?

This chapter generally covers 1010.380(d), "Beneficial owner".

2.1 What is substantial control?

Reporting companies are required to identify **all** individuals who exercise **substantial control** over the company. 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; or (4) the individual has any other form of substantial control over the reporting company. See the chart below for details about these criteria.

Chart 3 – Substantial control indicators



2.2 What is ownership interest?

Reporting companies are required to identify **all** individuals who own or control at least 25 percent of the **ownership interests** of the company. 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; and any other instrument, contract, or other mechanism used to establish ownership. A reporting company may have multiple types of ownership interests. The following chart identifies the ownership interest types and provides examples.

Chart 4 – Ownership interests



2.3 What steps can I take to identify my company's beneficial owners?

Your company can identify beneficial owners by taking the following steps:

Step 1: Identify individuals who exercise substantial control over the company.

Examples are provided below to help you identify those individuals.

Step 2: Identify the types of ownership interests in your company and the individuals that hold those ownership interests. Examples are provided below to help identification.

Step 3: Calculate the percentage of ownership interests held directly or indirectly by individuals to identify individuals who own or control, directly or indirectly, at least 25 percent of the ownership interests of the company.

Here are additional details on each step:

Step 1: Individuals may directly or indirectly exercise substantial control. Individuals can exercise substantial control through contracts, arrangements, understandings, relationships, or otherwise.

Note for trusts: a trustee of a trust or similar arrangement may exercise substantial control over a reporting company.

Examples of direct ways to exercise substantial control over a reporting company are:

- Board representation.
- Ownership or control of a majority of voting power or voting rights.
- Rights associated with financing or interest.

Examples of indirect ways to exercise substantial control over a reporting company are:

- Controlling one or more intermediary entities that separately or collectively exercise substantial control over a reporting company.
- Through arrangements or financial or business relationships with other individuals or entities acting as nominees.

While keeping these examples in mind, the following questions can help identify which individuals exercise substantial control over your company. Multiple criteria can apply to one individual.

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	
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	There are important decision-makers over your company.
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.

Complete Step 1: Once you have reviewed the examples and questions for exercising substantial control above, you will have enough information to complete Step 1 (identify the individuals who meet the substantial control criteria for your company). The individuals you have identified will be reported as beneficial owners in your company’s BOI report unless they qualify for an exception, as discussed in the next section of the chapter ([section 2.4](#)).

Step 2: Individuals may directly or indirectly own or control ownership interests. Individuals can own or control ownership interests through contracts, arrangements, understandings, relationships, or otherwise.

Note for trusts: The following individuals may hold ownership interests in a reporting company through a trust or similar arrangement:

- A trustee or other individual with the authority to dispose of trust assets.
- A beneficiary who is the sole permissible recipient of trust income and principal or who has the right to demand a distribution of or withdraw substantially all of the trust assets.
- A grantor or settlor who has the right to revoke or otherwise withdraw trust assets.

Examples of direct ways to own or control ownership interests in a reporting company are:

- Joint ownership with one or more other persons of an undivided interest in an ownership interest.

Examples of indirect ways to own or control ownership interests in a reporting company are:

- Owning or controlling one or more intermediary entities, or the ownership interests of any intermediary entities, that separately or collectively own or control ownership interests of a reporting company.
- Through another individual acting as a nominee, intermediary, custodian or agent.

While keeping these examples in mind, the following questions can help identify what types of **ownership interests** are relevant for your company. A company may have more than one type of 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? <i>Note:</i> 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? <i>Note:</i> 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? <i>Note:</i> 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.

Complete Step 2: Once you have reviewed the examples and questions for ownership interests above, you will have enough information to complete Step 2 (identify the individuals who hold ownership interests in your company). Step 3 will help you identify which of these individuals own or control 25 percent or greater of the ownership interests in your company. The individuals who own or control 25 percent or more of the ownership interests in your company will be reported as beneficial owners in your company’s BOI report unless they qualify for an exception, as discussed in the next section of the chapter ([section 2.4](#)).

Step 3: After identifying what types of ownership interests apply to your company and who owns or controls them, you must determine who owns or controls 25 percent or more of those ownership interests.

If your company has issued any *options, privileges, or convertible instruments*:

- ▶ Assume they have been exercised or converted in all calculations below.

If your company issues shares of *stock*, is a corporation (including a Subchapter S corporation), or is not a corporation but is treated as one for federal income tax purposes:

- ▶ Calculate each individual’s ownership interest as a percentage of the total shares of stock issued. If some shares of stock that your company issues have more voting power or represent more of the value of the company than other shares (for instance, if your company issues both series A shares with one vote per share and series B shares with ten votes per share), you will need to make the following two calculations. The individual’s ownership interest will be the larger of the two percentages:

$\frac{\text{Total combined voting power of all classes of the individual's ownership interests}}{\text{Total outstanding voting power of all classes of ownership interests entitled to vote}} = \text{Individual's voting power \%}$	$\frac{\text{Total combined value of the individual's ownership interests}}{\text{Total outstanding value of all classes of ownership interests}} = \text{Individual's ownership interest value \%}$
--	--

If your company, including if your company is treated as a partnership for federal income tax purposes, issues *capital or profit interests*:

- ▶ Apply the following calculation:

$\frac{\text{Individual's capital and profit interests}}{\text{Total outstanding capital and profit interests}} = \text{Individual's capital and profit interests \%}$
--

If none of these calculations apply to your company:

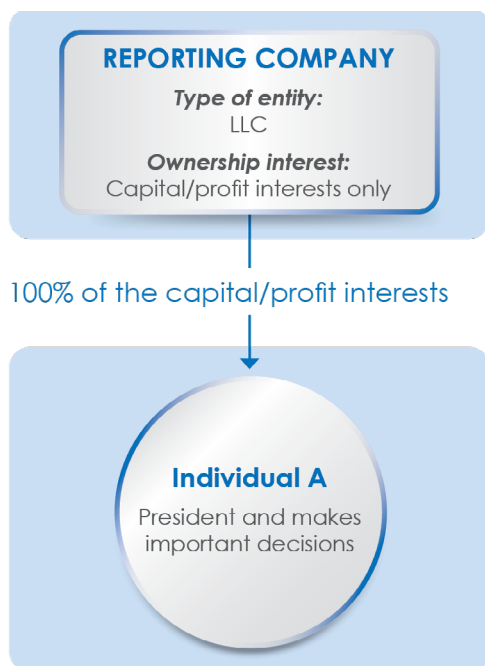
- ▶ Identify any individual who owns or controls 25 percent or more of any class or type of ownership interest of the company.

