

# General Guide to BOI Reporting

## A. General Questions

### 1. What is beneficial ownership information?

Beneficial ownership information refers to identifying information about the individuals who directly or indirectly own or control a company.

### 2. Why do companies have to report beneficial ownership information to the U.S. Department of the Treasury?

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

## B. Reporting Process

### 1. 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, and before January 1, 2025, will have 90 calendar days after receiving notice of the company's creation or registration to file its initial BOI report.

### 2. Who can file a BOI report on behalf of a reporting company, and what information will be collected on filers?

Anyone whom the reporting company authorizes to act on its behalf—such as an employee, owner, or third-party service provider—may file a BOI report on the reporting company's behalf.

## Reporting Company

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

Companies required to report are called *reporting companies*. There are two types of reporting companies:

- **Domestic reporting companies** are corporations, limited liability companies, and any other entities created by the filing of a document with a secretary of state or any similar office in the United States.

- **Foreign reporting companies** are entities (including corporations and limited liability companies) formed under the law of a foreign country that have registered to do business in the United States by the filing of a document with a secretary of state or any similar office.

## 2. Are some companies exempt from the reporting requirement?

The CTA exempts specific categories of entities, often based on their already existing reporting requirements or nature of operations. If your company meets any of the following criteria, then your company is exempt from filing.

1. **Securities Reporting Issuer:** Companies required to file periodic reports under Sections 13 or 15(d) of the Securities Exchange Act of 1934.
2. **Governmental Authority:** Entities that are part of the U.S. government, a state, or a political subdivision of a state.
3. **Bank:** Financial institutions that accept deposits and make loans, including savings banks, savings and loan associations, and cooperative banks.
4. **Credit Union:** Member-owned financial cooperatives that provide savings, credit, and other financial services to their members.
5. **Depository Institution Holding Company:** Corporations that control one or more banks or savings associations.
6. **Money Services Business:** Businesses providing services like currency exchange, check cashing, and money transmission.
7. **Broker or Dealer in Securities:** Firms or individuals involved in buying and selling securities on behalf of themselves or others.
8. **Securities Exchange or Clearing Agency:** Organizations facilitating the trading of securities or managing the clearing and settlement of transactions.
9. **Other Exchange Act Registered Entity:** Entities registered under the Securities Exchange Act of 1934 not covered by other categories.
10. **Investment Company or Investment Adviser:** Companies managing investment funds or offering investment advice for compensation.
11. **Venture Capital Fund Adviser:** Advisers to venture capital funds, typically investing in start-up companies.
12. **Insurance Company:** Companies providing insurance coverage, including life, health, property, and casualty insurers.
13. **State-Licensed Insurance Producer:** Individuals or entities licensed by a state to sell, solicit, or negotiate insurance.
14. **Commodity Exchange Act Registered Entity:** Entities registered under the Commodity Exchange Act, like commodity pool operators or commodity trading advisors.

15. **Accounting Firm:** Firms providing accounting, auditing, and related services.
16. **Public Utility:** Companies providing essential services like electricity, natural gas, water, and sewage treatment to the public.
17. **Financial Market Utility:** Entities providing services to financial markets, such as payment systems, securities clearing, and settlement services.
18. **Pooled Investment Vehicle:** Investment funds pooling money from various investors to invest in securities, real estate, and other assets.
19. **Tax-Exempt Entity:** Organizations exempt from federal income tax, such as charities, religious organizations, and non-profit organizations.
20. **Entity Assisting a Tax-Exempt Entity:** Entities providing support to tax-exempt organizations.
21. **Large Operating Company:** To qualify, **all three** of the following criteria must apply:
  - More than 20 full-time employees are employed in the United States.
  - Has an operating presence at a physical office within the United States.
  - Filed a federal income tax or information return in the U.S. for the previous year showing more than \$5,000,000 in gross receipts or sales.
22. **Subsidiary of Certain Exempt Entities:** Subsidiaries of entities already exempt from the reporting requirements.
23. **Inactive Entity:** Entities not engaged in active business and meet specific criteria.
24. **Foreign Person:** Non-U.S. persons, as defined in the regulations.
25. **Indian Tribe:** Federally recognized Indian tribes.
26. **Lawfully Admitted for Permanent Residence:** Individuals legally admitted to the U.S. as permanent residents.

