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Beneficial Ownership Information Reporting

Disclaimer: This advice is for informational purposes only and is not legal advice. The information provided here does not constitute an attorney-client relationship.

The U.S. Department of Treasury Financial Crimes Enforcement Network, or FinCEN, [has published a Small Entity Compliance Guide](#) to assist small businesses in compliance with the requirements of the [Beneficial Ownership Information Reporting Rule \(“Reporting Rule”\)](#).¹ Please note this document is designed to address most domestic small businesses and not-for-profits but does not address specific requirements applicable to financial or money service businesses. Please consult the regulations for more information regarding those entities. The Reporting Rule, issued on September 30, 2022, implements Section 6403 of the Corporate Transparency Act. The Reporting Rule requires certain entities to file beneficial ownership information reports (“BOI Reports”) to FinCEN. This information only needs to be reported once, not annually—unless the company needs to make an update or correction. Reports contain information about the small business itself and two categories of individuals related to the business- “beneficial owners” and “company applicants.” These terms are described in detail in the Small Entity Compliance Guide. In most instances, 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 registered with a Secretary of State (i.e., your attorney, or your board Secretary or President, etc.).

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

- **Domestic Reporting Companies:** 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:** 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.

Exempt Entities (for non-financial service businesses):

There are 23 types of exempt reporting entities. For the purposes of this document, we will only be focusing on the Tax-Exempt Entity, Entity assisting a Tax-Exempt Entity, Large Operating Company, Subsidiary of Certain Exempt Entities, or Inactive Entities.

¹ The Reporting Rule (regulation) 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.



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Tax-Exempt Entity (exemption #19) – An entity qualifies for this exemption if **any** of the following apply:

- The entity is an organization that is described in section 501(c) of the Internal Revenue Code (the “Code”) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code.
- 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.
- 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.
- The entity is a trust described in paragraph (1) or (2) of section 4947(a) of the Code.

Entity assisting a tax-exempt entity (exemption #20) - An entity qualifies for this exemption if:

- The entity operates exclusively to provide financial assistance to, or hold governance rights over, any tax-exempt entity described by Exemption #19.
- The entity is a United States person as defined in section 7701(a)(30) of the Internal Revenue Code.
- 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)).
- 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.

Large Operating Company (exemption #21)- An entity qualifies for this exemption if **all six** of the following apply:

- 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.
- 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).
- 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.
- The 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.
- 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.



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- 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.

Subsidiary of Certain Exempt Entities (exemption #22) - An entity qualifies for this exemption if: 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.

Inactive Entity (exemption #23) - An entity qualifies for this exemption if **all six** of the following apply:

- The entity was in existence on or before January 1, 2020.
- The entity is not engaged in active business.
- 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.
- The entity has not experienced any change in ownership in the preceding twelve-month period.
- 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.
- 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.

[For Full Exempt List Click Here](#)



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It is important to note that though there are no standard BOI reporting requirements for these exemptions, FinCEN may require even exempt entities to provide some statement or form attesting to that exemption, though no such requirement has been announced to date.

If I am not exempt, what do I report?

If you are required to report, you must identify beneficial owners and company applicants. There are exceptions to both.

1. Beneficial Owners

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

Exercises substantial control over a company or owns or controls at least 25 percent of the ownership interests of a company. An individual may be a beneficial owner through substantial control, ownership interests, or both. A company can have more than one beneficial owner.

Ownership interests and substantial control are defined and described further in the Small Entity Compliance Guide in sections 2.1 and 2.2. The guide further describes in section 2.3 ways to identify a company's beneficial owners.

There are five exceptions to the definition of beneficial owner. *As with company and entity exemptions, there may still be special reporting requirements for these individuals.*

Beneficial Owner Exceptions and Special Reporting Requirements

Minor Child

You do not need to report information about a beneficial owner of a company who is a minor child. If this special rule applies, you *may* instead report the required information about the child's parent or legal guardian.

If you report a parent or legal guardian's information instead of a minor child's information, then you must indicate in the beneficial owner report that the information relates to a parent or legal guardian of that minor child. Also of note, when the minor child reaches the age of majority, as defined by the law of the State or Indian tribe in which the company was created or first registered, the exception no longer applies. At that time, if the individual remains a beneficial owner, the company must file an updated report providing the individual's own information.

Nominee, Intermediary, Custodian, or Agent

An individual qualifies for this exception on reporting if the individual is authorized to act on behalf of an actual beneficial owner as the beneficial owner's nominee, intermediary, custodian, or agent. Please note that in circumstances where this exception applies, the beneficial owner for whom the agent or custodian represents must still be reported. This scenario might apply where an agent may appear to have "substantial control" but does not in fact have an ownership interest as an agent of the beneficial owner.

Employee



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An individual qualifies for this exception if:

- 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.
- 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, **AND**
- 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.

Inheritor

An individual qualifies for this exemption if 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. Please note, once the individual **inherits** the interest, this exemption no longer applies, and the individual may qualify as a beneficial owner.

Creditors

An individual qualifies for this exemption if an individual who would meet the definition of a beneficial owner of the company solely through rights or interests for the payment of a predetermined sum of money, such as a debt incurred by the 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.

