

# Upcoming Conference Opportunities

## Mid-South Agricultural & Environmental Law Conference

**June 6-7, 2024**

**University of Memphis Cecil C. Humphreys School of Law**



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## Western Agricultural & Environmental Law Conference

**June 13-14, 2024**

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# Beneficial Ownership Information Reporting

**MARCH 20, 2024**





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# Background and Basics of Beneficial Ownership Information Reporting

# Purpose of Beneficial Ownership Information Reporting

- The Corporate Transparency Act (CTA) was enacted as part of the Anti-Money Laundering Act of 2020 in the National Defense Authorization Act for Fiscal Year 2021, Public Law 116–283.
- The CTA was enacted to prevent money laundering, corrupt financial transactions, and financial terrorism.



# What are Shell Corporations?

- A shell corporation is a legal entity with no (or minimal) employees, customers, business, or assets.
- Although shell corporations serve many legitimate purposes, it's also possible to disguise the identity of interested individuals and the flow of money by layering shell companies on top of each other, "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."



## What is Beneficial Ownership Information Reporting?

- The Corporate Transparency Act (CTA) requires all non-exempted companies to report information about their company AND their beneficial owners to FinCEN, a federal agency, beginning in 2024.



Beneficial Ownership Information (BOI) Reporting

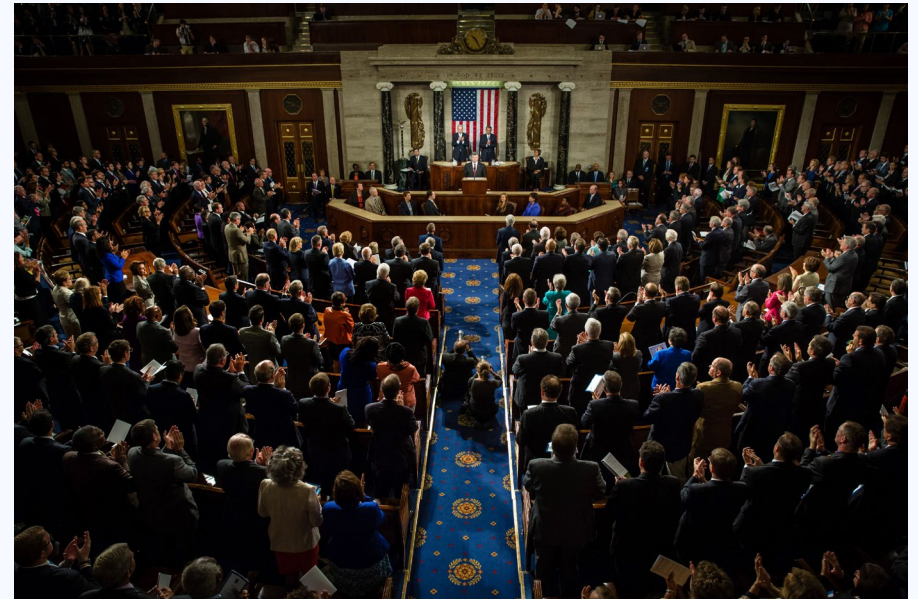
Need to file a BOIR? Click here!

**GET STARTED**

# Who Owns or Controls This Entity?

# History of Beneficial Ownership Information Reporting

- Many in Congress had been attempting for many years to pass legislation to address the problem of shell corporations contributing to financial crimes.
- Both chambers passed this law in 2020, but it was vetoed by the President.
- Two-thirds of Congress voted to override the veto, and it was enacted January 1, 2021.





# Impact of Beneficial Ownership Information Reporting

- There was little fanfare at the time, but the impact of law is **seismic**.
  - States are responsible for business registrations. This law introduces **new federal requirements**.
- This law impacts **SMALL** businesses, not large entities.
- This law will require **more than 32 million businesses**, including small LLCs, corporations, and limited partnerships, to begin filing new reports to disclose their beneficial owners in 2024.



# Administered by FinCEN

- The CTA requires the Financial Crimes Enforcement Network (FinCEN) to establish and maintain a **national registry of beneficial owners of entities** that are otherwise not subject to disclosure regulations.
  - **FinCEN is a bureau of the U.S. Treasury.**
- Unauthorized use or disclosure of beneficial ownership information (BOI) may be subject to criminal and civil penalties.
  - The information will not be made public.



