

Beneficial Ownership Information Reporting

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Goal: Provide understand of Beneficial Owner Information Reporting

Agenda:

- 1) Why: Are we discussing Beneficial Owner Information Reporting (BOIR)
- 2) 1a: Temporary Injunction
- 2) Who: must complete Beneficial Owner Information Reporting
- 3) When: must Beneficial Owner Information Owner Reporting be completed
- 4) Penalty for non-compliance
- 5) What: must be reported
- 6) How: to report beneficial owner reporting
- 7) Audience questions

Background:

Beneficial Owner Information (BOI) Reporting was created as part of the Corporate Transparency Act of 2021 in order to impede “bad actors” from “ill-gotten gains” received from shell companies and other opaque ownership structures.

It is important to understand that BOI reporting is not a one-time filing and business owners must be diligent about reporting the necessary updated information to FinCEN.

Temporary Injunction:

- On Tuesday, December 3, 2024, a federal district court in Texas issued an order granting a nationwide, preliminary injunction that: (1) enjoins enforcement of the Corporate Transparency Act (CTA) and regulations implementing its beneficial ownership information (BOI) reporting requirements, and (2) stays all deadlines to comply with the CTA's reporting requirements, including the January 1, 2025 deadline for reporting companies to submit their initial BOI report. The Department of Justice, on behalf of the Department of the Treasury, filed an appeal of the district court's decision on December 5, 2024.

Who has to file:

Most small companies (including Single-Member LLCs) will have to file a BOI report with FinCEN. Consolidated reporting is not allowed. Determination of what entities must file is a two-step process:

- 1) Did the entity file registration or reporting with a state Secretary of State or similar office
 - a. If yes, the entity must file a BOI report unless it meets one of the 23 exemptions
- 2) Does the entity meet one of the exemptions?
 - a. If yes, the entity is not required to file. If no, the entity must file within the following timing guidelines

Each entity should be analyzed with their filing status document to ensure clarity

Exemptions

Chart 2 – Reporting company exemptions

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

Tax-exempt entity:

- 501(c) organization tax exempt under 501(a)
- §527(e)(1) political organization
- Business trust described in Para (1) or (2) of §4949(a)

Large Operating Company: more than 20 full time employees employed in US, physical office in US, greater than \$5,000,000 gross receipts on PY tax return

Inactive entity: Entity existed before 1/1/20, not engage in active business, no foreign ownership, no change in ownership in last 12 months, no fund transfers > \$1,000 in last 12 months, entity does not hold any assets (other than cash) including ownership in other entities

Timing of Filing:

Existing reporting entities (those created before January 1, 2024):

- must complete their initial filing prior to December 31, 2024

Reporting entities created between January 1, 2024 and December 31, 2024:

- must complete their initial filing within 90 calendar days of registration with the Secretary of State

Reporting entities created after December 31, 2024:

- must complete their initial filing within 30 calendar days of registration with the Secretary of State

Updates and Corrections:

- Updated reports must be Efiled within 30 days calendar of the change occurrence
- Corrected reports must be Efiled within 30 calendar days of becoming aware of the inaccuracy

Consequences of not filing, filing incorrectly, and/or not updating timely:

A person/company who willfully violates the BOI reporting requirements may be subject to civil penalties up to \$500/day, adjusted for inflation (currently \$591/day), and criminal penalties up to \$10,000.

Incorrect, false or fraudulent BOI reports filed on the company's behalf may result in civil or criminal penalties. You have 30 days from date of filing to correct any errors in order to avoid penalties.

What is a Beneficial Owner: Equity Owner

An individual that owns or controls directly or indirectly at least 25% of the company's ownership interest. The determination of an individual's ownership interest is determined based on the greater of their voting power %, ownership interest value %, or their capital or profits interest %, each as to the percentage of the total available ownership outstanding

Equity owner Beneficial Ownership testing does not consider attribution

What is a Beneficial Owner: Equity Owner

Continued

Ex 1: Henry owns a 50% capital interest in XYZ, LLC. Henry is a beneficial owner of XYZ, LLC and must report as a beneficial owner.

Ex2: Henry owns a 50% capital interest in XYZ, LLC. XYZ, LLC owns 49% of ABC, LLC. Henry is not a beneficial owner of ABC, LLC because Henry only owns 24.5% of ABC, LLC indirectly through XYZ, LLC.

Ex3: Henry owns a 50% direct capital interest in XYZ, LLC and 1% direct capital interest in ABC, LLC. XYZ, LLC owns 49% of ABC, LLC. Henry is a beneficial owner of both XYZ, LLC and ABC, LLC because Henry directly owns 1% and indirectly owns 24.5% of ABC, LLC indirectly through XYZ, LLC. His combined ownership of ABC, LLC is 25.5%.

What is a Beneficial Owner: No Equity Ownership

An individual that exercises “Substantial Control” (“Senior Officer”, “Authority to appoint or remove”, “any other form of Substantial Control”). **Individuals performing services commonly performed by C-level employees are considered Beneficial Owners; even when they don’t have any equity ownership.** Members of the Board of Directors can also be considered Beneficial Owners when they “direct, determine, or have substantial influence over important decisions made by the reporting company”

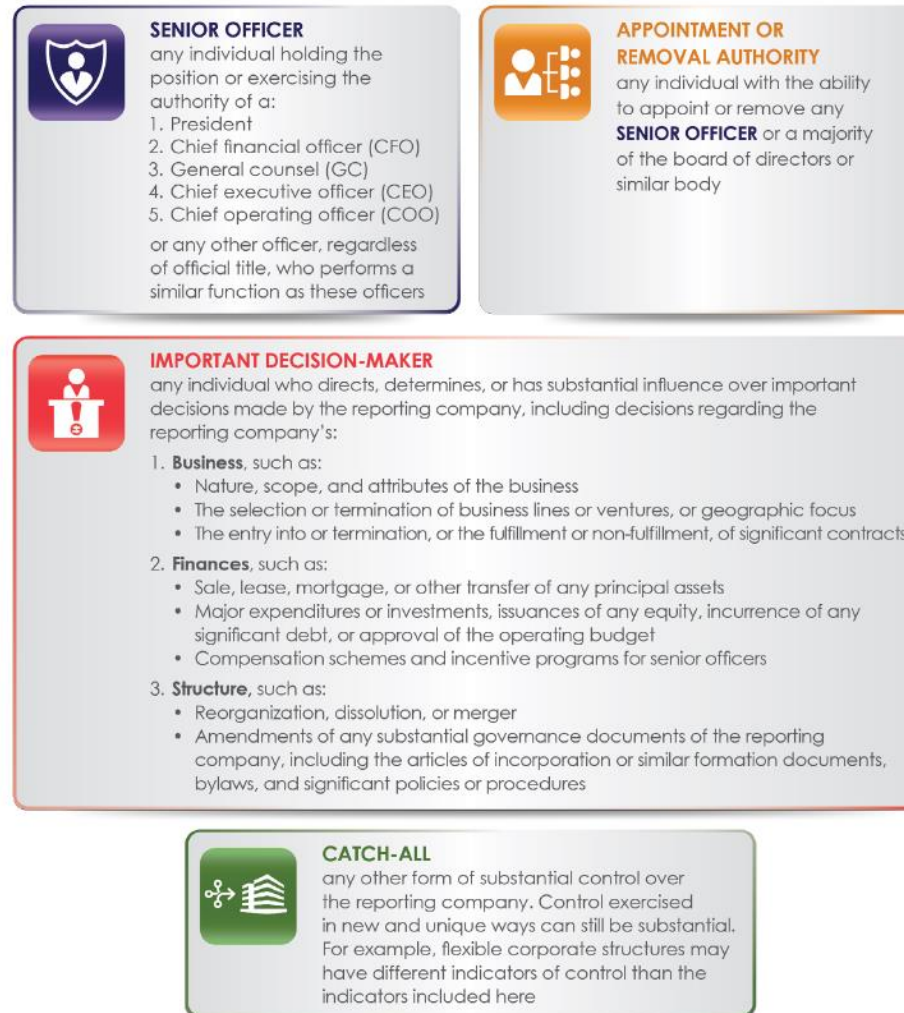
What is a Beneficial Owner: No Equity Ownership Continued

Important: Individuals performing functions similar to Senior Officers regardless of title or employment are beneficial owners under this category; even when they don't own any of the company

2.1 What is substantial control?

Reporting companies are required to identify **all** individuals who exercise *substantial control* over the company. There is no limit to the number of individuals who can be reported for exercising substantial control. **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. See the chart below for details about these criteria.

Chart 3 – Substantial control indicators



Exemptions from treatment as Beneficial Owner

- 1) Minor Child (instead report parent or legal guardian)
- 2) Nominee, intermediary, custodian or agent (tax professionals likely qualify here)
- 3) Employee (not a Senior Officer, at the control and direction of employer)
- 4) Inheritor (only interest is a future interest)
- 5) Creditor

What needs to be reported: Company

- 1) Legal Name
- 2) Any Trade Name or DBA
- 3) Jurisdiction where formed or first registered
- 4) Taxpayers Identification Number (TIN) could be EIN could be SSN depending on ownership structure

What needs to be reported: Beneficial Owner

- 1) Legal Name
- 2) Birthdate
- 3) Address
- 4) Taxpayers Identification Number from driver's license or passport
- 5) Image of Identifying Document (driver's license or passport)

Note: SSN/ITIN is not required to be reported for beneficial owner(s)

Consider FinCEN ID for not closely held organizations like Home Owner's Associations (yes, they have to file)

Recommend use of DL when available. Passport numbers always change when you get a new one, requiring an updated filing

What needs to be reported: Company Applicant

Company Applicant: Individual who directly files the document that creates the reporting company or Individual primarily responsible for directing/controlling the filing for the reporting company

Only applies to entities created after 1/1/2024

- 1) Legal Name
- 2) Birthdate
- 3) Address
- 4) Taxpayers Identification Number from driver's license or passport
- 5) Image of Identifying Document (driver's license or passport)

Note: Most Company Applicants will provide their FinCEN ID b/c they don't want the entire world to know this information

Most common reasons requiring updated reporting

The following are likely triggers requiring BOI reports to be updated within 30 days of occurrence:

- 1) Any change in the information reported on your company's most recent BOI report
- 2) A change in beneficial owners, such as a new CEO, or a transaction that changes who meets the ownership interest threshold of 25%
- 3) Any change to the beneficial owner's name, address, or unique identifying number previously provided to FinCEN

FinCEN ID's

Highly encourage utilization of FinCEN ID for anyone with more than several entities

The same information is required to request a FinCEN ID as reported as a beneficial owner

FinCEN ID takes the place of the more personal information

If changes need to be made, the beneficial owner must simply update their FinCEN ID rather than all their Beneficial Owner Reports.

BOI Reporting Complexities

Substantial Control: layered and is based on facts and circumstances

Determination of Ownership % in Tiered Structures

When does an Equity Owner with less than 25% need to report

Trusts have a reporting framework of their own, which depends on type of trust, named trustees and assigned/implied powers, and named beneficiaries and assigned/implied powers and/or rights

Holding Companies – disregarded doesn't matter – all need to file unless the Large Operating Company Exemption applies to the parent company

Company Applicants (entities created after 1/1/2024)

Steps to Completing Beneficial Owner Information Reporting

- 1) Create entity list
- 2) Evaluate exemption applicability
- 3) Determine Beneficial Owners (>25% equity owners & individuals with substantial control)
- 4) Determine whether creating a FinCEN ID makes sense for each beneficial owner
- 5) Collect required reporting information from each Beneficial Owner and Company Applicant
- 6) Create FinCEN report either directly through BOI E-filing or through a special purpose software provider (Capital Collective uses FinCENFetch)
- 7) Review your report for completeness and accuracy
- 8) Efile your report with FinCEN
- 9) Create a system to remind Beneficial Owners of the requirement to update any information previously submitted

Helpful Resources

FinCEN website: <https://fincen.gov/boi>

Small Entity Compliance Guide <https://www.fincen.gov/boi/small-entity-compliance-guide>

Beneficial Ownership Information – Frequently Asked Questions (FAQ)
<https://www.fincen.gov/boi/beneficial-ownership-information-frequently-asked-questions>

Beneficial Ownership Information Report – Filing Instructions

Who to call for help?

1) Your CPA/Accountant

- May or may not help based on their comfort level with the requirements or firm mandate

2) Your Attorney

- May not be eager to complete, but has someone in their office completing BOI reports

Questions & Contact Information

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