
BOI REPORTING FAQs

GENERAL

What is this new beneficial ownership information (BOI) reporting requirement?

A: This federal law requires certain businesses to report specified information about certain owners and officers to the U.S. Treasury Department's Financial Crimes Enforcement Network (FinCEN) and to timely update any changes. Failure to comply with these requirements can result in significant penalties being imposed.

Wasn't the law struck down by the courts?

A: Yes and no. A federal district court in Alabama did recently rule that the law was unconstitutional, but the court's ruling only made the mandate unenforceable to the plaintiffs who brought the case. All other businesses are still subject to the mandate, meaning if they don't file a required BOI report, they can be subject to the penalties outlined below. A similar case has also been filed in Maine, but no decision had been made on that case when these materials went to press.

PENALTIES

What kind of penalties will be imposed if a reporting company doesn't comply?

A: FinCEN is authorized to impose a civil penalty equal to \$591 (adjusted for inflation) **for each day** of willful noncompliance. There is no cap on the amount that may be imposed.

In addition, criminal penalties of up to \$10,000 and/or imprisonment for up to two years can also be imposed.

What does "willful" noncompliance mean?

A: If similar standards are applied for this penalty as the penalty for failing to comply with the FATCA reporting requirements, then simply being unaware of the requirements or having difficulty obtaining the necessary information will not be an adequate defense. The preamble to the final regulations does state:

"Any assessment as to whether false information was willfully filed would depend on all of the facts and circumstances surrounding the certification and reporting of the BOI [beneficial ownership information], but as a general matter, FinCEN does not expect that an inadvertent mistake by a reporting company acting in good faith after diligent inquiry would constitute a willfully false or fraudulent violation."

Will the penalty only apply to the business?

A: No, it can also be imposed against any person who either causes the failure or is a senior officer of the entity at the time of the failure. This means if a beneficial owner refuses to provide the required information to the entity to report to FinCEN, the owner themselves may be liable for the penalty as well as their senior staff.

WHO MUST FILE?

Which companies are subject to the mandate?

A: Domestic or foreign business entities that file organizational papers or register with a state's Secretary of State's office (or equivalent thereof) must file the BOI report unless a specific exemption applies. The requirement applies to:

- Corporations (both C and S corporations);
- Limited liability companies, including single member LLCs (SMLLCs);
- Limited partnerships and limited liability partnerships; and
- Business trusts if required to file formation papers/register with a Secretary of State's office.

This requirement applies even if the entity does not make a profit or engages solely in passive activities.

Comment

FinCEN estimates that more than 30 million reporting companies will be required to file BOI reports, and more than 3.5 million new entities will be required to file each year.

To which entities doesn't the law apply?

A: The following entities are not required to file the BOI report (unless a state requires them to file formation papers with the SOS's office):

- General partnerships (Note: Delaware requires general partnerships to file formation papers with the SOS office, so Delaware general partnerships would be required to file a BOI report);
- Sole proprietorships (including DBAs). Filing a document with a government agency to obtain (1) an IRS employer identification number, (2) a fictitious business name, or (3) a professional or occupational license does not create a new entity and therefore does not make a sole proprietorship filing such a document a reporting company; and
- Trusts (**Note:** Delaware statutory trusts must file with SOS office, so again would be required to file a BOI report).

It's important to verify a state's SOS filing requirements to determine whether the entities listed above must file a BOI report. For example, most states don't require general partnerships or trusts to file with the SOS office, but as noted above, Delaware requires general partnerships and statutory trusts to file with the SOS office, and therefore these entities must file a BOI report.

In addition, there are numerous exemptions as discussed below.

Does the requirement extend to entities formed/registered in U.S. territories?

A: Yes. This includes entities formed in Puerto Rico, Northern Mariana Islands, American Samoa, Guam, and the U.S. Virgin Islands.

Can a parent company file on behalf of all of its subsidiary companies?

A: No. Any company that meets the definition of a reporting company and is not exempt (see below) must file its own BOI report. A parent company cannot file a single report on behalf of its group of companies.

Are entities suspended with a state's SOS office required to file a report?

A: Yes, unless the entity meets the "inactive entity" exemption discussed below.

EXEMPTIONS

Are there any exemptions?

A: Yes, there are 23 exemptions, but these generally apply to larger businesses, inactive entities (narrowly defined), tax-exempt entities, and other highly regulated companies or industries (see below).