## Narrow Disclosure Authorized

- In furtherance of these goals, the CTA authorizes FinCEN to share the collected information with government agencies, financial institutions, and financial regulations, subject to safeguards and protocols.



# This is Not a Tax Law

- The CTA, although administered by the Treasury Department, is not tax legislation.
- The IRS has no oversight or involvement in the law's implementation.





# Final Regulations

- On September 22, 2022, FinCEN issued **final regulations, 31 CFR § 1010.380**, which went into effect **January 1, 2024**.
- The regulations supply the details of complying with the law.

## **§ 1010.380 Reports of beneficial ownership information**

*(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) Any domestic reporting company created on or after January 1, 2024 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.

## How Does the CTA Overlap with the Bank Secrecy Act?

- Banks have long reported beneficial ownership information of their entity clients to FinCEN. The new BOI reporting rules complicate the bank's job.
- If a reporting company grants permission, the bank can access the FinCEN report to verify information is consistent.
- New rule for Access is here: <https://www.govinfo.gov/content/pkg/FR-2023-12-22/pdf/2023-27973.pdf>
- Customer Due Diligence Rule will also be updated.

### Bank Secrecy Act Filing Information



## When Must Reports Be Filed?

- Reporting companies created or registered before January 1, 2024, have one year (**until January 1, 2025**) to file their initial reports.
- Reporting companies created or registered after January 1, 2024, but before January 1, 2025, have **90 days after creation to file their first report**.
- Reporting companies created on or after January 1, 2025, will have **30 days after creation or registration** to file their initial reports.
- Once the initial report has been filed, both existing and new reporting companies will have to **file updates within 30 days** of a change in their beneficial ownership information.
  - Any reporting company that no longer meets the requirements of an exemption from reporting shall file its report within 30 calendar days after it no longer qualifies for the exemption.

## But Wait...Is this Law Constitutional?

- On March 1, 2024, in the case of *National Small Business United v. Yellen*, No. 5:22-cv-01448 (N.D. Ala.), a federal district court in the Northern District of Alabama, Northeastern Division, entered a final declaratory judgment, concluding that the **Corporate Transparency Act exceeds the Constitution's limits on Congress's power** and enjoining the Department of the Treasury and FinCEN from enforcing the CTA against the plaintiffs.



# Notice of Appeal Filed

- The Justice Department, on behalf of the Department of the Treasury, filed a Notice of Appeal on March 11, 2024.
- <https://cases.justia.com/federal/district-courts/alabama/alndce/5:2022cv01448/183445/51/0.pdf?ts=1709398196>

<b>NATIONAL SMALL BUSINESS</b>	)	
<b>UNITED, d/b/a the NATIONAL</b>	)	
<b>SMALL BUSINESS</b>	)	
<b>ASSOCIATION, <i>et al.</i>,</b>	)	
	)	
<b>Plaintiffs,</b>	)	
	)	
<b>v.</b>	)	<b>Case No. 5:22-cv-1448-LCB</b>
	)	
<b>JANET YELLEN, in her official</b>	)	
<b>capacity as Secretary of the</b>	)	
<b>Treasury, <i>et al.</i>,</b>	)	
	)	
<b>Defendants.</b>	)	

# What are the Chances of Law Being Struck Down?

- Keep in mind that Congress' power under the Commerce Clause is very broad.
- In modern times, only a few laws have been struck down using this argument.



## How Does Litigation Impact Filing Requirements?

- While this litigation is ongoing, FinCEN will **continue to implement the Corporate Transparency Act as required by Congress**, while complying with the court's order.
- FinCEN has said that it **will not enforce the CTA against the plaintiffs** in that action: Isaac Winkles, reporting companies for which Isaac Winkles is the beneficial owner or applicant, the National Small Business Association, and members of the National Small Business Association (as of March 1, 2024) (approximately 65,000 members).
  - Only those individuals and entities are not required to report beneficial ownership information to FinCEN at this time.

## How Might Pending Litigation Impact Filing Decisions?

- Newly formed entities **MUST file** within 90 days.
- Entities existing before January 1, 2024, **may** want to wait a bit before filing to see if any new developments arise.
  - Reports for these entities **MUST be filed** by January 1, 2025.