### **3. Are certain corporate entities, such as statutory trusts, business trusts, or foundations, reporting companies?**

It depends. A domestic entity such as a statutory trust, business trust, or foundation is a reporting company only if it was created by the filing of a document with a secretary of state or similar office. Likewise, a foreign entity is a reporting company only if it filed a document with a secretary of state or a similar office to register to do business in the United States.

### **4. Does the activity or revenue of a company determine whether it is a reporting company?**

Only if your revenue is over 5 million dollars, then you could be considered exempt as a large operation company if you also meet other criteria

## Beneficial Owners

### 1. Who is a beneficial owner of a reporting company?

A beneficial owner is an individual who either directly or indirectly: (1) exercises substantial control over the reporting company, or (2) owns or controls at least 25% of the reporting company's ownership interests.

### 2. What is substantial control?

If the individual falls into any of the categories below, the individual is exercising substantial control:

A senior officer (the company's president, chief financial officer, general counsel, chief executive office, chief operating officer, or any other officer who performs a similar function).

An important decision-maker. Important decisions include decisions about a reporting company's business, finances, and structure. An individual that directs, determines, or has substantial influence over these important decisions exercises substantial control over a reporting company.

### 3. What is an ownership interest?

An ownership interest is generally an arrangement that establishes ownership rights in the reporting company. Examples of ownership interests include shares of equity, stock, voting rights, or any other mechanism used to establish ownership.

### 4. What information should a reporting company report about a beneficial owner who holds their ownership interests in the reporting company through multiple exempt entities?

If a beneficial owner owns or controls their ownership interests in a reporting company *exclusively* through *multiple exempt* entities, then the names of *all* of those exempt entities may be reported to FinCEN instead of the individual beneficial owner's information.

### 5. Is an unaffiliated company that provides a service to the reporting company by managing its day-to-day operations a beneficial owner of the reporting company?

Any individuals that exercise substantial control over the reporting company through the unaffiliated company must be reported as beneficial owners of the reporting company.

### 6. Is a reporting company's designated "partnership representative" or "tax matters partner" a beneficial owner?

Only if the individual exercises substantial control over the reporting company or owns or controls at least 25 percent of the company's ownership interests.

### 7. Who does a reporting company report as a beneficial owner if a corporate entity owns or controls 25 percent or more of the ownership interests of the reporting company?

Ordinarily, such a reporting company reports the individuals who indirectly either (1) exercise substantial control over the reporting company or (2) own or control at least 25 percent of the ownership interests in the reporting company through the corporate entity. It should not report the corporate entity that acts as an intermediate for the individuals.

Two special rules create exceptions to this general rule in very specific circumstances:

1. A reporting company may report the name(s) of an exempt entity or entities in lieu of an individual beneficial owner who owns or controls ownership interests in the reporting company entirely through ownership interests in the exempt entity or entities; or
2. If the beneficial owners of the reporting company and the intermediate company are the same individuals, a reporting company may report the FinCEN identifier and full legal name of an intermediate company through which an individual is a beneficial owner of the reporting company.

## **Company Applicant**

### **1. Who is the company applicant of a reporting company?**

Only reporting companies created or registered *on or after* January 1, 2024, will need to report their company applicants.

1. The individual who directly files the document that creates or registers the company; and
2. If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.

## **Reporting Requirements**

### **1. What information will a reporting company have to report about itself?**

A reporting company will have to report:

1. Its legal name
2. Any trade names, “doing business as” (d/b/a), or “trading as” (t/a) names
3. The current street address of its principal place of business if that address is in the United States (for example, a U.S. reporting company’s headquarters), or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States (for example, a foreign reporting company’s U.S. headquarters)
4. Its jurisdiction of formation or registration; and
5. Its Taxpayer Identification Number (or, if a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction).