Do exempt entities have to apply for an exemption from the filing requirement?

A: No. However, we recommend that businesses retain documentation supporting their exempt status should they ever be audited.

What happens if an entity newly qualifies for an exemption or no longer qualifies for an exemption?

A: An entity that previously filed a BOI report but newly qualifies for an exemption is required to file an updated report informing FinCEN of its exempt status.

This will frequently happen if an entity forms and then applies for tax-exempt status. Because the tax-exempt status application can take months to approve, an entity will have to file a BOI report with FinCEN when it first forms with the Secretary of State's office and then file an updated report reporting its new exempt status once its application is approved.

An updated report for a newly exempt entity will only require that:

- The entity identify itself; and
- Check a box noting its newly exempt status.
(FinCEN FAQ #J.1)

What is the large operating company exemption?

A: An exemption is available for large operating companies, which are defined as an entity:

- With 20 full-time U.S. employees in the prior year. A full-time employee is an employee who is employed an average of at least 30 hours per week. Employer aggregation rules do not apply;
- With a U.S. physical office; and
- That filed a federal income tax return in the prior year with more than \$5 million in U.S. gross receipts or sales (determined on a consolidated basis for taxpayers filing consolidated returns). Receipts or sales from outside the U.S. are excluded in determining the \$5 million threshold.

Full-time employees

Part-time employees do not count toward the 20 full-time employee threshold. For purposes of the BOI reporting requirements, full-time employees are those who work at least an average of 30 hours per week. There is no full-time equivalency test applied.

What happens if the large operating company's number of employees or gross receipts fluctuate from year to year?

A: Businesses must evaluate their eligibility for the exemption each year based on their number of full-time employees or gross receipts for the prior year.

Example of change in exemption status

In 2023, Rollercoaster, Inc. had 18 full-time employees and gross receipts of \$4.5 million. On January 1, 2025, it files a BOI report with FinCEN.

In 2025, Rollercoaster hires three full-time employees, and its gross receipts reach \$5.1 million.

Rollercoaster must file an updated BOI report in 2026 to report its "newly exempt status."

However, if in 2026, Rollercoaster's gross receipts drop below \$5 million, it must file a new BOI report with FinCEN in 2027.

Are all "inactive" entities exempt from the BOI reporting requirements?

A: No. An entity must meet all of the following criteria to qualify for the inactive entity exemption:

- It was in existence on or before January 1, 2020;
- It is not "engaged in active business" (**Note:** This term is not defined);
- It is not owned by a foreign person (directly, indirectly, wholly, or partially);
- It has not experienced any change in ownership in the last 12 months;
- It has not sent or received any funds in an amount greater than \$1,000 in the preceding 12-month period; and
- It does not otherwise hold any kind or type of assets (domestically or abroad), including any ownership interest in any corporation, LLC, or similar entity.

Are all tax-exempt organizations exempt from the BOI reporting requirements?

A: No. Only the following entities qualify for the tax-exempt entity exemption from the beneficial ownership reporting requirements:

- IRC §501(c) organizations exempt from tax under IRC §501(a);
- IRC §527(a) political organizations;
- IRC §4947(a) charitable trusts; and
- Certain entities providing financial assistance to such entities.

Are homeowners' associations exempt from the BOI reporting requirements?

A: A homeowners' association is only required to file a BOI report if it files organizational papers with the Secretary of State or similar office. However, a homeowners' association that is a tax-exempt IRC §501(c)(4) social welfare organization would qualify for the tax-exempt organization exemption discussed above. A homeowners' association that is tax-exempt under IRC §528, not IRC §501, does not qualify for the tax-exempt organization exemption. Therefore, unless it qualifies under one of the other exemptions (e.g., inactive entity), it must file a BOI report.

Which regulated entities are exempt from beneficial ownership reporting requirements?