## Filing Details: Who, What, How?

## Who: Reporting Companies

- The rule identifies two types of reporting companies: domestic and foreign. **Domestic reporting companies** are corporations, limited liability companies (LLCs), or **any entities 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.**
- This generally means that limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships are also required to file reports if they are not otherwise exempt. Single-member LLCs, disregarded for tax purposes, **are not exempt** from the reporting requirements.

# Who: Reporting Companies

Entity Type	Reporting Entity (unless exempted?)
LLC	Yes
SMLLC	Yes
General Partnership	No
Sole Proprietorship	Not unless corporation or LLC
Limited Partnership	Yes
S Corporation	Yes
C Corporation	Yes
Trust	Not unless required to file with Secretary of State, but trustees or beneficiaries may be beneficial owners of other reporting entities

# Exceptions to Reporting

- The FinCEN rule lists 23 types of entities that are specifically **excepted** from reporting requirements.
- These are generally excluded from the reporting requirements because other laws regulate these entities and separately require disclosure of BOI.
- Be very careful about looking just at categories. Devil is in the details.

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



# Exceptions to Reporting – Some Examples

- **Large Operating Companies** are exempt if:
  - They employ more than 20 full-time employees in the United States.
  - They have filed a Federal U.S. income tax return for the previous year that showed more than \$5,000,000 in gross receipts or sales.
  - They operate from physical premises in the United States.

**L.4. If I own a group of related companies, can I consolidate employees across those companies to meet the criteria of a large operating company exemption from the reporting company definition?**

No. The large operating company exemption requires that the entity itself employ more than 20 full-time employees in the United States and does not permit consolidation of this employee count across multiple entities.

*FinCEN's [Small Entity Compliance Guide](#) includes a checklist for this exemption (see exemption #21).*

[Issued November 16, 2023]

# Exceptions to Reporting – Tax Exempt Entities

## 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 <a href="#">Internal Revenue Code of 1986</a> (Code) (determined without regard to section 508(a) of the <a href="#">Code</a> ) and exempt from tax under section 501(a) of the <a href="#">Code</a> .	<input type="checkbox"/> Yes <input type="checkbox"/> No
2. The entity is an organization that is described in section 501(c) of the <a href="#">Code</a> , and was exempt from tax under section 501(a) of the <a href="#">Code</a> , 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 <a href="#">Code</a> , that is exempt from tax under section 527(a) of the <a href="#">Code</a> .	<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 <a href="#">Code</a> .	<input type="checkbox"/> Yes <input type="checkbox"/> No

# Exceptions to Reporting – Inactive Entities

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. A United States person is defined in section 7701(a)(30) of the [Internal Revenue Code of 1986](#) as a citizen or resident of the United States, domestic partnership and corporation, and other estates and trusts.
- (4) The entity has not experienced any change in ownership in the preceding twelve-month period.
- (5) The entity has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelve-month period.
- (6) The entity does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity.

## Who: Beneficial Owners

- In general, **beneficial owners** are individuals who:
  1. directly or indirectly exercise “**substantial control**” over the reporting company, or
  2. directly or indirectly **own or control 25%** or more of the “ownership interests” of the reporting company.

# Substantial Control

- Individuals have **substantial control** of a reporting company if they direct, determine, or exercise substantial influence over important decisions of the reporting company. [31 CFR § 1010.380(d)(1)]. This includes:
  - Senior officers such as chief financial officers, chief executive officers, general counsel, chief operating officers, or any other similar positions, regardless of title
  - An individual with authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body)
  - An individual who directs, determines, or has substantial influence over important decisions made by the reporting company
  - An individual with any other form of substantial control over the reporting company.



# Direct or Indirect Substantial Control

- Individuals *may* **directly or indirectly** (including as a trustee of a trust or similar arrangement) exercise substantial control over a reporting company through:
  - Board Representation (case by case analysis)
  - Ownership or control of a majority of the voting power or voting rights
  - Rights associated with any financing arrangement or interest in the company
  - Control over one or more intermediary entities that separately or collectively exercise substantial control
  - Nominee arrangements
  - Any other contract, relationship, understanding, etc.