2. Company Applicants

Not all companies are required to report their company applicants to FinCEN. IF you were formed before January 1, 2024, you DO NOT have to report your company’s applicants. If you register or are formed after that date you must report your applicants. Applicants are divided into two categories: “direct filer” or individuals who control the filing act.

Direct Filers must be identified by all companies who must report applicants. Individuals who control or direct the filing process must be reported when there are two or more individuals involved in the filing of the entity. For example, a senior attorney of retained counsel for your entity instructs a junior attorney to file the registration who then files. Both the senior attorney (controls or directs the filing) and junior attorney (direct filer) would be the applicants of record for reporting purposes.

No company will have more than two company applicants. Section 3 of the Small Entity Compliance Guide goes into further detail and provides examples of these individuals.

3. Reporting Checklist

- Full legal entity name
- Any trade name or “doing business as” (DBA) name



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- Complete current U.S. address- this may be the address of the principal place of business in United States, or, if 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 formed company only, also report 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 Applicant²
 - 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, a foreign passport.

Special Reporting Rules for Certain Exempt Reporting Entities

Owned by exempt entity (for complete exemption list see [here](#)): You do not need to report information about any beneficial owner whose ownership interests in a company are held through one or more entities, all of which are themselves exempt from reporting. 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 (Exemption #21). Individual A owns 50% of the large operating company, and therefore owns 25% of the ownership interests in your company (50% × 50% = 25%). You may report the name of the large operating company instead of Individual A's personal information.

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 required to report 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

² only if formed or registered on or after January 2024



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information about the individual who has the greatest authority over the strategic management of the company.

If I qualify, when do I need to file a report?

Starting on January 1, 2024, BOI reports must be filed electronically using FinCEN's secure filing system.

- 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, and before January 1, 2025, have **90 calendar days** after receiving actual or public notice that their company's creation or registration is effective to file their initial BOI reports. Specifically, this 90-calendar 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.
- Reporting companies created or registered on or after January 1, 2025, will have 30 calendar days from actual or public notice that the company's creation or registration is effective to file their initial BOI reports.

FinCEN identifier – What is it and how do 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 may only receive one FinCEN identifier. FinCEN's Small Entity Compliance Guide includes additional information on FinCEN identifiers in Chapter 4.3, “What is a FinCEN identifier and how can I use it?”

Are FinCEN identifiers required?

No. An individual or reporting company is not required to obtain a FinCEN identifier.

How can I use a FinCEN identifier?

When an individual who is a beneficial owner or company applicant has obtained a FinCEN identifier, reporting companies may report the FinCEN identifier of that individual in the place of that individual's otherwise required personal information on a beneficial ownership information report.

The use of FinCEN identifiers obtained by reporting companies is the subject of ongoing rulemaking. FinCEN anticipates providing additional guidance when that rulemaking is finalized.

How do I request a FinCEN identifier?

Individuals will be able to request a FinCEN identifier on or after January 1, 2024, by completing an electronic web form. Individuals will need to provide their full legal name, date of birth, address, unique



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identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document. After an individual submits this information, the individual will immediately receive a FinCEN identifier unique to that individual.

Reporting companies may request a FinCEN identifier by checking a box on the beneficial ownership information report when they submit the report. After the reporting company submits the report, the reporting company will immediately receive a FinCEN identifier unique to that company. If a reporting company wishes to request a FinCEN identifier after submitting its initial beneficial ownership report, it may submit an updated beneficial ownership information report requesting a FinCEN identifier, even if the company does not otherwise need to update its information.

What if I don't report? How is the law enforced?

Under Title 31 USC § 5336(h)(1), the willful provision of or an attempt to provide false or fraudulent beneficial ownership information, or the willful failure to report complete or updated beneficial ownership information to FinCEN may result in a civil or criminal penalties including civil penalties of up to \$500 per day the violation continues, and potential criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000.³ Please note, senior officers of an entity that fails to file a required BOI report may be held accountable for that failure. It is important to report any changes, updates or even initial reporting as soon as possible. Under Title 31 USC § 5336(h)(3)(C), if a person voluntarily submits a report correcting the information within 90 days of the original report, then the Corporate Transparency Act creates a “safe harbor” from penalty. There are several exceptions to this safe harbor defense and these sections should be reviewed carefully when reporting.

Where can I find additional information about BOI reporting?⁴

- 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.

³ § 5336(h)(3) discusses Civil and Criminal Penalties for an individual's willful failure to report or providing a false report. Please refer to this subsection for further information.

⁴ FinCEN ID FAQ - [Beneficial Ownership Information Reporting | FinCEN.gov](http://www.fincen.gov/boi-faqs)
FinCEN ID Application - [FinCEN ID | Financial Crimes Enforcement Network \(FinCEN\)](http://www.fincen.gov/boi-faqs)
Beneficial Ownership Information Filing System (Reporting) - [BOI E-FILING \(fincen.gov\)](http://www.fincen.gov/boi-faqs)
FAQ - [Beneficial Ownership Information Reporting | FinCEN.gov](http://www.fincen.gov/boi-faqs)
For Help - [FRC Contact Us | FinCEN.gov](http://www.fincen.gov/boi-faqs)