A: The following regulated entities are also exempt from the beneficial ownership reporting requirements:

- Public accounting firms required to be registered with the Public Company Accounting Oversight Board pursuant to 15 U.S.C. §7212;
- Security dealers or brokers (as defined in 15 U.S.C. §78c) registered with the Securities Exchange Commission (SEC) under 15 U.S.C. §78o;
- Investment companies and advisers (as defined under 15 U.S.C. §80a-3 or §80b-2) registered with the SEC;
- Venture capital fund advisers described in 15 U.S.C. §80b-3(l) that have filed specified schedules with the SEC;
- Commodity Exchange Act registered entities;
- Insurance companies and state-licensed insurance providers;
- Tax-exempt organizations (generally 501(c) organizations exempt from tax under IRC §501(a), IRC §527(a) political organizations, and IRC §4947(a) charitable trusts) and certain entities providing financial assistance to such entities;
- Securities reporting issuers that issue registered securities and file information reports with the SEC;
- Entities formed by and acting on behalf of a governmental entity;
- Banks, credit unions, depository institution holding companies, and money-transmitting businesses; and
- Public utilities.

Additional information

FinCEN's Small Entity Compliance Guide contains a complete list of all the exemptions as well as a checklist for determining whether a reporting company qualifies. That portion of the guide is available for download at:

 **Website**

www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf

FILING REQUIREMENTS

Is this an annual filing requirement?

A: The initial BOI report must only be filed once. It is not an annual report. However, changes and updates must be filed within specified timelines.

How is the report filed?

A: All beneficial ownership information reports must be filed electronically on the FinCEN portal at:

 **Website**

<https://fincen.gov/boi>

When is the initial report due?

A: The due date for the initial report depends on when the organization was formed, as follows:

- **Entities formed/registered in 2024:** Within 90 calendar days of the earlier of the date on which:
 - It receives actual notice that its creation has become effective or that it is registered to do business; or
 - The Secretary of State (or similar office) provides public notice that the reporting company has been created or registered to do business.
- **Entities in existence prior to January 1, 2024:** No later than January 1, 2025; and
- **Entities formed after 2024:** Within 30 calendar days of the earlier of the date on which:
 - The entity receives actual notice that its creation has become effective or that it is registered to do business; or
 - The Secretary of State (or similar office) provides public notice that the reporting company has been created or registered to do business; and
- **Entities that no longer qualify for an exemption:** Within 30 calendar days after the date that it no longer qualifies for the exemption.

If the entity was dissolved before January 1, 2025, is it still required to file a BOI report?

A: FinCEN regulations and guidance have not specifically addressed this issue, but we do not believe so. How can an entity that is no longer in existence file a report?

INFORMATION TO BE INCLUDED IN THE REPORT

Which information must be included in the BOI report?

A: The reporting company must provide specified information about itself, its beneficial owners (defined below), and for entities formed after 2023, its company applicants (defined below).

Which information must be provided about the reporting company?

A: The reporting company must provide the following information about itself:

- Its full legal name;
- Any of the company's trade or "doing business as" names;
- Its complete current address (if the company's principal place of business is outside the U.S., the street address of the primary location in the U.S. where the reporting company conducts business);
- The state, tribal, or foreign jurisdiction where the company was formed;
- For a foreign reporting company, the state or tribal jurisdiction where the company first registered; and
- The company's taxpayer identification number (TIN), including an EIN (if the foreign reporting company has not been issued a U.S. TIN, a TIN issued by the foreign jurisdiction and the name of the foreign jurisdiction).
(Treas. Regs. §1010.380(b))

 **Practice Pointer**

Note the second item above. Every time a company registers a new trade or “doing business as” name, it must file an updated BOI report.

Which information must be provided about the company’s beneficial owner(s) and company applicant?

A: The company must also report the following information for its beneficial owners and, for entities formed after 2023 only, for its company applicant(s) (defined below) as well:

- The individual’s full legal name and date of birth;
- A complete current residential address (if the company applicant is a business, the business address of the company applicant can be provided);
- A unique identifying number and the issuing jurisdiction from one of the following nonexpired documents issued to the individual:
 - U.S. passport;
 - State, local, or government of Indian tribe identification card;
 - State driver’s license; or
 - If the individual doesn’t have any of the above, a foreign passport; and
- An image of one of the documents listed above. The passport, identification card, license, etc., must be current.

See the FAQs below in the section “Beneficial owner” for information on who is considered a beneficial owner.

 **Practice Pointer**

As mentioned above, anytime one of these items changes (e.g., the owner’s address, name, etc.), an updated BOI report must be filed within 30 days of the change.

One question that has arisen is whether a renewed driver’s license or passport must be submitted if a previously submitted to FinCEN driver’s license, passport, etc., expires. Many commentators are taking the position that if none of the original information contained on the document has changed, then an updated document is not required.

