

BENEFICIAL OWNERSHIP INFORMATION REPORTING UNDER THE CORPORATE TRANSPARENCY ACT

LIVE DSBA SEMINAR WITH ZOOM OPTION

SPONSORED BY THE COMMERCIAL LAW SECTION
OF THE DELAWARE STATE BAR ASSOCIATION

WEDNESDAY, MAY 17, 2023 | 12:00 P.M. – 1:30 P.M.

1.5 Hours of CLE credit for Delaware and Pennsylvania Attorneys

ABOUT THE PROGRAM

The Corporate Transparency Act, which requires businesses to file a beneficial ownership information report with a bureau of the Department of Treasury known as FinCEN, takes effect on January 1, 2024. This legislation will likely impact 32 million business entities as well as the lawyers that handle their formation. Noncompliance may result in harsh civil and criminal penalties.

What, exactly, needs to be filed? Who is considered a “beneficial owner”? When are compliance materials due? This CLE seminar provides answers to these questions, and more. Alan Stachura, the Senior Manager of Government Relations for CT Corporation, will break down the key components of this new reporting obligation so you can move ahead with clarity, confidence, and compliance.

Attendees will learn about:

- Companies that must file and companies that are exempt
- What information must be reported
- When the initial report is due
- When a report needs to be updated or corrected
- Who is considered a beneficial owner
- Penalties for non-compliance
- What companies and law firms should be doing now to prepare

SPEAKER

Alan Stachura

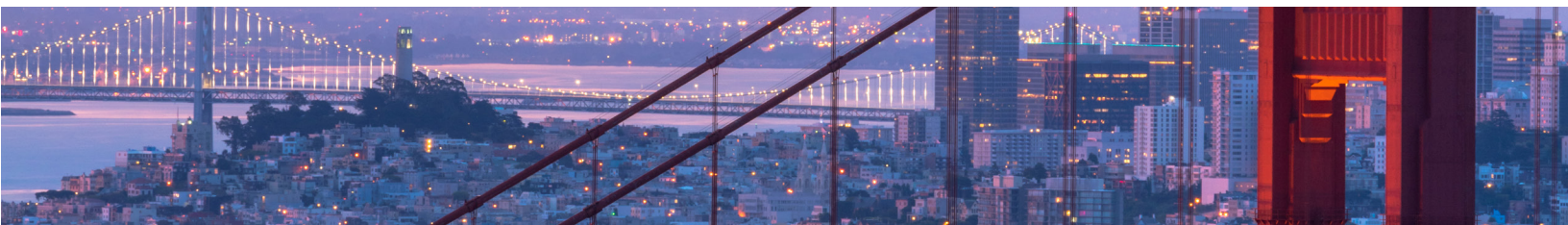
Senior Manager of Government Relations, Wolters Kluwer

Visit <https://www.dsba.org/event/beneficial-ownership-information-reporting-under-the-corporate-transparency-act/> for all the DSBA CLE seminar policies.

Speaker

Alan Stachura

*Senior Manager of Government Relations,
Wolters Kluwer*



SPEAKER BIO

Alan Stachura

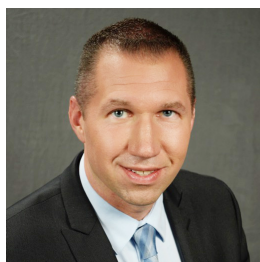
Senior Manager of Government Relations

Mr. Stachura joined CT Corporation in 2001. He assumed his current role as Senior Manager of Government Relations in 2009. He is a key liaison for CT vis-à-vis the fifty State governments across the U.S. with a particular focus on Delaware. Mr. Stachura regularly shares his Delaware corporate law expertise through a series of seminars focusing on statutory compliance, the process and advantages of incorporating in Delaware, and recent statutory updates. He has been a registered lobbyist in Delaware since 2009 which enables him to work closely with the State and all Legislative personnel. Mr. Stachura has traveled extensively with the State of Delaware Team to teach other countries about doing business in Delaware with recent trips to England, Germany, Peru, and Colombia. He is well known by State governments for his help in working through complex legislative, policy, and system issues.

Previously, Mr. Stachura has held a number of important positions at CT, including Senior Manager of the Delaware Fulfillment office where he oversaw CT's Delaware Fulfillment Operations. He also has been responsible for leading CT's Delaware Service of Process Team, the Delaware Night Shift, and the Delaware Administrative Group.

Prior to joining CT, Mr. Stachura was a Branch Manager for Wilmington Savings Fund Society, FSB. He has also worked in management roles for two market research firms in Philadelphia.

Mr. Stachura majored in Psychology and Business at the University of Delaware.



Alan Stachura
Senior Manager of Government Relations

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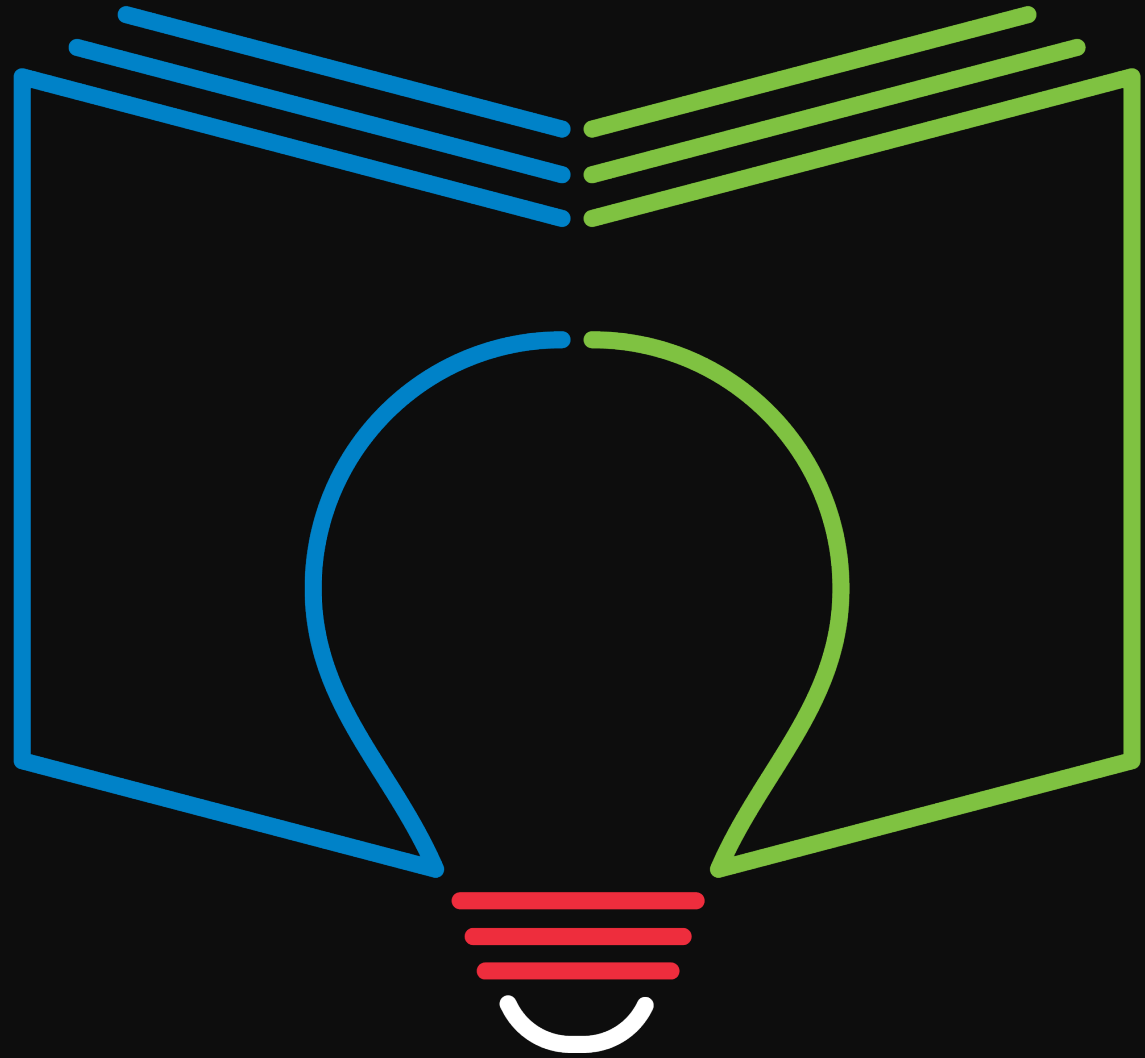
CT Corporation

