

## BENEFICIAL OWNERSHIP INFORMATION FILING REQUIREMENTS

Starting January 1, 2024, many small and mid-sized businesses will be required to file beneficial ownership information (“BOI”) statements with the US Department of the Treasury’s Financial Crimes Enforcement Network (“FinCen”). Here is a summary and (hopefully) useful information:

1. **WHO HAS TO FILE?** Virtually all non-public corporations, LLCs and other entities created in, or operating in, the United States are required to report with FinCEN. Yes, this means, without limitation, start-ups, single-purpose entities created to produce films, etc., production companies, and distribution companies unless the entity qualifies for an exception (spoiler alert, you don’t qualify). Here are the 23 types of entities that are exempt from the requirements: [https://www.fincen.gov/boi-faqs#C\\_2](https://www.fincen.gov/boi-faqs#C_2). Companies that are required to file are called “**reporting companies.**”

Or, as FinCEN says, a company has to file if it is:

- a. A corporation, a limited liability company (LLC), or was otherwise created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe; or
- b. A foreign company and was registered to do business in any U.S. state or Indian tribe by such a filing.

Note that sole proprietorships and partnerships/joint ventures that do not file an organizing document with a Secretary of State (or similar office) are not required to file.

2. **WHAT INFORMATION WILL NEED TO BE FILED?** The reporting company will need to report the following:

- a. As to the reporting company:
  - i. Legal name and all d/b/a names;
  - ii. US address; and
  - iii. State of formation.
- b. As to each beneficial owner and company applicant:
  - i. Legal name;
  - ii. Date of birth;
  - iii. Current *residential* address unless the company applicant is someone who does so in the course of their business (outside counsel, outside accountants, formation service company such as LegalZoom, etc.), then the business address is required; and
  - iv. ID number, issuing jurisdiction and image of one of the following:
    - (1) US passport;
    - (2) State driver’s license; or
    - (3) ID document issued by a state, local government or tribe.

Note that if a beneficial owner or company applicant has a FinCEN identifier, the reporting company may report said FinCEN identifier rather than the information required above about such person. A FinCEN identifier can be obtained by the applicable person providing the above referenced information (online) to FinCEN and requesting the FinCEN identifier, which will be issued immediately.

3. **WHAT IS A BENEFICIAL OWNER?** A beneficial owner is any individual who, directly or indirectly:

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

4. **WHAT DOES “SUBSTANTIAL CONTROL” MEAN?** An individual exercises substantial control over a reporting company if the individual meets any of four general criteria: (1) the individual is a senior officer; (2) the individual has authority to appoint or remove certain officers or a majority of directors of the reporting company; (3) the individual is an important decision-maker; or (4) the individual has any other form of substantial control over the reporting company.

Note that the following officers are specifically listed as having “substantial control”: president; CFO; general counsel; CEO; COO; any other officer, regardless of official title, who performs similar functions to the foregoing officers.

5. **WHAT IS AN IMPORTANT DECISION-MAKER?** An “important decision-maker” is a person who directs, determines, or has substantial influence over important decisions made by the reporting company including decisions regarding the reporting company’s:

- a. Business, such as:
  - i. Nature, scope, and attributes of the business;
  - ii. The selection or termination of business lines or ventures or geographic focus;
  - iii. The entry into or termination, or the fulfillment or non-fulfillment of significant contracts.
- b. Finances, such as:
  - i. Sale, lease, mortgage or other transfer of any principal assets;
  - ii. Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approve of the operating budget;
  - iii. Compensation schemes and incentive programs for senior officers.
- c. Structure, such as:
  - i. Reorganization, dissolution, or merger;
  - ii. Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures;
- d. Any other form of substantial control over the reporting company.

6. **WHAT IS A COMPANY APPLICANT AND DO I HAVE TO REPORT THAT?** A “company applicant” is the person or persons that filed the documents with the secretary of state (or similar office) to create (or register) the reporting company. This includes the person who actually filed the documents and, if applicable, the person who oversaw the person who filed the documents. Note that this includes outside counsel, third-party accountants, business formation service (think, LegalZoom), etc. All companies created on or after January 1, 2024 (or registered to do business in the US on or after January 1, 2024) are required to report their company applicants. Reporting companies that are so required to report company applicants must report at least one, but no more than two, company applicants.

7. **WILL THE REPORTED INFORMATION BE MADE AVAILABLE TO THE GENERAL PUBLIC?** No. The information will be stored in a secure, non-public database. But, federal, state, local, and Tribal officials, as well as certain

foreign officials who submit a request through a U.S. Federal government agency, will be able to obtain beneficial ownership information for authorized activities related to national security, intelligence, and law enforcement. Financial institutions will also have access to beneficial ownership information in certain circumstances, with the consent of the reporting company. Those financial institutions' regulators will also have access to beneficial ownership information when they supervise the financial institutions.

8. **WHEN DO I HAVE TO FILE?** A reporting company created or registered to do business before January 1, 2024, will have until January 1, 2025 to file its initial beneficial ownership information report.

A reporting company created or registered on or after January 1, 2024, and before January 1, 2025, will have 90 calendar days after receiving notice of the company's creation or registration to file its initial BOI report.

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 with FinCEN.

9. **DO I NEED TO FILE MORE THAN ONCE?** If there is any change to the required information about the reporting company or its beneficial owners in a BOI report that the reporting company filed (or if any of such reported information was inaccurate), the reporting company must file an updated BOI report no later than 30 days after the date on which the change occurred (or, with respect to correcting inaccurate information, no more than 90 days after the original filing).

10. **WHAT HAPPENS IF I DON'T FILE?** The penalties for reporting companies who fail to comply (i.e., not filing, not updating as required or providing false information) may include civil penalties up to \$500 per day until the violation is corrected; and a criminal fine of up to \$10,000; and/or up to two years in prison. Importantly, note that senior officers of a reporting company that fails to file a required BOI report may be held accountable for that failure.

11. **HOW DO I FILE?** Filing is done online via the FinCEN website, <https://www.fincen.gov/boi>, there is no fee for filing.

12. **WHO CAN FILE ON BEHALF OF A REPORTING COMPANY?** 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.

13. **THIS IS ALL VERY EXCITING HOW DO I GET MORE INFORMATION?** I strongly recommend that you review the Small Entity Compliance Guide available at [https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf) as well as the FinCEN website, <https://www.fincen.gov/boi#chat>. The FinCEN BIO FAQ is available at [https://www.fincen.gov/boi-faqs#B\\_1FAQ](https://www.fincen.gov/boi-faqs#B_1FAQ).

Of course, feel free to contact me with any questions.

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