## Direct or Indirect Substantial Control

- Based on the breadth of the substantial control definition, FinCEN has stated that it expects **a reporting company will identify at least one beneficial owner** under that definition, regardless of whether:
  - any individual satisfies the ownership definition, or
  - exclusions to the definition of beneficial owner apply

# Ownership Interests

- Ownership interest (for purposes of determining whether an individual directly or indirectly owns or controls 25% or more of the “ownership interests” of the reporting company) includes:
  - Any equity in stock or similar instruments (does not matter if it comes with voting rights)
  - Any capital or profit interest
  - Any instrument that is convertible to an equity or capital or profit interest, even if consideration would be required and even if the instrument is characterized as debt
  - Any put, call, straddle or other option to buy an equity interest (unless the reporting company has no knowledge)
  - Any other instrument, contract, etc. used to establish ownership

# Ownership Or Control Interests

- Individuals may directly or indirectly own or control an ownership interest through an arrangement, relationship, or contract, including:
  - Through joint ownership
  - Through an interest where **another individual** acts as the nominee or custodian
  - With regard to a trust that holds an ownership interest
    - As a trustee with authority to dispose of assets
    - As a beneficiary who
      - Is the sole permissible recipient of income and principal from the trust
      - Has the right to demand a distribution or withdraw substantially all of the assets
    - As a grantor who has the right to revoke the trust or withdraw the assets
  - Through ownership or control of intermediary entities

# Exclusions from Definition of Beneficial Owner

- Beneficial owners **do not include**:
  - Minor children, as long as the reporting company reports the required information of the parent or legal guardian and states that they are the parent or legal guardian of a minor (report must be updated when minor reaches the age of majority)
  - An individual acting as a nominee, intermediary, custodian, or agent on behalf of another person.
  - An employee of a reporting company acting solely as an employee (as long as the person is not a senior officer)
  - An individual whose only interest is a future interest through a right of inheritance
  - A creditor of a reporting company



## Who: Company Applicants

- Companies created or registered **on or after January 1, 2024**, are required to report the **company applicants**, in addition to beneficial owners.
- **Company Applicants** include:
  - 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.
- Companies created or registered **before January 1, 2024**, are required to report only beneficial owners.

# Who: Company Applicants

## **E. 3. Is my accountant or lawyer considered a company applicant?**

An accountant or lawyer could be a company applicant, depending on their role in filing the document that creates or registers a reporting company. In many cases, company applicants may work for a business formation service or law firm.

An accountant or lawyer may be a company applicant if they directly filed the document that created or registered the reporting company. If more than one person is involved in the filing of the creation or registration document, an accountant or lawyer may be a company applicant if they are primarily responsible for directing or controlling the filing.

For example, an attorney at a law firm that offers business formation services may be primarily responsible for overseeing preparation and filing of a reporting company's incorporation documents. A paralegal at the law firm may directly file the incorporation documents at the attorney's request. Under those circumstances, the attorney and the paralegal are both company applicants for the reporting company.

[Issued September 18, 2023]

## What: Reporting Details

- A **reporting company** must disclose:
  - its full legal name and any trade name or DBA;
  - a complete address, including the street address of the principal place of business for U.S. companies and primary U.S. location for other businesses;
  - the State, Tribal, or foreign jurisdiction in which it was formed or first registered, depending on whether it is a U.S. or foreign company; and
  - its Taxpayer Identification Number (TIN) (i.e., EIN)

# What: Reporting Details

- For each **beneficial owner** and each **company applicant** (if required), the company must provide the individual's:
  - full legal name
  - birthdate
  - a complete address
    - For company applicants who form or register an entity, this includes the street address of the company applicant. For all individuals, beneficial owners and applicants, the address must be the residential street address of the individual.
- an identifying number from a non-expired driver's license, passport, or other approved document for each individual, **as well as an image** of the document from which the document was obtained

## What: FinCEN Identifier

- An individual (beneficial owner or company applicant) or reporting company may obtain a **FinCEN identifier** by submitting an application at or after the time that the reporting company submits its initial report.
- Each identifier is specific to the individual or reporting company.
- If an individual has obtained a FinCEN identifier, the reporting company may use that identifier in its report instead of listing all of the required information for the individual.
- **A reporting company uses its FinCEN identifier to submit updated reports, as required.**



# What: FinCEN Identifier

## **M.3. How do I request a FinCEN identifier?**

Individuals may request a FinCEN identifier starting January 1, 2024, by completing an electronic web form at <https://fincenid.fincen.gov>. Individuals will need to provide their full legal name, date of birth, address, unique identifying number and issuing jurisdiction from an acceptable identification document, and an image of the identification document. After an individual submits this information, they will immediately receive a unique FinCEN identifier.