CLE Seminar

The Corporate Transparency Act

Alan Stachura

Senior Manager Government Relations



Agenda

- The Basics
- History of the CTA
- BOI Reports
- Exemptions
- Beneficial Owners
- Company Applicants
- Penalties
- Recent Comment Periods
- What's Next?
- Questions





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The Basics

The Corporate Transparency Act - CTA

- Federal law enacted January 1st, 2021
- Requires reporting company to file Beneficial Ownership Information (BOI) report with FinCEN
- Report contains Personally Identifiable Information (PII) on beneficial owners and applicants
- Information maintained in a private database with limited access
- Small businesses may be impacted more than most



Glossary

- AML – Anti Money Laundering
- BO – Beneficial Owner
- BOI – Beneficial Ownership Information
- BOSS – Beneficial Ownership Secure System
- CDD – Customer Due Diligence
- CTA – Corporate Transparency Act
- FATF – Financial Action Task Force
- FinCEN – Financial Crimes Enforcement Network
- NSBA – National Small Business Association
- PII – Personally Identifiable Information
- UBO – Ultimate Beneficial Ownership



Why did Congress Enact the CTA?

- States do not collect beneficial owner information
- Malign actors conceal ownership to launder money, finance terrorism, other illicit activities
- Federal law providing for BOI collection needed to protect national security and counter money laundering



FinCEN Finalized Rule

- UBO Reporting Rule – highly anticipated
 - Published September 29th, 2022
 - “Full” reporting requirements of the CTA
- The CTA is part of the Anti-Money Laundering Act of 2020 (the AML Act)
 - Establishes UBO reporting requirements for the vast majority of privately held corporations, LLCs, and “similar entities” which were created in, or registered to do business in the US and the US Territories
- Becomes effective January 1st, 2024



What is the Role of FinCEN?



CTA sets forth
basic framework
of reporting
requirement

FinCEN to
provide details
through
rulemaking

FinCEN issues
final rule on
September 29,
2022

Effective date
of final rule is
January 1, 2024

Reporting
begins January 1,
2024



History of the CTA

History of the CTA

- An estimated 32,000,000 business entities exist in the US
- More than 2,000,000 new entities are formed each year
 - The vast majority do not have to disclose any beneficial ownership information
- All 28 countries in the European Union have beneficial ownership information within their corporate registries.
- Although the US is a member of the Financial Action Task Force on Money Laundering (FATF), the US did not have legislation adopted to address the FATF standards related to the collection of beneficial ownership data.



History of the CTA (continued)

- For nearly 20 years, the collection of beneficial ownership information has been debated. Hearings and investigations are held by the Senate Permanent Sub Committee on Investigations.
- Originally, advocates for collection felt that having the states collect data would reduce the concern that anonymity allows bad actors to use shell companies for illicit purposes such as terrorist financing, money laundering, and other financial crimes.
- However, strong opposition was raised immediately by the states, the ABA, and businesses themselves. Concerns revolved around privacy issues, costs to implement and run such a program, and the potential threat of cyber attacks.



History of the CTA (continued)

- In 2016, FinCEN issued the Customer Due Diligence Rule (CDD Rule)
 - Amended the Bank Secrecy Act (BSA) related to the verification of the identities of natural persons (or beneficial owners)
- On January 1st, 2021, the US Senate passed the CTA
 - This amended the BSA to add a new Section 5356 titled “Beneficial ownership information reporting requirements”
 - This addition requires Reporting Companies to disclose the personal information of their beneficial owners.
- On December 7th, 2021, FinCEN published a proposed rule to implement these UBO reporting requirements
 - Public comments were encouraged





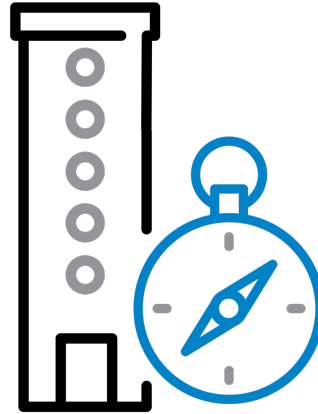
BOI Reports

Who Files a BOI Report?



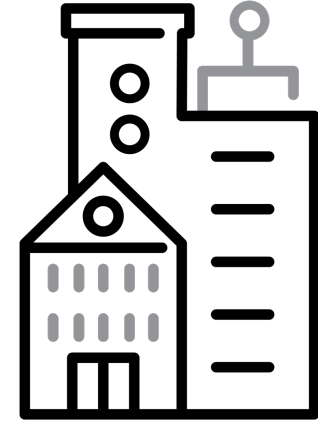
Domestic reporting companies

- Corporation, LLC, or other entity created by filing a document with a SOS (or similar office)



Foreign reporting companies

- Corporation, LLC, or other entity created under foreign law and registered in US by filing a document with a SOS (or similar office)



“Other entities”?

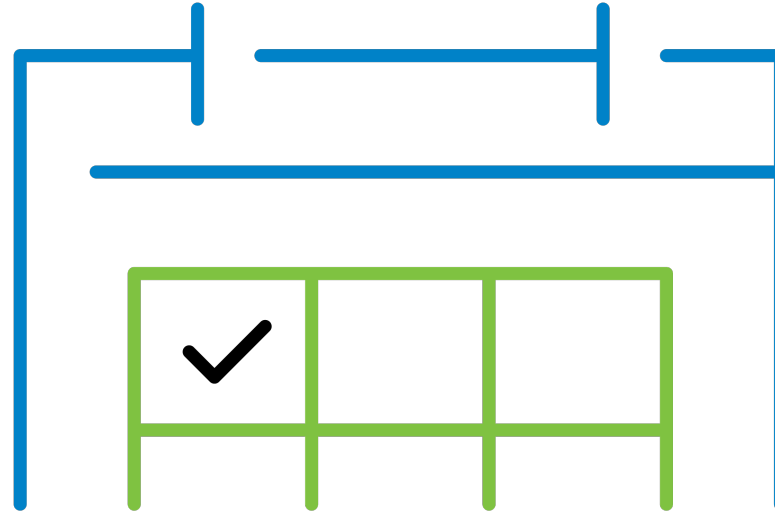
- LLP, LLLPs, STs, BTs, most LPs – FinCEN expects so
- SPs, GPs, trusts – FinCEN expects not

BOI Report Filing Clarification

- Each Individual Entity Files
 - Qualified entities do NOT need to refile
 - ABC, LLC – a Delaware LLC – qualified in 33 states files once
 - Separate entities created in multiple jurisdictions file multiple times
 - ABC, LLC – a separate domestic entity in 19 states – files 19 times



When is the Initial Report Due?



Created before January 1, 2024 - File on or before January 1, 2025

Created on or after January 1, 2024 – File within 30 calendar days of earlier of:

- Date received actual notice of creation or
- Date SOS first provides public notice of creation

Once exempt but no longer – File within 30 calendar days after no longer qualifying

BOI Report Filing Clarification

- When is “filed” actually “filed”?
 - Some states issue evidence proactively
 - Some states require evidence retrieval
 - What about severe backlogs?
- Recommendation: File within 30 days of formation submission
- Entity Changes require updates
 - Name changes, changes to domestic jurisdiction, merger, conversion, etc.





Exemptions

There are 23 Exemptions

- Securities Exchange Act issuers
- Banks & Bank Holding Companies
- Credit unions
- Entities registering with SEC
- Insurance companies
- Insurance producers
- Public accounting firms
- Tax exempt entities
- Tax exempt political organizations
- Large operating companies
- Others



Other Exemptions

- **Subsidiary Exemption** – any entity whose interests are entirely controlled or wholly owned, directly or indirectly by one or more of the following entities (direct or indirect subsidiaries of any of the following exempt entities:
 - Securities reporting issuers
 - Governmental authorities
 - Banks
 - Bank holding companies
 - Federal or state credit unions
 - Brokers or dealers of securities
 - Venture capital fund advisors
 - Insurance companies
 - State-licensed insurance providers
 - Entities registered under the Commodity Exchange Act
 - Other entities registered under the Securities Exchange Act of 1934
 - Investment companies or investment advisers that are registered with the Securities and Exchange Commission
 - Accounting firms
 - Regulated public utility entities
 - Financial market utilities
 - Tax exempt entities
 - Large operating companies



Other Exemptions (continued)

- **Dormant entity exemption** – any corporation, LLC, or other similar entity that:
 - Was in existence on or before January 1st, 2020
 - Is not engaged in active business
 - Is not owned by a foreign person (directly or indirectly)
 - Has not experienced any changes in ownership in the past 12 month period
 - Has not sent or received any funds in an amount greater than \$1,000 in the past 12 month period AND
 - Does not otherwise hold any kind of assets, whether in the US or abroad, including any ownership interest in any corporation, LLC, or other similar entity



Other Exemptions (continued)

- **Money services businesses** registered with FinCEN under 31 USC 5330 and 31 CFR 1022.380
- **Public utility providers** of telecommunication services, electrical power, natural gas, or water and sewer services within the US
- **Trusts** described in paragraph 1 or 2 of section 4947(a) of the IRS code
 - Trusts that have only charitable interests
- **Entities that assist tax exempt entities:**
 - Operate exclusively to provide financial assistance to, or hold governance rights over, any 501(c) tax exempt entity, a tax exempt political organization, or a charitable trust
 - Is formed in the US
 - Is beneficially owned or controlled exclusively by one or more US persons that are US citizens or lawfully admitted for permanent residence AND
 - Derives at least a majority of its funding or revenue from one or more US persons that are US citizens or lawfully admitted for permanent residence



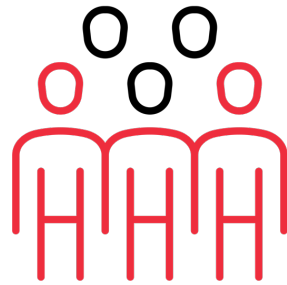
Other Exemptions (continued)

- **Pooled Investment Vehicles** that are operated or advised by a bank, federal or state credit union, a broker or dealer that is registered under the Exchange Act that meets certain specific conditions
- Any additional **entities that FinCEN may determine should be exempt** on an ongoing basis
 - The Secretary of the Treasury, with written support of the Attorney General and the Secretary of Homeland Security may deem an entity or class of entities exempt if requiring disclosure would not (a) serve the public interest and (b) be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the finance of terrorism, proliferation finance, serious tax fraud, or other crimes

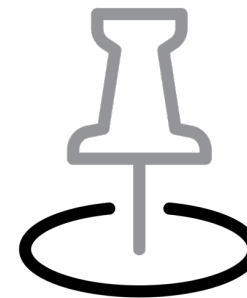


How is a Large Operating Company Defined?*

More than
\$5 million in
gross receipts
or sales



More than 20 full
time employees
in US



Operating
presence at
a physical
office in US

*All three required

What Information is Reported?

Information about the company

- Full legal name
- Any trade or dba name
- Current street address of PPB
- State of formation
- TIN

PII on all beneficial owners

- Full legal name
- Date of birth
- Current residential street address
- Unique ID number and issuing jurisdiction
 - Passport
 - State ID
 - Driver's license
- Image of document
- OR FinCEN Identifier

PII on applicants – reporting companies created on or after January 1, 2024

- Same as beneficial owner except business address for some applicants

What is the FinCEN Identifier?

- Number specific to beneficial owner or company applicant
- Application filed with FinCEN by beneficial owner or company applicant
- Application contains PII and document image
- BOI report may set forth FinCEN ID
- Reporting company that files initial report can obtain FinCEN ID
- Information must be updated or corrected with FinCEN within 30 days



FinCEN Identifier (continued)

- Potentially protects PII
 - However, the PII is protected at the end point, but there is very little PII protection throughout the process
- FinCEN Identifiers have no sunset provision
 - Lifetime commitment
 - Name changes, address changes, etc – only 30 days to update
 - Concerns related to current employees



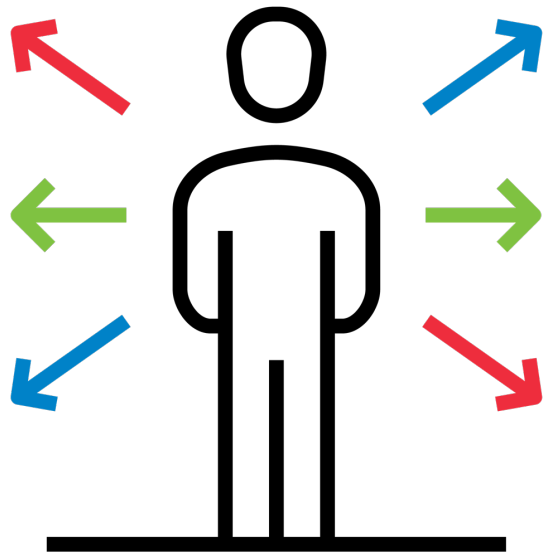


Beneficial Owners

Who is a Beneficial Owner?

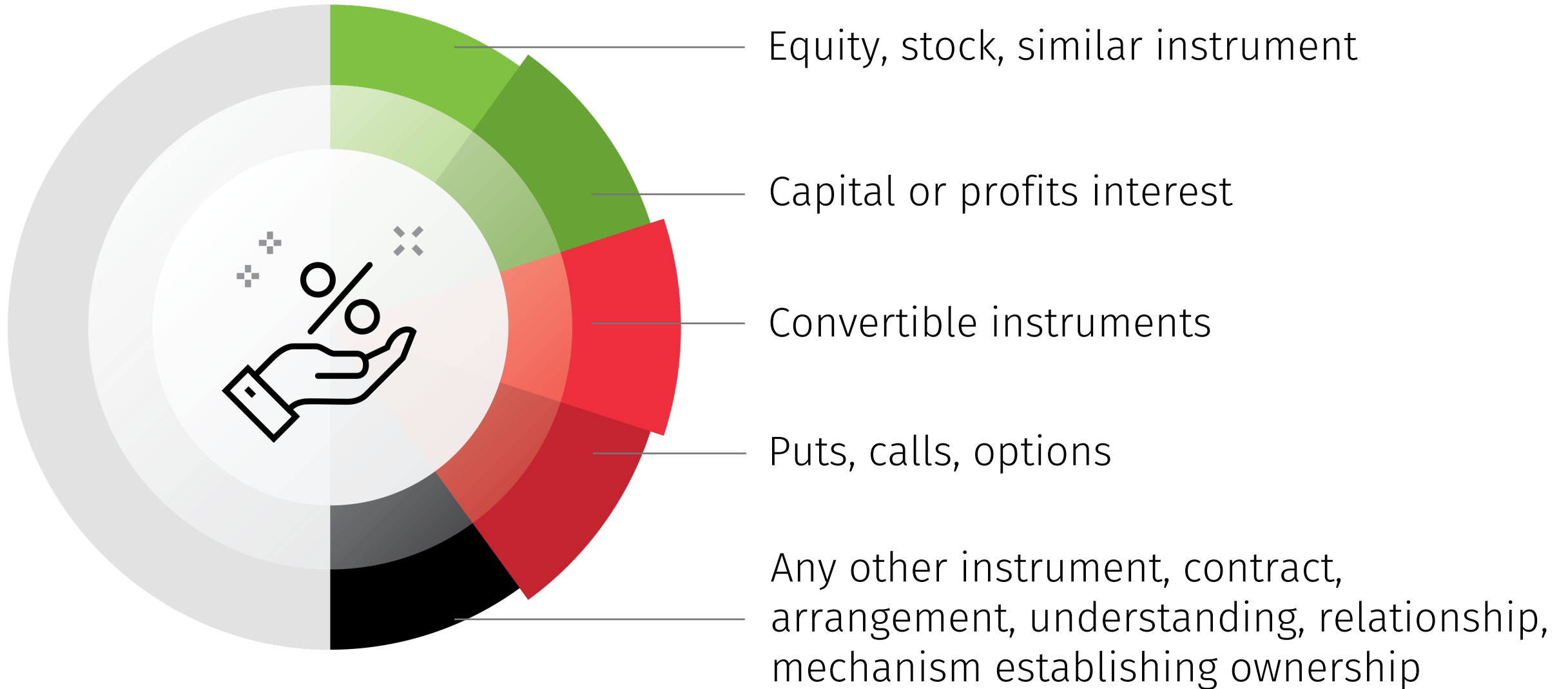
- Exercises substantial control over reporting company OR
- Owns or controls at least 25% of ownership interests
- Control or ownership may be direct or indirect

Beneficial Owner: Substantial Control



- Identify key individuals standing behind and directing actions
- Serves as senior officer (Pres., CFO, GC, CEO, COO)
- Authorized to remove senior officers or majority of board
- Directs, determines, influences important decisions
 - Sale, lease, mortgage of principal assets
 - Reorganization, dissolution, merger
 - Major expenditures
 - Selection or termination of business lines
 - Compensation, incentive programs for senior officers
 - Entering into or terminating contracts
 - Amending governance documents
- Any other form of substantial control

Beneficial Owner: Ownership Interests



What are the 5 Exceptions?

Minor children (report parent/guardian PII)

Nominees, intermediaries, custodians, agents

Future inheritors

Employees (not senior officers)

Creditors





Company Applicants

Who is a Company Applicant?

- Reporting companies created on or after January 1, 2024
- Directly files document creating company
- Directs or controls filing of document creating company
- May be 1 or 2 individuals

Company Applicant

- The same information must be reported for each Company Applicant
 - Defined as the individual(s) – up to two – who filed an application to form the entity and is primarily responsible for directing or controlling such filing when multiple individuals are involved in the filing process.
 - State employees are specifically excluded
 - FinCEN guidance not yet entirely clear
 - Attorney and Service Company involvement
- Report is completed by Reporting Company, NOT by the Company Applicant
- FinCEN Identifier can be utilized

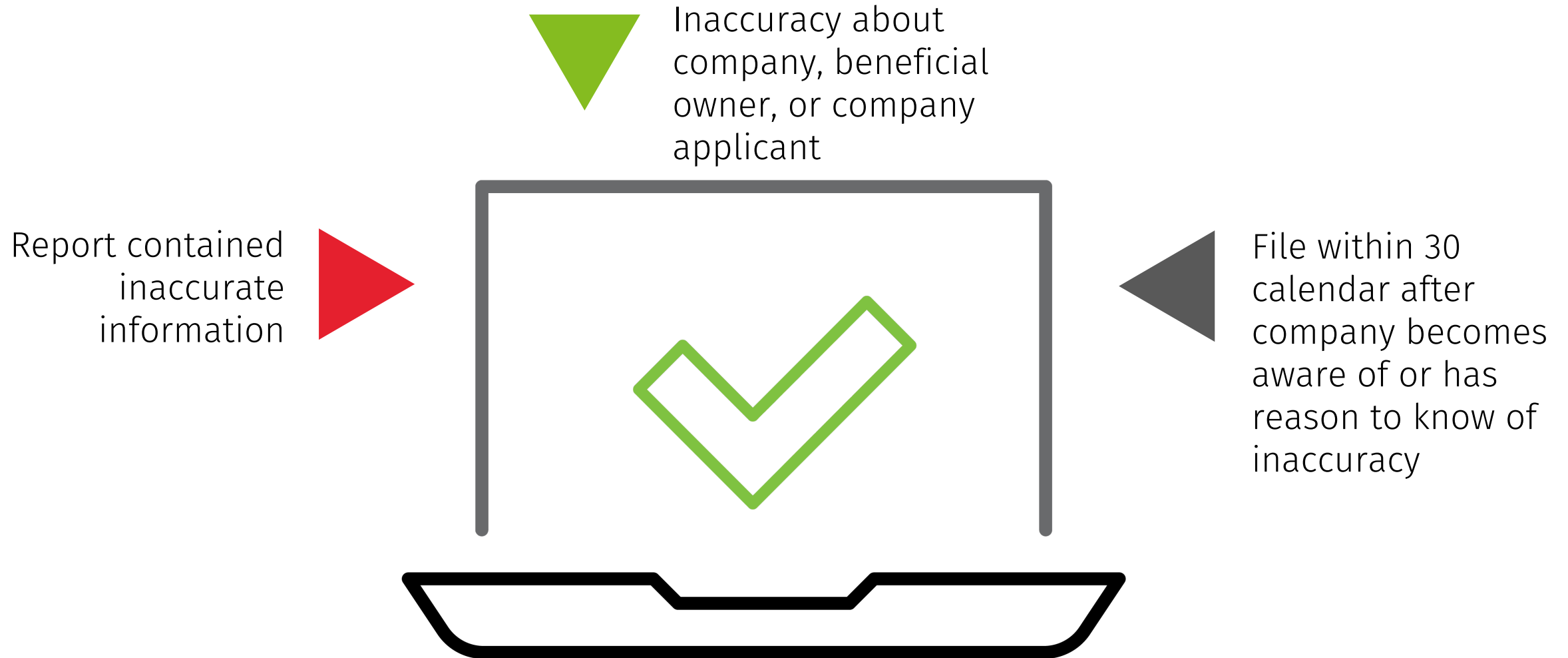


When do you Need to Update a BOI Report?



- Change in information for company or beneficial owner
- File within 30 calendar days after change occurs
- If reporting company qualifies for exemption after filing initial report, file update
- Company applicant information does not have to be updated
- When a deceased beneficial owner's estate is settled
- When a minor reaches the age of majority and previously reported information related back to the minor's parent or legal guardian

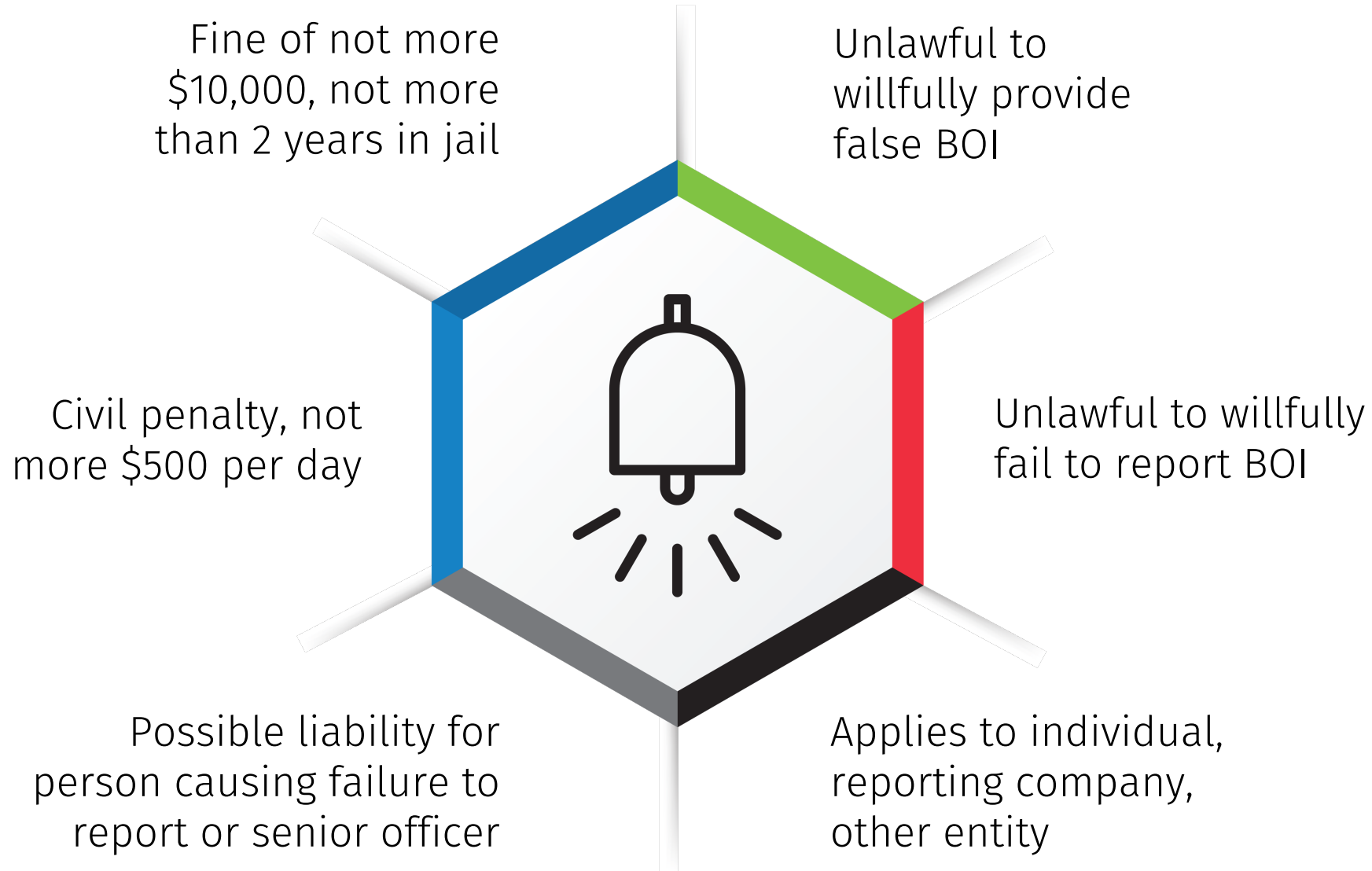
When do you Need to Submit a Corrected Report?





Penalties

What are the Penalties?



Penalties (continued)

- Any person who knowingly discloses or knowingly uses the UBO obtained by the person through either a report submitted to FinCEN or a disclosure made by FinCEN pursuant to the CTA, shall be liable for fines of up to \$500 each day the violation continues and may be fined up to \$250,000 and/or imprisoned for not more than 5 years, or if while violating another US law or as part of a pattern of illegal activity involving more than \$100,000 in a 12 month period, such person may be fined up to \$500,000 and/or imprisoned for up to 10 years.
- No indication in the language of the CTA that the federal government will consider any actions taken by a non-complying Reporting Company to be null and void based upon the Reporting Company's non-compliance with the CTA. Therefore, the non-compliance will not prohibit the Reporting Company from conducting business or commencing action in federal court.



Safe Harbor from Penalties

- The CTA provides a safe harbor from civil or criminal penalties for a person who submits inaccurate beneficial ownership information if the individual:
 - Has no actual knowledge that any information in the report is inaccurate
 - Is not trying to evade the reporting requirement AND
 - Submits a report correcting the information no later than 90 days after the initial report is filed



What will be Publicly Disclosed?

- The UBO information is confidential and is subject to disclosure only in limited circumstances
- UBO reports will be stored and maintained solely with FinCEN
 - They will not be made publicly available
 - They will not be shared with the states
- UBO information can only be used for:
 - Facilitating national security, intelligence, and law enforcement activities
 - Confirming UBO provided to financial institutions to facilitate AML **with the consent of the Reporting Company**
- The BOSS – a non-public cloud-based database – must use information security methods and techniques appropriate to protect non-classified information systems at the highest security level and to audit that the information is only accessed as permitted above



Retention and Disclosure

- FinCEN will hold all UBO data for no less than 5 years after the date that the Reporting Company is dissolved or cancelled
- FinCEN may disclose UBO to:
 - A federal agency engaged in national security, intelligence, and law enforcement activities
 - A state, local, or tribal law enforcement agency, if a court of competent jurisdiction has authorized the law enforcement agency to seek the information in a criminal or civil investigation
 - A financial institution subject to customer due diligence requirements with the consent of the Reporting Company
 - A request made by a Federal Functional Regulator using the information solely to assess a financial institution's compliance with CDD Rule requirements





Recent Comment Periods

Recent Comment Periods

- Access Rule (Who Should Have Access to the Collected Info?)
 - Due February 14th, 2023
 - 85 Total Responses
 - Cogency Global & NPRRA Responded
 - Utilized opportunity to re-ask several open questions as well
 - No Guidance Issued by FinCEN Yet



Recent Comment Periods

- FinCEN Notice (The Actual Report to be Filed)
 - Due March 20th, 2023
 - 27 Total Responses
 - 1 Lawyer & Several Special Interest Groups
 - CT, Cogency Global, & NPRRA Responded
 - 7 Financial Institutions or Groups Representing Financial Institutions
 - 2 Anonymous, Several Individuals
 - 15 Objected (strongly) to the “Unknown” or “Unable to Obtain Information” responses
 - No Guidance Issued by FinCEN Yet



Recent Comment Periods

- FinCEN Identifier (To Use in Lieu of Our PII)
 - Due March 20th, 2023
 - 9 Total Responses
 - CT, Cogency Global, Northwest Registered Agents, & NPPRA responded
 - Individuals & a Church
 - No Guidance Issued by FinCEN Yet



Other Items of Interest

- Third parties CAN file BOI reports for others
- Certification of BOI reports falls to the Reporting Companies
 - Exact guidelines are still somewhat unclear
- There is no fee to file a BOI report
- There is no annual reporting requirement (updates required as they occur)
- Will there be evidence issued for filed reports?
- Will electronic filing be mandated?
- When will form be finalized?
- Exemption filings are NOT required
- Legislation Gives us very Rough Guidelines
 - Doesn't provide enough information to finalize plans
 - Formal Guidance requested



Other Items of Interest (continued)

- NSBA filed lawsuit challenging the CTA's constitutionality in 2022
 - <https://www.nsba.biz/cta>
- Senators draft letter to voice their displeasure (March 2023)
 - <https://www.whitehouse.senate.gov/news/release/whitehouse-grassley-wyden-rubio-warren-push-fincen-to-improve-implementation-of-corporate-transparency-act>
 - Upset about the rulemaking process
 - Push for more small business education (FAQs & Videos have been since created)
- Banks have also voiced opposition to existing guidelines



Preparing for 2024



- Is your entity a reporting company?
- Develop policies and procedure to ensure compliance
- Identify and inform beneficial owners
- Gather information to be reported
- Develop procedure for keeping track of reported information
- Decide when to file
- Decide when to create new entity
- Educate clients on upcoming changes

FinCEN Regulatory Support

1.800.767.2825
frc@fincen.gov



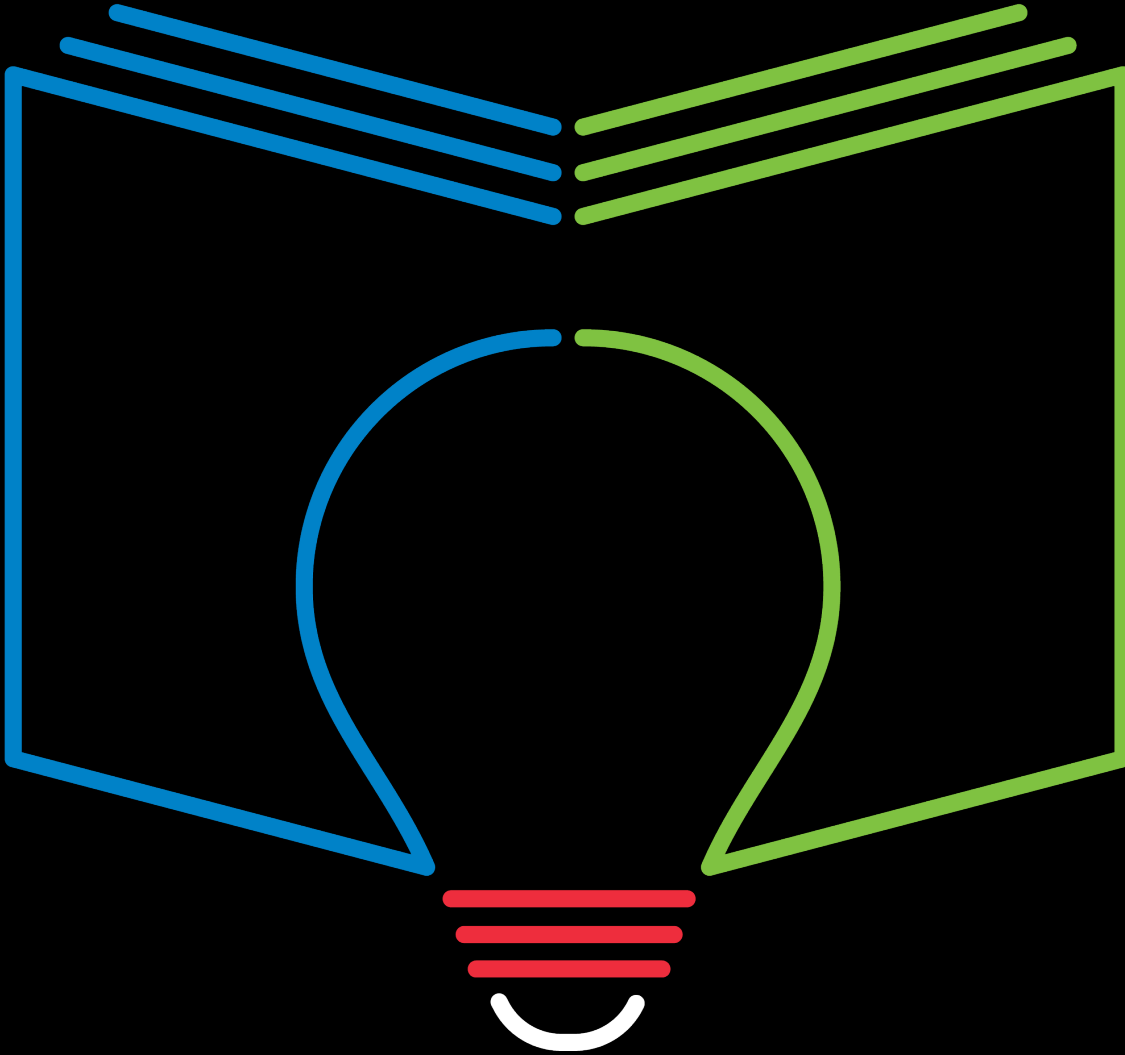
List of Frequently Asked Questions

- FinCEN issued FAQs
 - <https://fincen.gov/anti-money-laundering-act-2020>
- Full list of current questions and answers from CT Seminars:
 - <https://www.wolterskluwer.com/en/solutions/ct-corporation/faqs/beneficial-ownership-under-corporate-transparency-act>



Questions??





Thank you for
attending!

For questions, please contact:

Alan Stachura

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CT Government Relations

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Corporate Transparency Act

Frequently Asked Questions

Will FinCEN be providing the website where you have to file, and can we access the website now?

The report will be filed with FinCEN. FinCEN has stated the following: “FinCEN continues to develop the infrastructure to administer these requirements ... including the information technology system that will be used to store beneficial ownership information: the Beneficial Ownership Secure System (BOSS).” The website cannot be accessed now.

Is there a fee for filing a report?

The final reporting rule does not contain a provision imposing a filing fee.

Is this an annual filing?

The final reporting rule only requires an initial report, updated report (when necessary), and corrected report (when necessary).

Which types of organizations are considered reporting companies?

The answer is found in the final reporting rule’s definition of reporting company, which is stated below. If the organization meets the definition it is required to file a report unless it qualifies for an exemption.

The final rule states that Beneficial Ownership Information reports have to be filed by domestic reporting companies and foreign reporting companies. A domestic reporting company is defined as an entity that is a corporation, LLC or other entity created by the filing of a document with a secretary of state or similar office under the laws of a state or Indian tribe. A foreign reporting company is an entity that is a corporation, LLC, or other entity created under the law of a foreign country and registered to do business in any state or tribal jurisdiction by filing a document with a secretary of state or similar office under the law of a state or Indian tribe.

Which types of organizations are exempt?

These 23 are currently the only entities that are exempt.

Exemptions. Notwithstanding paragraph (c)(1) of this section, the term “reporting company” does not include:

(i) *Securities reporting issuer.* Any issuer of securities that is:

(A) An issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934; or

(B) Required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934

(ii) *Governmental authority.* Any entity that:

(A) Is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and

(B) Exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

(iii) *Bank.* Any bank, as defined in:

(A) Section 3 of the Federal Deposit Insurance Act;

(B) Section 2(a) of the Investment Company Act of 1940; or

(C) Section 202(a) of the Investment Advisers Act of 1940

(iv) *Credit union.* Any Federal credit union or State credit union, as those terms are defined in section 101 of the Federal Credit Union Act.

(v) *Depository institution holding company.* Any bank holding company as defined in section 2 of the Bank Holding Company Act of 1956, or any savings and loan holding company as defined in section 10(a) of the Home Owners' Loan Act.

(vi) *Money services business.* Any money transmitting business registered with FinCEN under [31 U.S.C. 5330](#), and any money services business registered with FinCEN under [31 CFR 1022.380](#).

(vii) *Broker or dealer in securities.* Any broker or dealer, as those terms are defined in section 3 of the Securities Exchange Act of 1934, that is registered under section 15 of that Act.

(viii) *Securities exchange or clearing agency*. Any exchange or clearing agency, as those terms are defined in section 3 of the Securities Exchange Act of 1934, that is registered under sections 6 or 17A of that Act.

(ix) *Other Exchange Act registered entity*. Any other entity not described in paragraph (c)(2)(i), (vii), or (viii) of this section that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

(x) *Investment company or investment adviser*. Any entity that is:

(A) An investment company as defined in section 3 of the Investment Company Act of 1940, or is an investment adviser as defined in section 202 of the Investment Advisers Act of 1940; and

(B) Registered with the Securities and Exchange Commission under the Investment Company Act of 1940 or the Investment Advisers Act of 1940.

(xi) *Venture capital fund adviser*. Any investment adviser that:

(A) Is described in section 203(l) of the Investment Advisers Act of 1940; and

(B) Has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

(xii) *Insurance company*. Any insurance company as defined in section 2 of the Investment Company Act of 1940.

(xiii) *State-licensed insurance producer*. Any entity that:

(A) Is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(B) Has an operating presence at a physical office within the United States.

(xiv) *Commodity Exchange Act registered entity*. Any entity that:

(A) Is a registered entity as defined in section 1a of the Commodity Exchange Act; or

(B) Is:

(1) A futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor, each as defined in section 1a of the Commodity Exchange Act, or a retail foreign exchange dealer as described in section 2(c)(2)(B) of the Commodity Exchange Act and

(2) Registered with the Commodity Futures Trading Commission under the Commodity Exchange Act.

(xv) *Accounting firm*. Any public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.

(xvi) *Public utility*. Any entity that is a regulated public utility as defined in [26 U.S.C. 7701\(a\)\(33\)\(A\)](#) that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

(xvii) *Financial market utility*. Any financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.

(xviii) *Pooled investment vehicle*. Any pooled investment vehicle that is operated or advised by a person described in paragraph (c)(2)(iii), (iv), (vii), (x), or (xi) of this section.

(xix) *Tax-exempt entity*. Any entity that is:

(A) An organization that is described in section 501(c) of the Internal Revenue Code of 1986 (Code) (determined without regard to section 508(a) of the Code) and exempt from tax under section 501(a) of the Code, except that in the case of any such organization that ceases to be described in section 501(c) and exempt from tax under section 501(a), such organization shall be considered to continue to be described in this paragraph (c)(1)(xix)(A) for the 180-day period beginning on the date of the loss of such tax-exempt status;

(B) A political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or

(C) A trust described in paragraph (1) or (2) of section 4947(a) of the Code.

(xx) *Entity assisting a tax-exempt entity*. Any entity that:

(A) Operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in paragraph (c)(2)(xix) of this section;

(B) Is a United States person;

(C) Is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

(D) Derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

(xxi) *Large operating company*. Any entity that:

(A) Employs more than 20 full time employees in the United States, with “full time employee in the United States” having the meaning provided in [26 CFR 54.4980H-1\(a\)](#) and [54.4980H-3](#), except that the term “United States” as used in [26 CFR 54.4980H-1\(a\)](#) and [54.4980H-3](#) has the meaning provided in § 1010.100(hhh);

(B) Has an operating presence at a physical office within the United States; and

(C) Filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales, as reported as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form, excluding gross receipts or sales from sources outside the United States, as determined under Federal income tax principles. For an entity that is part of an affiliated group of corporations within the meaning of [26 U.S.C. 1504](#) that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group.

(xxii) *Subsidiary of certain exempt entities.* Any entity whose ownership interests are controlled or wholly owned, directly or indirectly, by one or more entities described in paragraphs (c)(2)(i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xix), or (xxi) of this section.

(xxiii) *Inactive entity.* Any entity that:

(A) Was in existence on or before January 1, 2020;

(B) Is not engaged in active business;

(C) Is not owned by a foreign person, whether directly or indirectly, wholly or partially;

(D) Has not experienced any change in ownership in the preceding twelve month period;

(E) 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; and

(F) 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.

Does an LLC formed in the US and subsequently acquired by a foreign entity who becomes the sole owner have to file a report?

Any entity that meets the definition of a reporting company will be required to file an initial report. Changes in information reported (other than information for the company applicant) will require an updated report.

What does PII mean?

Personally identifiable information – which is information that is used to identify an individual.

How is beneficial owner defined?

The final rule defines beneficial owner as follows:

“For purposes of this section, the term “beneficial owner,” with respect to a reporting company, means any individual who, directly or indirectly, either exercises substantial control over such reporting company or owns or controls at least 25 percent of the ownership interests of such reporting company.”

Will certain individuals be considered a beneficial owner based on their role (as opposed to being 25% owners)?

The answer depends upon whether they have substantial control over the reporting company. That definition is as follows:

(i) *Definition of substantial control.* An individual exercises substantial control over a reporting company if the individual:

- (A) Serves as a senior officer of the reporting company;
- (B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- (C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:
 - (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - (2) The reorganization, dissolution, or merger of the reporting company;
 - (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;

(4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;

(5) Compensation schemes and incentive programs for senior officers;

(6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;

(7) 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; or

(D) Has any other form of substantial control over the reporting company.

(ii) *Direct or indirect exercise of substantial control.* An individual may directly or indirectly, including as a trustee of a trust or similar arrangement, exercise substantial control over a reporting company through:

(A) Board representation;

(B) Ownership or control of a majority of the voting power or voting rights of the reporting company;

(C) Rights associated with any financing arrangement or interest in a company;

(D) Control over one or more intermediary entities that separately or collectively exercise substantial control over a reporting company;

(E) Arrangements or financial or business relationships, whether formal or informal, with other individuals or entities acting as nominees; or

(F) any other contract, arrangement, understanding, relationship, or otherwise.

What constitutes an ownership interest?

The final rule defines an ownership interest as follows:

(i)(A) Any equity, stock, or similar instrument; preorganization certificate or subscription; or transferable share of, or voting trust certificate or certificate of deposit for, an equity security, interest in a joint venture, or certificate of interest in a business trust; in each such case, without regard to whether any such instrument is transferable, is classified as stock or anything similar, or confers voting power or voting rights;

(B) Any capital or profit interest in an entity;

(C) Any instrument convertible, with or without consideration, into any share or instrument described in paragraph (A), or (B) of this section, any future on any such instrument, or any warrant or right to purchase, sell, or subscribe to a share or interest described in paragraph (A), or (B) of this section, regardless of whether characterized as debt;

(D) Any put, call, straddle, or other option or privilege of buying or selling any of the items described in paragraph (A), (B), or (C) of this section without being bound to do so, except to the extent that such option or privilege is created and held by a third party or third parties without the knowledge or involvement of the reporting company; or

(E) Any other instrument, contract, arrangement, understanding, relationship, or mechanism used to establish ownership.

(ii) An individual may directly or indirectly own or control an ownership interest of a reporting company through any contract, arrangement, understanding, relationship, or otherwise, including:

(A) Joint ownership with one or more other persons of an undivided interest in such ownership interest;

(B) Through another individual acting as a nominee, intermediary, custodian, or agent on behalf of such individual;

(C) With regard to a trust or similar arrangement that holds such ownership interest:

(1) As a trustee of the trust or other individual (if any) with the authority to dispose of trust assets;

(2) As a beneficiary who:

(i) Is the sole permissible recipient of income and principal from the trust; or

(ii) Has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or

(3) As a grantor or settlor who has the right to revoke the trust or otherwise withdraw the assets of the trust; or

(D) 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 interests of the reporting company.

How are the total ownership interests of a reporting company calculated?

The final reporting rule states that in determining whether an individual owns or controls at least 25 percent of the ownership interests of a reporting company, the total ownership interests that an individual owns or controls, directly or indirectly, shall be calculated as a percentage of the total outstanding ownership interests of the reporting company as follows:

(A) Ownership interests of the individual shall be calculated at the present time, and any options or similar interests of the individual shall be treated as exercised;

(B) For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, calculated as a percentage of the total outstanding capital and profit interests of the entity;

(C) For corporations, entities treated as corporations for federal income tax purposes, and other reporting companies that issue shares of stock, the applicable percentage shall be the greater of:

(1) the total combined voting power of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, or

(2) the total combined value of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; and

(D) If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls 25 percent or more of any class or type of ownership interest of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.

What if beneficial owners are all international, therefore have no passport, etc.?

The final reporting rule does not address the situation where an individual does not have one of the authorized documents containing a unique number. You might consider contacting the FinCEN regulatory support section regarding that situation.

Will a disregarded entity have to obtain an EIN (employer identification number)?

The final reporting rule provides that a reporting company must set forth in its initial report "The Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)) of the reporting company, or where a foreign reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction".

When there is a change of control in the company's ownership structure, when does the company have to inform FinCEN?

If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report within 30 calendar days after the date on which such change occurs.

If a beneficial owner moves to a new address, does that need to be reported in 30 days?

If there is any change with respect to required information previously submitted to FinCEN concerning a reporting company or its beneficial owners, including any change with respect to who is a beneficial owner or information reported for any particular beneficial owner, the reporting company shall file an updated report within 30 calendar days after the date on which such change occurs.

What if all beneficial owners of your company are entities? What will need to be reported?

Please see the final reporting rule's definition of beneficial owner (set forth above). A beneficial owner is defined as an individual. The identity of the individuals who either directly or indirectly have either substantial control or are 25% owners will vary depending upon the unique circumstances of each reporting company. However, the definition of substantial control includes several roles that are provided by individuals.

Has there been guidance issued defining who the company applicant is?

The final rule defines a company applicant as follows:

- “(1) For a domestic reporting company, the individual who directly files the document that creates the domestic reporting company;
- (2) For a foreign reporting company, the individual who directly files the document that first registers the foreign reporting company; and
- (3) Whether for a domestic or a foreign reporting company, the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.”

Further guidance has not been provided by FinCEN. You may wish to contact the FinCEN regulatory support section to request clarification.

What is an “operating presence at a physical office”?

The final reporting rule states that the term “has an operating presence at a physical office within the United States” means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.

On the duty to update – would the expiration of the Passport or Driver’s License (say 1 year after the initial filing) – does that information need to be updated?

Although not addressed in the final rule itself, FinCEN stated in the preamble to the final rule that “reporting companies are required to update the image of the identification document from which the unique identification number is obtained only when there is a change in information to be reported in [31 CFR 1010.380\(b\)\(1\)\(ii\)\(A-D\)](#) on the identification document (e.g., name, date of birth, address, unique number). Other changes in the information contained in the identification document—for example, with respect to expiration dates or personal characteristics other than the information enumerated in [31 CFR 1010.380\(b\)\(1\)\(ii\)\(A-D\)](#)—do not require the submission of an updated image. Because the image is used to corroborate the information required to be reported in [31 CFR 1010.380\(b\)\(1\)\(ii\)\(A-D\)](#), the image only needs to be updated when such information changes.”

For companies created after 01/01/2024, do they also have to provide beneficial owner information, or just the applicant information?

Domestic reporting companies created on or after January 1, 2024 must report information about the reporting company, personally identifiable information about all beneficial owners, and personally identifiable information about its company applicant or applicants.

If all owners of more than 25% are reported as beneficial owners, is it necessary to report anyone else with substantial control?

Information must be reported on all individuals who meet the definition of beneficial owner – which includes those with substantial control and those with 25% ownership. (Please see the definition of beneficial owner above for the exact language of the final rule).

If a reporting entity is wholly owned by another entity, are we required to look through to the individual(s) of the ownership entity?

Please see the definition of beneficial owner set forth above. It includes individuals who, directly or indirectly, exercise substantial control over a reporting company, which includes, among things, an individual who directs, determines, or has substantial influence over important decisions made by the reporting company.

Can you look at multiple companies' total sales in order to determine if a company can qualify for the large company exemption?

The definition of large operating company states "For an entity that is part of an affiliated group of corporations within the meaning of [26 U.S.C. 1504](#) that filed a consolidated return, the applicable amount shall be the amount reported on the consolidated return for such group."

Will filing be done online?

FinCEN has indicated that filings must be submitted electronically.

Have any forms been published by FinCEN?

FinCEN issued proposed versions of the data field summaries for the report form and individual FinCEN ID application.

What if a member of your entity will not cooperate in providing information (e.g., won't give a copy of ID) needed for filing?

The final rule does not address that situation. You may wish to contact the FinCEN regulatory support section for clarification.

For the large operating company exemption, do all 3 factors need to be true? Can you have fewer than 20 employees but with more than \$5 million in receipts and still be exempt?

The final rule requires all three factors for an entity to qualify for the large operating company exemption – 1) More than \$5M in gross receipts or sales, 2) More than 20 full time employees in US, and 3) Operating presence at a physical office in US.

Do offshore companies created in the US but with no business in US need to report?

Please see the definition of a reporting company and the list of exemptions to determine if the offshore company would be required to report.

How are law firms categorized as company applicants on existing entities?

Entities existing before January 1, 2024 are not required to report company applicant information.

Does an LLC without employees have to file a report?

The final reporting rule's definition of reporting company includes an LLC. An LLC is required to file a report unless it qualifies for one of the 23 exemptions.

Where a corporation is owned by a US holding company and the US holding company is owned by a foreign holding company, does the US holding company have to file a report?

Any entity that meets the definition of a domestic reporting company (LLC, corporation or other entity created by filing a document with a state. See full definition above), and does not qualify for one of the 23 exemptions is required to file a report.

Will evidence be provided when a report is filed?

Yes. FinCEN indicates that a submission receipt with a unique identifying number will be provided at the time of filing.

How quickly can I obtain a FinCEN Identifier?

FinCEN indicates that this process will be “near-real time” and that the unique identifier will be provided seconds after submitting the application.

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