We feel that until FinCEN specifically states the renewed document is not required, that given the large penalty amounts at stake, it is better to be safe than sorry, so we recommend providing FinCEN with the renewed license, passport, etc.

CHANGES AND CORRECTIONS TO REPORTED INFORMATION

When must a company report corrections to its initial report?

A: A reporting company must file a corrected BOI report to FinCEN within 30 calendar days after the date on which the reporting company becomes aware or has reason to know of the inaccuracy. A penalty for failing to comply with the beneficial ownership reporting requirements will not be imposed if the corrected report is filed within 90 calendar days after the date the inaccurate report was filed.

When must a company report any changes to its initial report?

A: A company must file an updated report within 30 days of any changes to the information provided in the initial report concerning the company or any of its beneficial owners.

Practice Pointer

This is going to be a big trap for reporting companies, which must rely on their owners to report to them whenever there is a change in their ownership interests, or if any of the previously reported beneficial owners sells their interest, changes jobs, moves, remarries, divorces, dies, etc.

For example, if a beneficial owner divorces, changes her name back to her maiden name, and moves, the reporting company must provide her “new” name, address, and a new passport or driver’s license showing her new name and address. A change must also be reported when a minor child who is a beneficial owner reaches the age of majority or if an entity newly qualifies for an exemption and is no longer considered a “reporting company.”

When must a company report the death of one of its beneficial owners?

A: Within 30 days of the settlement of the deceased’s estate. The updated report must also report on any new beneficial owners, if applicable.

Checklist of Items that Must Be Updated for Beneficial Owners		
<p>Make sure your clients understand that they must report any changes to the following information for their beneficial owners, including their senior officers.</p> <p><i>If the answer to any of these questions is yes, then the beneficial ownership information listed above must be obtained and reported to FinCEN within 30 days of the change.</i></p>		
Change in ownership		
	Yes	No
Did the owners sell their shares/interest? Did this result in their interests falling below 25%? Did this result in anyone obtaining at least a 25% interest?	<input type="checkbox"/>	<input type="checkbox"/>
Was the owner's ownership interest transferred as a result of the owner's death?	<input type="checkbox"/>	<input type="checkbox"/>
If the owner lives in a community property state, did the owner marry?	<input type="checkbox"/>	<input type="checkbox"/>
Was there a change in ownership due to divorce?	<input type="checkbox"/>	<input type="checkbox"/>
Did a minor child reach the state's age of majority (age 18, 19 or 21)?	<input type="checkbox"/>	<input type="checkbox"/>
Change in senior officers		
	Yes	No
Was there a change in personnel in any senior officer (e.g., CFO, CEO, COO, general counsel, president, certain vice-presidents) position (e.g., due to retirement, resignation, termination), or were senior officer duties reorganized to encompass additional personnel?	<input type="checkbox"/>	<input type="checkbox"/>
Change in information previously reported		
	Yes	No
<p>Did a beneficial owner:</p> <ul style="list-style-type: none"> • Move; • Change their name (either due to divorce, marriage, other change in circumstances); • Renew or replace their passport (if so, they will have been given a new passport number that must be reported); or • Replace their driver's license/state ID after it expired? 	<input type="checkbox"/>	<input type="checkbox"/>
<p>Note: In any of the situations above, not only will the information need to be updated with FinCEN, but the owner will also have to provide an updated image of their driver's license or passport.</p>		

FinCEN IDENTIFIERS

What if the beneficial owner and/or company applicant does not want to provide this personally identifiable information to the company?

A: The owner/applicant can apply to FinCEN for a FinCEN identifier number and can provide the FinCEN identifier number to the company to put in its report in lieu of all the information listed above. The company/owner must supply the same information listed above to FinCEN, but on the

beneficial ownership report that is actually filed, the FinCEN identifier would be supplied in lieu of the above-listed information.

If the individual's or company's information changes in any manner, the individual must provide updates or corrections to FinCEN within 30 days, rather than putting the onus on the company.

Comment

Reporting companies may also want to require their beneficial owners to obtain a FinCEN number so responsibility for tracking updated and correct information is shifted from the reporting company to the owner(s). Although, it may be much more difficult to get all beneficial owners to agree to this.

Who should file for a FinCEN identifier?