## What: FinCEN Identifier

**M.6. Is there any way to deactivate an individual's FinCEN identifier that is no longer in use so that the individual no longer has to update the information associated with it?**

FinCEN is actively assessing options to allow individuals to deactivate a FinCEN identifier so that they do not need to update the underlying personal information on an ongoing basis. FinCEN will provide additional guidance on this functionality upon completion of that process.

[Issued September 29, 2023]

# How to File

<https://boiefiling.fincen.gov>

## File the Beneficial Ownership Information Report (BOIR)

Select the filing method that works best for you:



### File PDF BOIR

- Adobe Reader is required
- Prepare report offline at your own pace, save as you go
- Reuse PDF BOIR when filing updates/corrections
- Download BOIR transcript upon submission

[Prepare BOIR](#)

[Submit BOIR](#)

# How to File



**WEB**

## **File Online BOIR**

- Adobe Reader NOT required
- Prepare report online and submit now
- Prepare new Online BOIR when filing updates/corrections
- Download BOIR transcript upon submission

**Prepare & Submit BOIR**

# How to File – Third Parties

FinCEN also offers system-to-system BOIR transmission via secure Application Programming Interface (API) for those, including third-party service providers, who are interested in automating the BOIR filing process:



**API**

## **System-to-System API**

If you are interested in this method of filing, select the button below to contact FinCEN and one of our representatives will reach out.

**Contact FinCEN for API Information**



# FINANCIAL CRIMES ENFORCEMENT NETWORK

<https://boiefiling.fincen.gov/help>

**BOI E-FILE**

**FILE BOIR**

**HELP**

## Help & Resources

- [Beneficial Ownership Information Report \(BOIR\) Filing Instructions](#)
- [PDF BOIR Filing Method: Quick Reference Guide](#)
- [PDF BOIR Filing Method: Step-by-Step Instructions](#)
- [Online BOIR Filing Method: Quick Reference Guide](#)
- [Online BOIR Filing Method: Step-by-Step Instructions](#)





# Beneficial Ownership Information Report

OMB No. 1506-0076

Version Number: 1.0

Release Date: 02-02-2024

## Report Preparation & Submission Instructions:

Instructions

1. Complete the report in its entirety with all required information. Click **Instructions** for help.

Validate

2. Click **Validate** to ensure all entered data is properly formatted and that all required fields are completed.

Finalize

3. Click **Finalize** to lock the entries in the report and prepare it for submission. Click **Edit Report** to unlock and re-edit.

Save

4. Click **Save** to retain a local copy of the report (this can be done at any time during report preparation).

Print

5. (Optional) Click **Print** to print a hard copy of your completed report.

Ready To File

6. Select **Ready to File** (activated after the report is finalized and saved locally) to begin the submission process.

# Filing Information

1. \*Type of filing:

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

*Reporting Company information associated with most recent report, if any:*

- e. Legal name
- f. Tax Identification type
- g. Tax Identification number
- h. Country/Jurisdiction *(if foreign tax ID*

2. Date prepared *(auto-filled when form is finalized)*

## Part I. Reporting Company Information

3. Request to receive FinCEN Identifier (FinCEN ID)

4. Foreign pooled investment vehicle

### Full legal name and alternate name(s):

5. \* Reporting Company legal name

6. Alternate name (e.g. trade name, DBA)



### Form of identification:

7. \* Tax Identification type

8. \* Tax Identification number

9. Country/Jurisdiction *(if foreign tax ID only)*

### Jurisdiction of formation or first registration:

10. \* a. Country/Jurisdiction of formation

### Domestic Reporting Company:

b. State of formation

c. Tribal jurisdiction of formation

d. Name of the other Tribe

# How to File - Reporting Company Information

## Current U.S. Address:

11. \* Address (number, street, and apt. or suite no.)

12. \* City

13. \* U.S. or U.S. Territory

14. \* State

15. \* ZIP Code

16. Existing Reporting Company

*(check if Reporting Company was created or registered before January 1, 2024)*

Company Applicant FinCEN ID:

18. **FinCEN ID**

Full legal name and date of birth:

19. \* Individual's last name

20. \* First name

21. Middle name

22. Suffix

23. \* Date of birth

Current address:

24. \* Address type

a. Business address     b. Residential address

25. \* Address (number, street, and apt. or suite no.)

26. \* City

27. \* Country/Jurisdiction

28. \* State

29. \* ZIP/Foreign postal code

**Form of identification and issuing jurisdiction:**

30. \* Identifying document type

31. \* Identifying document number

32. \* Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

33. \* Identifying document image



# How to File - Company Applicant Information

## Form of identification and issuing jurisdiction:

30. \* Identifying document type

31. \* Identifying document number

32. \* Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

33. \* Identifying document image

Form of identification and issuing jurisdiction:

30. \* Identifying document type

31. \* Identifying document number

32. \* Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

33. \* Identifying document image

State-issued driver's license

State/local/tribe-issued ID

U.S. passport

Foreign passport

Add Attachment

Remove Attachment

### Part III. Beneficial Owner Information

of



35. Parent/Guardian information instead of minor child  (check if the Beneficial Owner is a minor child and the parent/guardian information is

#### Beneficial Owner FinCEN ID:

36. FinCEN ID

#### Exempt entity:

37. Exempt entity

#### Full legal name and date of birth:

38. \* Individual's last name or entity's legal name.

39. \* First name

40. Middle name

41. Suffix

42. \* Date of birth

# How to File - Beneficial Owner Information

## Residential address:

43. \* Address (number, street, and apt. or suite no.)

44. \* City

45. \* Country/Jurisdiction

46. \* State

47. \* ZIP/Foreign postal code

**Form of identification and issuing jurisdiction:**

48. \* Identifying document type

49. \* Identifying document number

50. \* Identifying document issuing jurisdiction:

a. Country/Jurisdiction

b. State

c. Local/Tribal

d. Other local/Tribal description

51. \* Identifying document image

# Updating Reports

- FinCEN began accepting reports electronically on January 1, 2024. The person filing the report **is required to certify that the report is true, correct, and complete.**
- Once a reporting company has filed its first report, it must file a new report any time the reported information changes, making the prior report inaccurate. **Reporting companies will have 30 days to report any changes or updates to reported information.**
- The 30 days begins after the company **becomes aware of or has reason to know of** an inaccuracy in a prior report.
- Any reporting company that no longer meets the requirements of an exemption from reporting shall file its report within 30 calendar days after it no longer qualifies for the exemption.

# Updating Reports

## H. Updated Report

### **H.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.

A reporting company is not required to file an updated report for any changes to previously reported information about a company applicant.

# When Must Reports Be Updated?

## **Death of Beneficial Owner**

If an individual becomes a beneficial owner by virtue of rights transferring at the death of another, a change is deemed to occur when the estate of the deceased beneficial owner is settled, either through the operation of intestacy laws or through a testamentary disposition. An updated report must identify any new beneficial owners.



# When is New Document Image Required?

## **Change in Document Image**

A change must be reported with respect to a document image only when the name, date of birth, address, or unique identifying number of the document changes.

**H.4. 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 entire new BOI report?**

Updated BOI reports will require all fields to be submitted, including the updated pieces of information. For example, if a reporting company changes its legal name, the reporting company will need to file an updated BOI report to include the new legal name and the previously reported, unchanged information about the company, its beneficial owners, and, if required, its company applicants.

A reporting company that filed its prior BOI report using the fillable PDF version may update its saved copy and resubmit to FinCEN. If a reporting company used FinCEN's web-based application to submit the previous BOI report, it will need to submit a new report in its entirety by either accessing FinCEN's web-based application to complete and file the BOI report, or by using the PDF option to complete the BOI report and upload to the BOI e-Filing application.

[Issued December 12, 2023]

### **PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE**

This notice is given under the Privacy Act of 1974 (Privacy Act) and the Paperwork Reduction Act of 1995 (Paperwork Reduction Act). The Privacy Act and Paperwork Reduction Act require that FinCEN inform persons of the following when requesting and collecting information in connection with this collection of information. This collection of information is authorized under 31 U.S.C. 5336 and 31 C.F.R. 1010.380. The principal purpose of this collection of information is to generate a database of information that is highly useful in facilitating national security, intelligence, and law enforcement activities, as well as compliance with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law. Pursuant to 31 U.S.C. 5336 and 31 C.F.R. 1010.380, reporting companies and certain other persons must provide specified information. The provision of that information is mandatory and failure to provide that information may result in criminal and civil penalties. The provision of information for the purpose of requesting a FinCEN Identifier is voluntary; however, failure to provide such information may result in the denial of such a request. Generally, the information within this collection of information may be shared as a "routine use" with other government agencies and financial institutions that meet certain criteria under applicable law. The complete list of routine uses of the information is set forth in the relevant Privacy Act system of record notice available at <https://www.federalregister.gov/documents/2023/09/13/2023-19814/privacy-act-of-1974-system-of-records>. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 1506-0076. It expires on November 30, 2026. The estimated average burden associated with this collection of information from reporting companies is 90 to 650 minutes per respondent for reporting companies with simple or complex beneficial ownership structures, respectively. The estimated average burden associated with reporting companies updating information previously provided is 40 to 170 minutes per respondent for reporting companies with simple or complex beneficial ownership structures, respectively. The estimated average burden associated with this collection of information from individuals applying for FinCEN identifiers is 20 minutes per applicant. The estimated average burden associated with individuals who have obtained FinCEN identifiers updating information previously provided is 10 minutes per individual. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Financial Crimes Enforcement Network, P. O. Box 39, Vienna, VA 22183, Attn: Policy Division.



# Penalties for Noncompliance

## Penalties for Noncompliance

- The rule states that 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 the new law.

# Penalties for Noncompliance

## **K.2. 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. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

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# Penalties for Noncompliance

- The final rule clarifies that a person is considered to have failed to report complete or updated BOI **if the person causes the failure or is a senior officer of the entity at the time of the failure.**
- A penalty safe harbor applies to companies that discover an inaccuracy and file a corrected report within 90 days of the filing of an initial report.



# Who is Responsible?

## **K.3. Who can be held liable for violating BOI reporting requirements?**

Both individuals and corporate entities can be held liable for willful violations. This can include not only an individual who actually files (or attempts to file) false information with FinCEN, but also anyone who willfully provides the filer with false information to report. Both individuals and corporate entities may also be liable for willfully failing to report complete or updated beneficial ownership information; in such circumstances, individuals can be held liable if they either cause the failure or are a senior officer at the company at the time of the failure.

### **i. Can an individual who files a report on behalf of a reporting company be held liable?**

Yes. An individual who willfully files a false or fraudulent beneficial ownership information report on a company's behalf may be subject to the same civil and criminal penalties as the reporting company and its senior officers.

# Small Business Compliance Guide (Best Resource)

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

## Small Entity Compliance Guide

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# Who Can Assist?



# Who Can Assist?

## **B.8. 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. When submitting the BOI report, individual filers should be prepared to provide basic contact information about themselves, including their name and email address or phone number.

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# Who Can Assist?

**B.7. Is a reporting company required to use an attorney or a certified public accountant (CPA) to submit beneficial ownership information to FinCEN?**

No. FinCEN expects that many, if not most, reporting companies will be able to submit their beneficial ownership information to FinCEN on their own using the [guidance](#) FinCEN has issued. Reporting companies that need help meeting their reporting obligations can consult with professional service providers such as lawyers or accountants.

# Practice of Law?

<https://www.cpai.com/Education-Resources/my-firm/Tax-Services/What-accounting-firms-need-to-know-about-CTA>

AICPA alert provides great discussion of risks to consider when determining a course of action.

Engagement letters are important for professionals.

States are responsible for determining boundaries of unauthorized practice of law.

# Practice of Law?

## *CTA and the unauthorized practice of law (“UPL”)*

Like the Report of Foreign Bank and Financial Accounts (“FBAR”), CTA is administered by FinCEN. However, unlike FBAR, to date no grant of authority designating the IRS as an enforcement agent for CTA has been conferred.

Accountants have a limited grant to “interpret” tax law under Title 26 of the U.S. Code (Internal Revenue Code) via Treasury Circular 230 and state accountancy statutes. It is unclear whether interpretation of CTA statutes, which are under Title 31 of the U.S. Code (Money and Finance), is similarly permissible.



# Legal Questions

For legal questions regarding identity of beneficial owners or other concerns, attorney who formed the entity is a great resource.



**Questions?**