Complete Step 3: After you have applied these scenarios to your company’s ownership interests, you will have enough information to identify the individuals who own or control 25 percent or greater of the ownership interests in your company. You must report the individuals who own or control 25 percent or more of the ownership interests in your company as beneficial owners in your company’s BOI report unless they qualify for an exception, as discussed in the next section of the chapter ([section 2.4](#)).

Examples of how to determine beneficial owners:

The following examples show how to determine beneficial owners across a variety of types of company structures. These examples assume that no exceptions apply to the beneficial owners, as discussed in the next section of the chapter ([section 2.4](#)). In the infographics for the examples, beneficial owners are noted by circles and non-beneficial owners are noted by triangles.

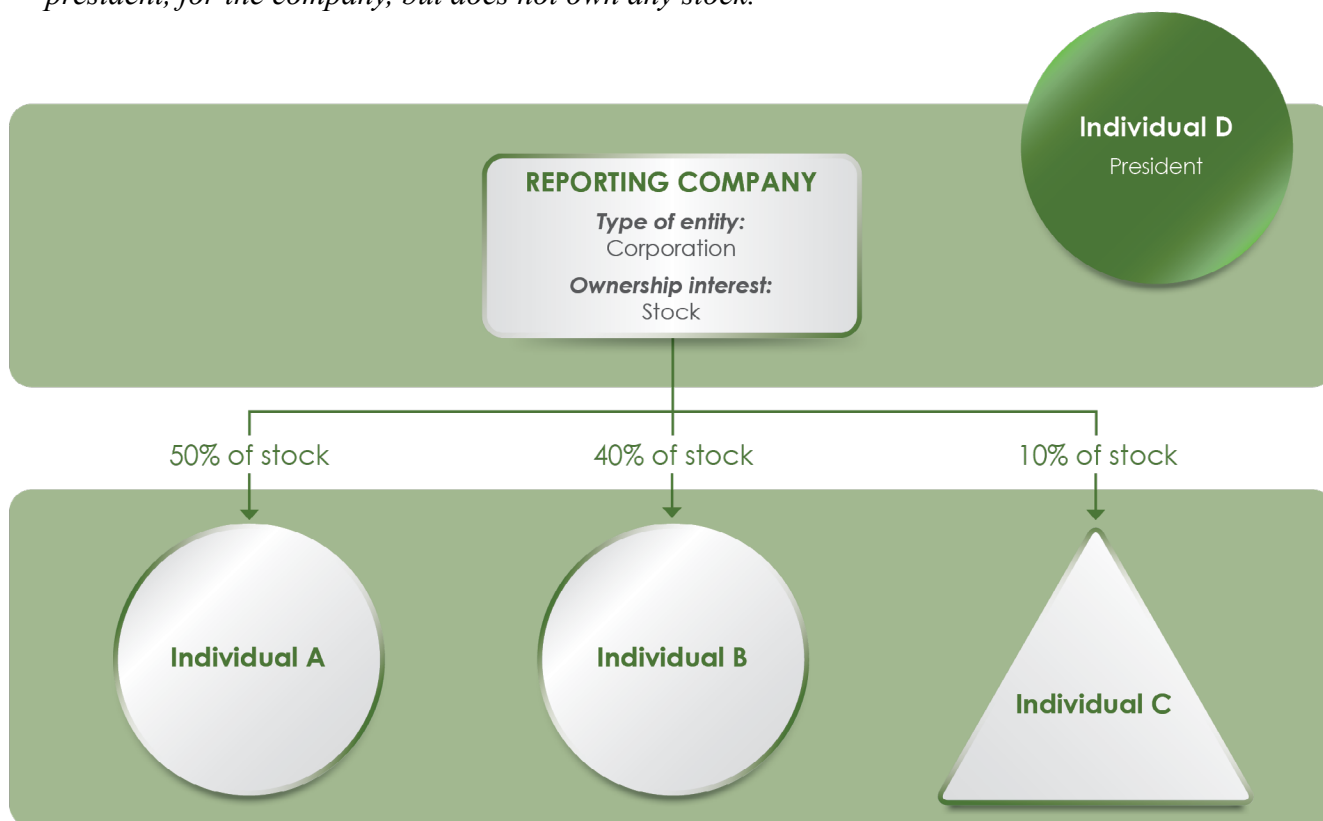
Example 1: The reporting company is a limited liability company (LLC). Individual A is the sole owner and president of the company and makes important decisions for the company. No one else owns or controls ownership interests in the company or exercises substantial control over the company.



Individual A is a beneficial owner of the reporting company in two different ways, assuming no other facts. First, Individual A exercises substantial control over the company because Individual A is a senior officer of the company (the president). Second, Individual A is also a beneficial owner because Individual A owns 25 percent or more of the reporting company’s ownership interests.

Because no one else owns or controls ownership interests in the LLC or exercises substantial control over it, and assuming there are no other relevant facts, Individual A is the only beneficial owner of this reporting company, and Individual A’s information must be reported to FinCEN.

Example 2: The reporting company is a corporation. The company's total outstanding ownership interests are shares of stock. Three people (Individuals A, B, and C) own 50 percent, 40 percent, and 10 percent of the stock, respectively, and one other person (Individual D) acts as the president, for the company, but does not own any stock.



Assuming there are no other relevant facts, Individuals A, B, and D are all beneficial owners of the company and their information must be reported. Individual C is not a beneficial owner.

Individual A owns 50 percent of the company's stock and therefore is a beneficial owner because 50 percent is greater than the threshold of 25 percent or more of the company's ownership interests.

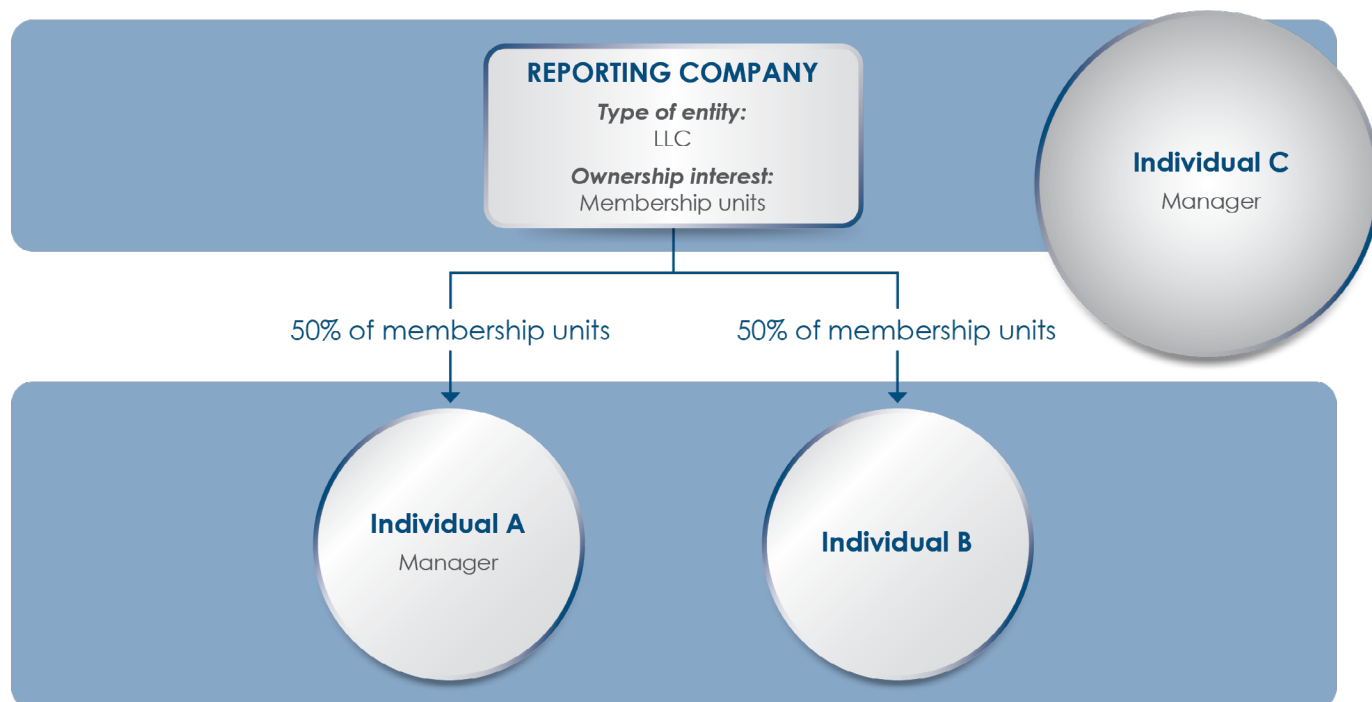
Individual B owns 40 percent of the company's stock and therefore is a beneficial owner 40 percent is also greater than the threshold of 25 percent or more of the company's ownership interests.

Individual C is not a senior officer of the company and does not directly or indirectly exercise any substantial control over the company.

Individual C also owns 10 percent of the company's stock, which is less than the 25 percent or greater interest needed to qualify as a beneficial owner by virtue of ownership interests. Individual C is therefore not a beneficial owner of the company.

Individual D is president of the company. As a senior officer of the company, Individual D exercises substantial control over the company and is therefore a beneficial owner, regardless of whether or not Individual D owns or controls 25 percent or more of the company's ownership interests.

Example 3: The reporting company is an LLC with two managers, Individuals A and C. Individual A also owns 50 percent of the “membership units” in the LLC while Individual C does not. Individual B owns the remaining membership units in the LLC but is not a manager.



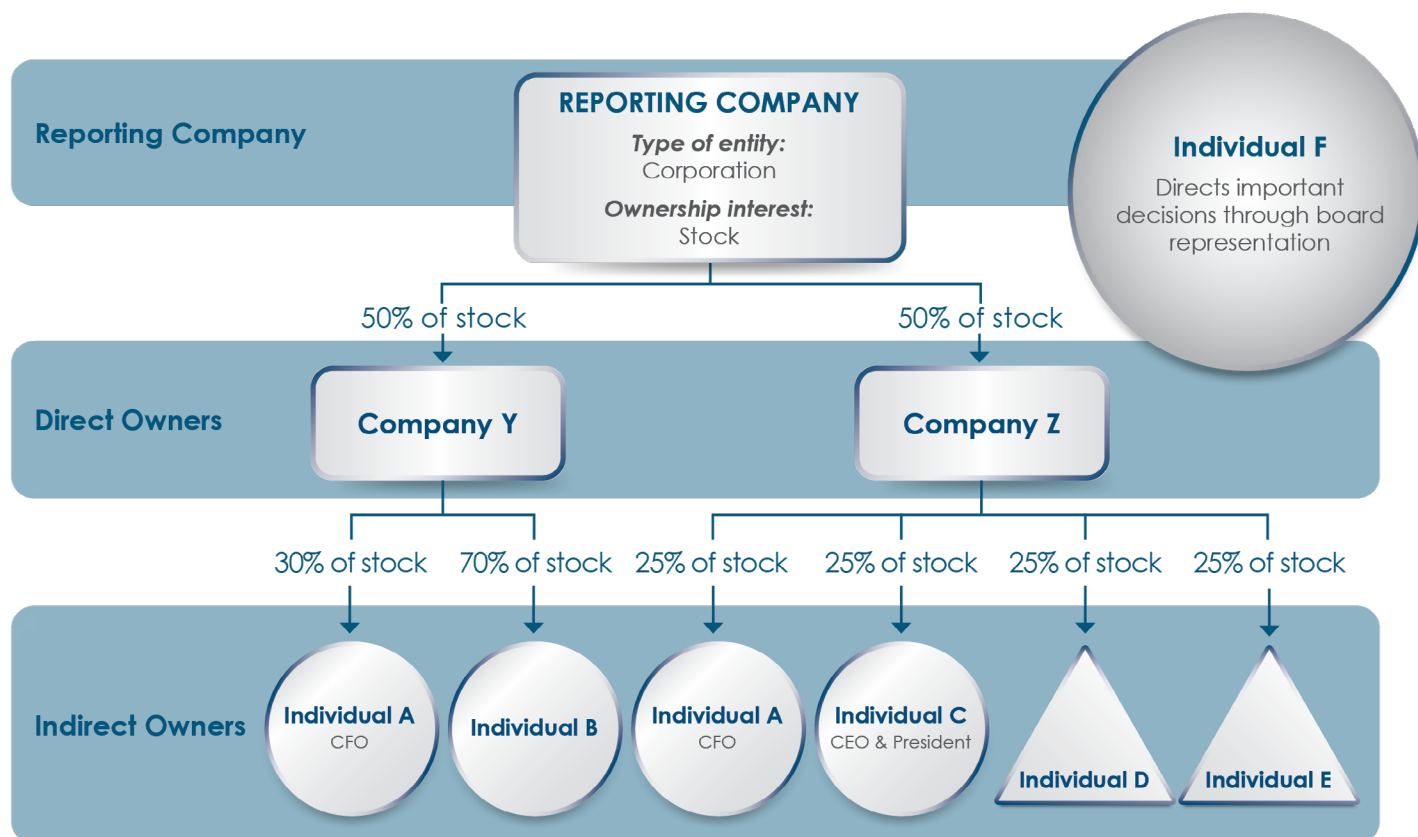
Owners of membership units (which are a type of “capital or profit interest” ownership interest) in an LLC are sometimes called “members” of the LLC. A member may not automatically be required, or authorized, to make decisions for the LLC; depending on the internal organization of the LLC, however, a member may also be a “manager.” In this example, Individual A is a member and a manager. Individual B is a member but not a manager, while Individual C is a manager but not a member. All three are beneficial owners of the reporting company.

Individual A is a manager of the LLC and owns 50 percent of the company’s membership units. Individual A exercises substantial control over the LLC because Individual A makes important decisions for the LLC in the role of manager. Individual A also owns 50 percent (which is greater than the 25 percent or more threshold) of the company’s ownership interests. Individual A is therefore a beneficial owner of the reporting company in two different ways, by exercising substantial control and owning or controlling 25 percent or more of the ownership interests.

Individual B owns 50 percent (which is greater than the 25 percent or more threshold) of the LLC’s membership units. That makes Individual B a beneficial owner of the LLC even though Individual B is not a manager and does not make important decisions or otherwise exercise substantial control over the LLC.

Individual C is a manager of the LLC and makes important decisions on its behalf, thereby exercising substantial control over it. Individual C does not own any of the LLC’s membership units (the ownership interests) but is nevertheless still a beneficial owner because the individual exercises substantial control.

Example 4: A reporting company is a corporation with multiple indirect owners through Company Y and Company Z.



In this example, Individuals A, B, C, and F are beneficial owners.

Individual A is the reporting company's Chief Financial Officer and is therefore a senior officer, which under the Reporting Rule means that Individual A exercises substantial control over the company. Individual A also indirectly owns 27.5 percent of the reporting company's stock through direct ownership of Company Y and Company Z, which each own 50 percent of the reporting company's stock. (Individual A owns 30 percent of Company Y's stock and 25 percent of Company Z's stock. Therefore, Individual A owns 15 percent of the reporting company's stock through Company Y ($50\% \times 30\% = 15\%$) and 12.5 percent of the reporting company's stock through Company Z ($50\% \times 25\% = 12.5\%$). Adding these two percentages together equals 27.5 percent of the reporting company's stock.) Individual A is therefore a beneficial owner in two different ways, by exercising substantial control and owning or controlling 25 or more of the ownership interests of the reporting company.

Individual B indirectly owns 35 percent of the reporting company's stock through Company Y, which owns 50 percent of the reporting company's stock. (Individual B owns 70 percent of Company Y's stock ($50\% \times 70\% = 35\%$)). Individual B does not exercise substantial control. Individual B is a beneficial owner by owning or controlling 25 percent or more of the reporting company's ownership interests.

Individual C is the reporting company's Chief Executive Officer and president and is therefore a senior officer who exercises substantial control. Individual C indirectly owns 12.5 percent of the reporting company's stock. To calculate Individual C's indirect ownership interests in the reporting company, multiply the ownership interest of Individual C in Company Z by the ownership interest of Company Z in the reporting company. Individual C owns 25 percent of Company Z's stock and Company Z owns 50 percent of the reporting company's stock. Therefore, Individual's C ownership interests in the reporting company are 12.5 percent ($25\% \times 50\% = 12.5\%$), which is less than the 25 percent ownership interest threshold. Accordingly, Individual C's ownership interests in the reporting company do not make Individual C a beneficial owner, but Individual C is nevertheless a beneficial owner because Individual C exercises substantial control over the reporting company.

Similar to Individual C, Individuals D and E own 25 percent of Company Z's stock, and each therefore indirectly owns 12.5 percent of the reporting company's stock. In contrast to Individual C, Individuals D and E do not exercise substantial control over the reporting company. Individuals D and E are not beneficial owners.

Individual F is on the company's board of directors and makes important decisions on the reporting company's behalf, thereby exercising substantial control over it. Individual F does not own or control any stock in the reporting company. Individual F is therefore a beneficial owner by exercising substantial control over the reporting company, but not through holding ownership interests in it.

2.4 Who qualifies for an exception from the beneficial owner definition?

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. The following checkboxes are intended to help your company determine whether any exceptions apply to individuals who might otherwise qualify as beneficial owners of your company.

Minor Child (Exception #1)

An individual qualifies for this exception if the following criterion applies:

1. The individual is a minor child, as defined under the law of the State or Indian tribe in which the domestic reporting company is created or the foreign reporting company is first registered.	<input type="checkbox"/> Yes <input type="checkbox"/> No
--	--

Special rule for minor child: If the answer above is yes, the reporting company may instead report information about the parent or legal guardian of the minor child.

Note: This exception only applies if a parent or legal guardian's information is reported in lieu of the minor child's information. Also, when the minor child reaches the age of majority, as defined by the law of the State or Indian tribe in which the reporting company was created or first registered, the exception no longer applies. At that time, if the individual is a beneficial owner, the reporting company must file an updated BOI report providing the individual's own information. See [Chapter 6](#) for more information on when an updated report may be required.

Nominee, intermediary, custodian, or agent (Exception #2)

An individual qualifies for this exception if the following criterion applies:

2. The individual merely acts on behalf of an actual beneficial owner as the beneficial owner's nominee, intermediary, custodian, OR agent.	<input type="checkbox"/> Yes <input type="checkbox"/> No
Note: Individuals who perform ordinary advisory or other contractual services (such as tax professionals) likely qualify for this exception. In scenarios where this exception applies, the actual beneficial owner must still be reported.	

Employee (Exception #3)

An individual qualifies for this exception if **all three** of the following criteria apply:

1. The individual is an employee of the reporting company, when applying the meaning of “employee” provided in 26 CFR 54.4980H-1(a)(15) . In general, the term employee means that an individual is subject to the will and control of the employer in what and how to do work, and that the employer may discharge the individual from work.	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The individual’s substantial control over, or economic benefits from, the reporting company are derived solely from the employment status of the individual as an employee.	<input type="checkbox"/> Yes <input type="checkbox"/> No
3. The individual is not a senior officer of the reporting company. The term “senior officer” means any individual holding the position or exercising the authority of a president, chief financial officer, general counsel, chief executive officer, or chief operating officer, or any other officer, regardless of official title, who performs a similar function.	<input type="checkbox"/> Yes <input type="checkbox"/> No

Inheritor (Exception #4)

An individual qualifies for this exception if the following criterion applies:

1. The individual’s only interest in the reporting company is a future interest through a right of inheritance, such as through a will providing a future interest in a company.	<input type="checkbox"/> Yes <input type="checkbox"/> No
---	--

Note: Once the individual inherits the interest, this exception no longer applies, and the individual may qualify as a beneficial owner. See Chapter 6 for more information on when an updated report may be required in this circumstance.

Creditor (Exception #5)

An individual qualifies for this exception if the following criterion applies:

1. The individual is a creditor of the reporting company.

The term “creditor” means an individual who would meet the definition of a beneficial owner of the reporting company solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

For example, an individual qualifies for the creditor exception if the individual is entitled to payment from the reporting company to satisfy a loan or debt, so long as this entitlement is the only ownership interest the individual has in the reporting company.

☐ Yes ☐ No



03

Does my company have to report its company applicants?

Only certain reporting companies must include information about their company applicants in their BOI reports. This chapter has two sections to help your company determine whether the requirements apply and, if so, how to identify its company applicants:

3.1 Is my company required to report its company applicants?

3.2 Who is a company applicant of my company?

This chapter generally covers 1010.380(e), “Company applicant”.

3.1 Is my company required to report its company applicants?

Not all reporting companies are required to report their company applicants to FinCEN.

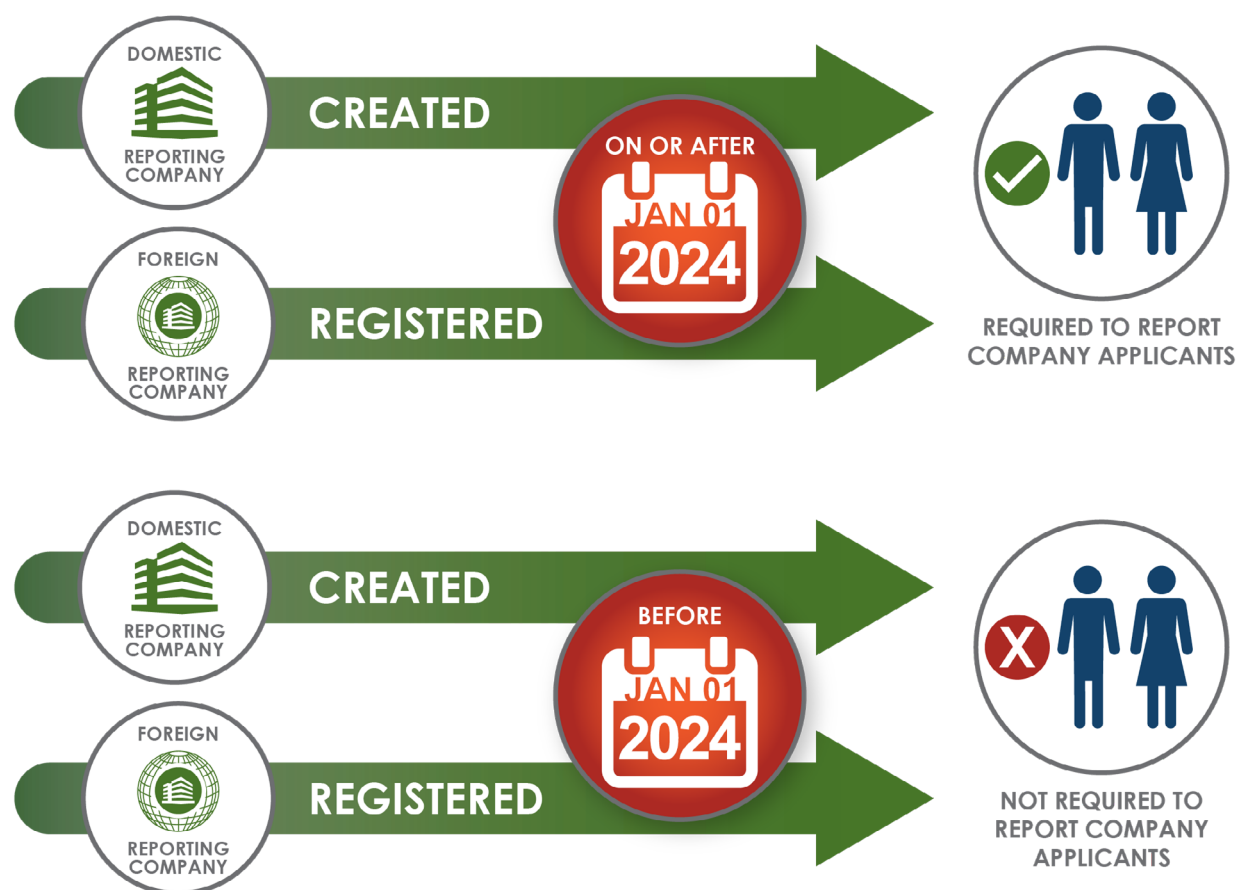
A reporting company **is required to report its company applicants** if it is either a:

- 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.

Chart 5 – Company applicant reporting requirement



The special rule concerning company applicant reporting can be found at 1010.380(b)(2)(iv) and is discussed further in the next chapter ([section 4.2](#)).

3.2 Who is a company applicant of my 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.

Company Applicant Category 1: Direct filer

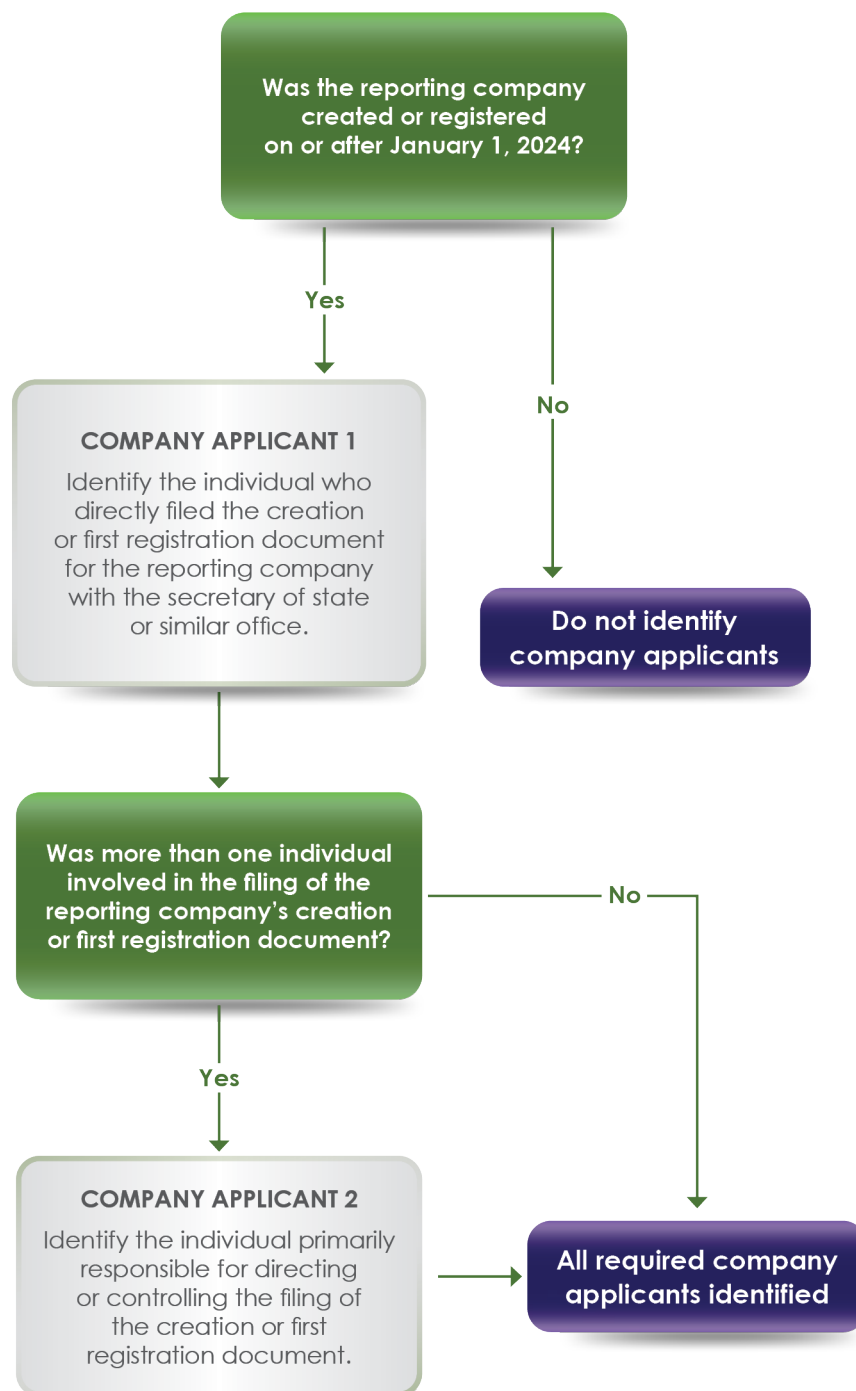
This is the individual who directly filed the document that created a domestic reporting company, or the individual who directly filed the document that first registered a foreign reporting company. This individual would have actually physically or electronically filed the document with the secretary of state or similar office.

Company Applicant Category 2: Directs or controls the filing action

The other possible company applicant is the individual who was primarily responsible for directing or controlling the filing of the creation or first registration document. This individual is a company applicant even though the individual did not actually file the document with the secretary of state or similar office.

The following chart may assist your company in identifying company applicants.

Chart 6 – Company application definition



The following examples illustrate how to identify company applicants in common company creation or registration scenarios.

Example 1: Individual A is creating a new company. Individual A prepares the necessary documents to create the company and files them with the relevant State or Tribal office, either in person or using a self-service online portal. No one else is involved in preparing, directing, or making the filing.

Individual A is a company applicant because Individual A directly filed the document that created the company. Because Individual A is the only person involved in the filing, Individual A is the only company applicant. State or Tribal employees who receive and process the company creation or formation documents should not be reported as company applicants.

Example 2: Individual A is creating a company. Individual A prepares the necessary documents to create the company and directs Individual B to file the documents with the relevant State or Tribal office. Individual B then directly files the documents that create the company.

Individuals A and B are both company applicants – Individual B directly filed the documents, and Individual A was primarily responsible for directing or controlling the filing. Individual B could, for example, be Individual A's spouse, business partner, attorney, or accountant; in all cases, Individuals A and B are both company applicants in this scenario.



04

What specific information does my company need to report?

This chapter covers what information needs to be included in a BOI report to FinCEN. BOI reports require specific pieces of information about your company, its beneficial owners, and, in the cases described in [section 3.1](#), its company applicants. Additionally, this chapter covers what information needs to be provided to obtain a FinCEN identifier. The person submitting information to FinCEN must certify that it is true, correct, and complete. This chapter includes the following sections:

4.1 What information should I collect about my company, its beneficial owners, and its company applicants?

4.2 What do I report if a special reporting rule applies to my company?

4.3 What is a FinCEN identifier and how can I use it?

This chapter generally covers 1010.380(b), “Content, form, and manner of reports”.

4.1 What information should I collect about my company, its beneficial owners, and its company applicants?

The following checklists may help you identify the information about your company and its beneficial owners and company applicants that you are required to collect and report.

Chart 7 – Required information checklists

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

If an individual has obtained a FinCEN identifier and provided it to a reporting company, the reporting company may include such FinCEN identifier in its report instead of the information required about the individual.

4.2 What do I report if a special reporting rule applies to my company?

The Reporting Rule includes four special reporting rules that may affect your company's reporting obligations.

1. *Owned by exempt entity:* You do not need to report information about any beneficial owner whose ownership interests in a reporting company are held through one or more entities, all of which are themselves exempt from the reporting company definition. Refer to [Chapter 1.2](#) for the types of entities that are exempt from the reporting company definition.
 - ▶ If this special rule applies, then you may report the names of all of the exempt entities instead of information about the individual who is a beneficial owner of your company through ownership interests in those exempt entities.
Example: A large operating company owns 50% of the ownership interests in your company. Large operating companies are exempt from the reporting company definition (see [Exemption #21](#)). Individual A owns 50% of the large operating company, and therefore owns 25% of the ownership interests in your company ($50\% \times 50\% = 25\%$). You may report the name of the large operating company instead of Individual A's personal information.
2. *Minor child:* You do not need to report information about a beneficial owner of the reporting company who is a minor child, provided you have reported the required information about the minor child's parent or legal guardian.
 - ▶ If this special rule applies, you may report the required information about the child's parent or legal guardian instead of the child.
Note: If you report a parent or legal guardian's information instead of a minor child's information, then you must indicate in your BOI report that the information relates to a parent or legal guardian of the minor child.
3. *Foreign pooled investment vehicle:* You do not need to report information about each beneficial owner and company applicant if your company was formed under the laws of a foreign country and would be a reporting company if not for the pooled investment vehicle exemption ([Exemption #18](#)).
 - ▶ If this special rule applies, you must report one individual who exercises substantial control over the company. You do not need to report any company applicants. If more than one individual exercise substantial control over the company, you must report information about the individual who has the greatest authority over the strategic management of the company.
4. *Company applicant reporting for existing companies:* If the reporting company was created or registered before January 1, 2024, you do not need to report any company applicant information for the reporting company.
 - ▶ If this special rule applies, do not report company applicants. Specify on the BOI report that the company was created or registered before January 1, 2024.

4.3 What is a FinCEN identifier and how can I use it?

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.

- An individual or reporting company is not required to obtain a FinCEN identifier.
- An individual or reporting company may only receive one FinCEN identifier.
- Your company may include FinCEN identifiers in its BOI report instead of certain required information about beneficial owners or company applicants.

FinCEN Identifiers for Individuals

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.

FinCEN Identifiers for Reporting Companies

Your company may request a FinCEN identifier when it submits a BOI report by checking a box on the reporting form.

Updates or Corrections

When the information an individual or reporting company reported to FinCEN to obtain a FinCEN identifier changes, or when the individual or reporting company discovers that reported information is inaccurate, the individual or reporting company must update or correct the reported information, as applicable. See [Chapter 6](#) for more information on the update and correction requirements, including timelines.



05

When and how should my company file its initial report?

The Reporting Rule is effective on January 1, 2024. FinCEN will begin accepting BOI reports electronically through its secure filing system on this date. BOI reports will not be accepted prior to January 1, 2024. This chapter explains when your company should file its initial BOI report and how to do so in the following two sections:

5.1 When should my company file its initial BOI report?

5.2 How does my company file a BOI report?

This chapter generally covers 1010.380(a)(1), (Timing of) “initial reports”.

5.1 When should my company file its initial BOI report?

If your company already exists as of January 1, 2024, it must file its initial BOI report by January 1, 2025. If your company is created or registered to do business in the United States after January 1, 2024, then it must file its initial BOI report within 30 days after receiving actual or public notice that its creation or registration is effective. For example, your company may receive **actual** notice that its creation or registration is effective through a direct communication from the secretary of state or similar office. Your company could also receive **public** notice that its creation or registration is effective because it appears on a publicly accessible registry maintained by the secretary of state or similar office. Notice practices will vary by jurisdiction. If a jurisdiction provides both actual and public notice, the timeline for when an initial BOI report is due starts on the earlier of the two dates notice is received.



The reporting requirement is effective on January 1, 2024. FinCEN will begin accepting beneficial ownership information reports on that date.



INITIAL REPORTS

Required by all companies that meet the definition of **reporting company** and are not **exempt** from that definition.



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.
Reports due by **January 1, 2025**.



New reporting companies

Created or registered to do business in the United States on or after January 1, 2024.
Reports due within **30 calendar days** of receiving actual or public notice that the creation or registration of the reporting company is effective.

Previously exempt reporting companies: If your company previously qualified for an exemption to the reporting company definition but no longer qualifies, you are required to file a BOI report **within 30 calendar days** of the date on which your company stops qualifying for the exemption.

Refer to [section 1.2](#) of this Guide for additional information on exemptions from the reporting requirements.

5.2 How does my company file a BOI report?

If your company is required to file a BOI report, you must do so electronically through a secure filing system.

- FinCEN's filing system is currently under development and will not be available until January 1, 2024.
- FinCEN will not accept BOI reports before January 1, 2024.
- FinCEN will publish instructions and other technical guidance on how to complete the BOI report form. This guidance will be available at: www.fincen.gov/boi.

Note: There may be certain circumstances in which a reporting company is unable to electronically file a BOI report through FinCEN's secure filing system. In those cases, the reporting company should contact FinCEN: www.fincen.gov/contact.



06

What if there are changes to or inaccuracies in reported information?

In addition to filing an initial BOI report, reporting companies must also update and correct information in their previously filed BOI reports. Individuals who obtain FinCEN identifiers must also update and correct information previously reported to FinCEN. This chapter discusses what to do when there are changes to or inaccuracies in reported information in the following sections:

6.1 What should I do if previously reported information changes?

6.2 What should I do if I learn of an inaccuracy in a report?

6.3 What should my company do if it becomes exempt after already filing a report?

This chapter generally covers 1010.380(b)(3), “Contents of updated or corrected reports”.

6.1 What should I do if previously reported information changes?



UPDATED REPORTS

Required when there is a change to previously reported information about the reporting company itself or its beneficial owners.



Updated reports due within **30 calendar days** after a change occurs.

If there is **any change** to the required information about your company or its beneficial owners in a BOI report that your company filed, your company must file an updated BOI report no later than 30 days after the date on which the change occurred. The same 30-day timeline applies to changes in information submitted by an individual in order to obtain a FinCEN identifier. A reporting company is not required to file an updated report for any changes to previously reported personal information about a company applicant.

The following are some examples of changes that would require an updated BOI report:

- Any change to the information reported for the reporting company, such as registering a new DBA.
- A change in beneficial owners, such as a new Chief Executive Officer, a sale that changes who meets the ownership interest threshold of 25 percent, or the death of a beneficial owner.

Note: When a beneficial owner dies, resulting in changes to the reporting company's beneficial owners, report those changes within 30 days of when the deceased beneficial owner's estate is settled. The updated report should, to the extent appropriate, identify any new beneficial owners.

- Any change to a beneficial owner's name, address, or unique identifying number provided in a BOI report.

Note: If a beneficial owner obtained a new driver's license or other identifying document that includes the changed name, address, or identifying number, the reporting company also would have to file an updated beneficial ownership information report with FinCEN, including an image of the new identifying document.

Special rule: Keep in mind the update requirement related to the special reporting rule for a minor child. When a beneficial owner that was a minor child reaches the age of majority, you must file an updated BOI report, identifying the individual as a beneficial owner and, if warranted, replacing their parent or legal guardian's information with their own.

Like initial BOI reports, updated BOI reports should be filed electronically through the secure filing system.

Note: There is no requirement to report a company's termination or dissolution.

6.2 What should I do if I learn of an inaccuracy in a report?



CORRECTED REPORTS

Required when previously reported information was inaccurate when filed and remains inaccurate.



Corrected reports due within **30 calendar days** after the reporting company becomes aware or has reason to know of an inaccuracy.

If an inaccuracy is identified in a BOI report that your company filed, your company must correct it no later than 30 days after the date your company became aware of the inaccuracy or had reason to know of it. This includes any inaccuracy in the required information provided about your company, its beneficial owners, or its company applicants. The same 30-day timeline applies to inaccuracies in information submitted by an individual in order to obtain a FinCEN identifier.

Note: There are no penalties for filing an inaccurate BOI report provided it is corrected within 90 calendar days of when it was filed.

Corrected BOI reports should be filed electronically through the secure filing system.

6.3 What should my company do if it becomes exempt after already filing a report?

If your company filed a BOI report and later qualifies for an exemption from the reporting requirements, your company should file an updated BOI report to indicate that it is newly exempt from the reporting requirements. Refer to [section 1.2](#) of this Guide for information on exemptions.

Updated BOI reports should be filed electronically through the secure filing system. An updated BOI report for a newly exempt entity will only require that: (1) the entity identify itself; and (2) check a box noting its newly exempt status.

Appendix A - Guide and Regulation Reference Page

This index shows where the different parts of the Reporting Rule (1010.380) are covered in this Guide. The left side of the index shows each different paragraph of the Reporting Rule and its title. The right side of the index shows what part of this Guide covers that paragraph of the Reporting Rule. You can click on the hyperlinks on the right to jump to the part of this Guide. Some of the Reporting Rule paragraphs are mentioned in more than one place in this Guide. Mentions of the paragraphs are included in the index in the parentheses on the right.

(a) Reports required; timing of reporting	Chapter 5 and Chapter 6
(1) Initial report	5.1
(2) Updated report	6.1
(3) Corrected report	6.2
(b) Content, form, and manner of reports	Chapter 4 and Chapter 6
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