A: This will be a personal choice for all beneficial owners/company applicants, but we recommend this option if an individual is a beneficial owner of numerous reporting companies or acts as a company applicant for numerous companies. It is much more efficient for an owner to obtain a FinCEN identifier and only be required to report a change once to FinCEN if anything changes rather than making sure that all the various entities in which they are involved have been notified and minimizes the risk of being subject to significant penalties.

This is also a good option for company applicants who will likely not want to share their personal information with the companies they are assisting in forming.

How do you obtain a FinCEN identifier?

A: Individuals may request a FinCEN identifier by completing an electronic web form at:

 Website

<https://fincenid.fincen.gov>

Individuals must 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.

BENEFICIAL OWNER

Who is a beneficial owner?

A: For purposes of the BOI reporting requirements, a reporting company's beneficial owner(s) is any **individual** who, directly or indirectly, either:

- Exercises substantial control over the reporting company ("substantial control" is defined below); or
- Owns or controls at least 25% of the reporting company's ownership interests. (Treas. Regs. §1010.380(d))

A beneficial owner does not include corporate or other entity owners. However, as we'll discuss below, an individual owner may be a beneficial owner as a result of tiered entity relationships.

Comment

It's important to understand that beneficial ownership is much broader than the owners of record, who may receive a K-1 from a passthrough entity or who may be listed on Form 1125-E, Compensation of Officers, or Schedule B-1, Information on Certain Shareholders, of an S corporation.

There is no limit on the number of beneficial owners an entity may have.

Example of multiple beneficial owners

Triple T, LLC is a three-member manager-managed LLC with three members, each holding a one-third interest in the LLC. The LLC also has a president, chief financial officer, and chief executive officer. Even though none of the members manage the LLC, all three are beneficial owners because they each own more than 25% of the LLC interest. In addition, the president, CFO, and CEO are all senior officers who exercise substantial control of the LLC and are therefore also considered beneficial owners.

Triple T, LLC must include six beneficial owners on its beneficial ownership report.

Are there any exceptions to this broad definition of beneficial owners?

A: The following are not beneficial owners:

- A minor child (under state law), as long as the reporting entity provides the required information for the parent or legal guardian;
- An employee of the reporting company, acting solely as an employee and not as a senior officer, as long as their control or economic benefit from the entity derives solely from their employment status;
- An individual whose only interest in the company is a future interest through right of inheritance;
- A creditor of a reporting company; and
- An individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual.

(Treas. Regs. §1010.380(d)(4))

Minor child comes of age

Once a minor child reaches the age of majority, as defined by the state or tribal law under which the company is first created (or registered, if a foreign company), the company must file an updated beneficial ownership report to report the information for the now-adult child.

It's important for reporting companies to track when any of their minor-aged owners will "come of age."

Are accountants and attorneys automatically treated as beneficial owners?

A: No. Accountants, tax professionals, and lawyers generally do not qualify as beneficial owners, but that may depend on the work being performed.

Accountants and lawyers who provide general accounting or legal services are not considered beneficial owners because ordinary, arms-length advisory or other third-party professional services to a reporting company are not considered to be "substantial control."

In addition, a lawyer or accountant who is designated as an agent of the reporting company may qualify for the “nominee, intermediary, custodian, or agent” exception from the beneficial owner definition.

However, an individual who holds the position of general counsel in a reporting company is a “senior officer” of that company and is therefore a beneficial owner. (FinCEN FAQs D.6 and Small Business Compliance Guide)

SUBSTANTIAL CONTROL

What is substantial control?

A: An individual has substantial control and must be included in the BOI report if the individual:

- Is a senior officer of the reporting company (e.g., a president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other office (regardless of official title) who performs a similar function);
- Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- Directs, determines, or has substantial influence over important matters affecting the reporting company, including but not limited to:
 - The nature, scope, and attributes of the company’s business, including the sale, lease, mortgage, or other transfer of any of the company’s principal assets;
 - The reorganization, dissolution, or merger of the company;
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the company’s operating budget;
 - The selection or termination of the company’s business lines or ventures, or geographical focus;
 - Senior officer compensation schemes and incentive programs;
 - The entry into, termination of, or the fulfillment of significant contracts;
 - Amendments to any of the company’s governance documents (e.g., articles of incorporation or bylaws, significant policies, or procedures; or
 - **Has any other form of substantial control over the company.**

(Treas. Regs. §1010.380(d)(1))

What if a person has indirect control over the company?