## **2. What information will a reporting company have to report about its beneficial owners?**

For each individual who is a beneficial owner, a reporting company will have to provide:

1. The individual's name.
2. Date of birth.
3. Residential address; and
4. A passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document.

## **3. What information will a reporting company have to report about its company applicants?**

1. Same as above

## **4. Does a reporting company have to report information about its parent or subsidiary companies?**

No, though if a special reporting rule applies, the reporting company may report a parent company's name instead of beneficial ownership information.

## **5. Can a reporting company report a P.O. box as its current address?**

No. The reporting company address must be a U.S. Street address and cannot be a P.O. box.

## **Updated Report**

### **1. What should I do if previously reported information changes?**

If there is **any change** to the required information about your company or its beneficial owners in a beneficial ownership information report that your company filed, your company must file an updated report no later than 30 days after the date of the change.

### **2. If a reporting company needs to update one piece of information on a BOI report, such as its legal name, does the reporting company have to fill out an entirely new BOI report?**

Yes. An updated report will need to be filed.

### **3. Can a filer submit a late updated BOI report?**

Yes. An updated BOI report can be submitted to FinCEN at any time. However, the reporting company is responsible for ensuring that updates are filed within 30 days of a change occurring.

### **4. If a reporting company last filed a "newly exempt entity" BOI report but subsequently loses its exempt status, what should it do?**

A reporting company should file an updated BOI report with FinCEN.

## **5. What should I do if I learn of an inaccuracy in a report?**

If a beneficial ownership information report is inaccurate, 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.

## **6. What should a reporting company do if it becomes exempt after already filing a report?**

If a reporting company filed a beneficial ownership information report but then becomes exempt from filing the report, the company should file an updated report indicating that it is no longer a reporting company.

## **Penalties For Not Reporting**

### **1. What penalties do individuals face for violating BOI reporting requirements?**

As specified in the Corporate Transparency Act, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. That person may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000.

## **Reporting Company Exemptions**

### **1. What are the criteria for the tax-exempt entity exemption from the beneficial ownership information reporting requirement?**

An entity qualifies for the tax-exempt entity 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.

(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.

(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.

(4) The entity is a trust described in paragraph (1) or (2) of section 4947(a) of the Code.

### **2. What are the criteria for the inactive entity exemption from the beneficial ownership information reporting requirement?**

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

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

(2) The entity is not engaged in active business.

(3) The entity is not owned by a foreign person, whether directly or indirectly, wholly, or partially. "Foreign person" means a person who is not a United States person.

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

(5) The entity has not sent or received any funds in an amount greater than \$1,000, either directly, in the preceding twelve-month period.

### **3. What are the criteria for the subsidiary exemption from the beneficial ownership information reporting requirement?**

Subsidiaries of certain types of entities that are exempt from the beneficial ownership information reporting requirements may also be exempt from the reporting requirement.

An entity qualifies for the subsidiary exemption if the following applies:

The entity's ownership interests are controlled or wholly owned, directly or indirectly, by **any** of these types of exempt entities:

- Securities reporting issuer.
- Governmental authority.
- Bank.
- Credit union.
- Depository institution holding company.
- Broker or dealer in securities.
- Securities exchange or clearing agency.
- Other Exchange Act registered entity.
- Investment company or investment adviser.
- Venture capital fund adviser.
- Insurance company.
- State-licensed insurance producer.
- Commodity Exchange Act registered entity.
- Accounting firm.
- Public utility.
- Financial market utility.
- Tax-exempt entity; or
- Large operating company.



**4. How does a company report to FinCEN that the company is exempt?**

A company does not need to report to FinCEN that it is exempt from the BOI reporting requirements if it has always been exempt. If a company filed a BOI report and later qualifies for an exemption, that company should file an updated BOI report to indicate that it is newly exempt from the reporting requirements.

**5. Does a subsidiary whose ownership interests are partially controlled by an exempt entity qualify for the subsidiary exemption?**

No. If an exempt entity control some but not all of the ownership interests of the subsidiary, the subsidiary does not qualify.