A: An individual’s substantial control can be exercised directly or indirectly. The regulations provide a much more expansive definition of control than is normally applied in the tax world. An individual may directly or indirectly exercise substantial control over a reporting company through a variety of means, including through:

- Board representation;
- Ownership or control of a majority of the voting power or 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;
- 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.** This is much broader than the IRC §267 or §704 relationship tests often used.

(Treas. Regs. §1010.380(d)(2))

Do tax attribution rules apply?

A common question asked by tax professionals is whether the tax attribution rules apply for purposes of determining whether an individual is a beneficial owner. The FinCEN rules do not specifically incorporate the tax attribution rules. However, the items highlighted in the lists above contain broad “catch-alls” that we believe are more expansive than the tax attribution rules.

This will require a facts and circumstances analysis. We believe that in situations where it is unclear whether substantial control or a 25% ownership interest is established, it is better to err on the more conservative side and report the individual to avoid any risk of penalties being imposed.

What are some examples of indirect substantial control?

A: An individual can exercise substantial control by:

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

Example of indirect control

DoubleX, LLC is owned 40% by Claire and 60% by the AI & Claire Trust and is a member-managed LLC. AI is the trustee of the AI & Claire Trust. AI can exercise substantial control over DoubleX in his role as trustee of the AI & Claire Trust. AI is a beneficial owner of DoubleX.

Are all board members considered to have substantial control?

A: No. A member of a board of directors is not automatically treated as a beneficial owner as a result of being on the board. Only those who actually exercise substantial control or have a 25% ownership interest are beneficial owners. This must be evaluated on a director-by-director basis. (FinCEN FAQ D.9)

OWNERSHIP INTEREST

How is an ownership interest defined?

A: An ownership interest is defined in Treas. Regs. §1010.380(d)(2)(i) and includes any of the following:

- Equity, stock, or voting rights;
- A capital or profits interest;
- Convertible instruments;
- Options or other nonbinding 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.

In determining whether an individual owns or controls 25% of the ownership interests of a reporting company, the ownership interests of the reporting company include all ownership interests of any class or type, and the percentage of such ownership interests that an individual owns or controls is determined by aggregating all of the individual’s ownership interests in comparison to the undiluted ownership interests of the company.

For entities such as partnerships and LLCs that issue capital or profits interests, the ownership interest is based on the individual's share of the entity's capital and profits interests. For entities that issue stock, the individual's share is based on the greater of the individual's percentage of the voting or value of ownership interests.

Example of beneficial ownership

ABC, Inc. is a corporation owned by the following three individuals:

- Abel (50% owner);
- Barbara (40% owner); and
- Carlos (10% owner).

Maria is the president of the company but does not own any stock. Vicente is the CFO. Samantha is the company's HR director.

Abel, Barbara, Maria, and Vicente are all beneficial owners – Abel and Barbara because they have at least a 25% ownership in the company, and Maria and Vicente because they are senior officers of the company. Samantha is not considered a senior officer. Although she implements the company's personnel and compensation policies, she does not have the authority to adopt these policies.

If Abel, Barbara, and Carlos bring in Daphne and modify their ownership interests to each own 25% of the company, then all four would be considered beneficial owners.

What other factors besides owning shares of stock or other interests in an entity are considered in determining an individual's ownership interest?

A: An individual may directly or indirectly own or control an ownership interest in a reporting company through a variety of means, including but not limited to:

- Joint ownership with one or more other persons of an undivided interest in such ownership interest;
- Through control of such ownership interest owned by another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual (e.g., parent/guardian of minor child or disabled person);
- With respect to a trust (or similar arrangement):
 - Acting as a trustee of a trust or other individual with the authority to dispose of trust assets;
 - Being a beneficiary of a trust, 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; or
 - As a grantor or settlor of a trust, who can revoke the trust or withdraw the trust assets; 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 interest of the reporting company.
(Treas. Regs. §1010.380(d)(3))

Do community property tax laws come into play in determining a person's ownership interest?

A: Yes. In community property states, spouse's interests will be combined for purposes of determining whether they have reached the 25% threshold.

Example of community property law application

Robert and Roberta both have a 20% interest in a limited partnership, so combined they will each be considered to have a 40% beneficial ownership interest in the limited partnership.

If they should divorce and each keep their respective shares, neither of them would be considered beneficial owners unless they otherwise exercise substantial control over the limited partnership.

Constructive ownership rules

To date, FinCEN has not provided any specific guidance on constructive ownership rules for spouses/parents/children. Until guidance is issued, we recommend that you err on the side of caution.

Who is considered a beneficial owner of a trust?

A: The following individuals associated with a trust may be considered a beneficial owner of a reporting company if the trust has at least a 25% ownership interest in the reporting company (or a 25% interest owned in conjunction with the individual):

- Trustee or other individual with the authority to dispose of trust interests;
- 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; and
- A grantor or settlor who has the right to revoke or otherwise withdraw assets.

How is beneficial ownership determined in cases involving tiered entities with exempt entities?

A: If a beneficial owner owns or controls their ownership interests in a reporting company exclusively through multiple exempt entities (see page 4-13 for a discussion of exempt entities), then the names of all of those exempt entities may be reported to FinCEN instead of the individual beneficial owner's information.

Example of ownership through exempt entities

WePayForYou is a payroll company that has three owners, Mr. Smith, Ms. Jones, and BigCo., which is exempt because it is a large operating company. BigCo. is 100% owned by Joe.

WePayForYou does not have to include Joe as a beneficial owner on its beneficial ownership report because BigCo. is an exempt owner. WePayForYou only must provide beneficial ownership information regarding Smith and Jones, and list BigCo. as an exempt entity owner.

This special rule does not apply if an individual owns or controls ownership interests in a reporting company through both exempt and nonexempt entities. In that case, the reporting company must report the individual as a beneficial owner, but the exempt companies do not need to be listed.

COMPANY APPLICANTS

Who is a company applicant?

A: A company applicant is an individual who helps prepare and/or file the business's organizational/registration papers with the Secretary of State's office.

This can be up to two individuals:

- The individual who directly files the document that creates or first registers the reporting company with the Secretary of State's office; and
- If different than above, the individual who is primarily responsible for directing or controlling the filing of the documents with the Secretary of State's office by another. (Treas. Regs. §1010.380(e))

Practice Pointer

Accountants and attorneys and their staff who either direct the filing of the formation documents or actually file the documents with the Secretary of State's office are specifically identified as company applicants. (FinCEN FAQ #E.3)

If this is a service your firm frequently provides for your clients, you may want to consider filing for a FinCEN identifier (discussed on page 4-10). As we discuss in more detail below, by using the identifier, you can avoid having to provide the required information (e.g., names, address, birth dates, identifying documentation) to your clients to include in their beneficial ownership reports. Rather, you can simply provide them with your FinCEN identifier number to include in their reports.

Comment

The FinCEN FAQs specifically state that no reporting company will have more than two company applicants. (FinCEN FAQ #E.1)

When does an entity have to provide information about company applicants?

A: For entities formed after 2023, the entity must report information about their company applicants. (Treas. Regs. §1010.380(b)(1)(ii))

Comment

Entities formed prior to January 1, 2024, do not have to report company applicant information. (Treas. Regs. §1010.380(b)(1)(iv))

Comment

There are two key differences between the information that must be reported concerning a company applicant and the information that must be reported about the reporting entity's beneficial owners:

1. The reporting entity may provide a business address for the company applicant rather than the applicant's residential address but only if the applicant forms or registers the reporting company in the course of the company applicant's business (e.g., if the applicant is a lawyer, paralegal, or accountant who is filing the papers for the business in the course of their representation); and
2. The reporting entity does not have to provide updated information about the company applicant if the applicant moves, changes names, etc. In contrast, updated information must be reported for beneficial owners.

Example of company applicant reporting requirements

Brad is opening a new restaurant and has asked his mother Alice, an attorney, to help him set up the business as an LLC. Alice completes the articles of organization to be filed with the Secretary of State's office. She directs her assistant Christopher to actually file the papers on January 15, 2024.

Because the entity was formed after 2023, the restaurant must provide information about both Alice and Christopher on its initial report. However, the entity can provide the address of Alice's law firm rather than the residential address for both Alice and Christopher.

If Alice was not an attorney and was simply filling out the papers for her son, the business would have to report Alice's residential address.

ADDITIONAL BOI REPORTING INFORMATION AND RESOURCES

FinCEN has developed a resource page on its website that contains the latest regulations, guidance, and news releases at:



Website
www.fincen.gov/boi

FinCEN has also issued a set of FAQs available at:



Website
www.fincen.gov/boi-faqs

FinCEN has also developed a small business resource guide available at:



Website
https://fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf