

CLIENT ALERT

FinCEN Launches Beneficial Ownership Information Registry

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On January 1, 2024, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) brought its [BOIE-Filing System](#) online and began accepting Beneficial Ownership Information Reports (BOIRs), marking the first day of a new compliance regime under the Corporate Transparency Act (the Act). The bipartisan Act, aiming to combat money laundering, terrorism, tax fraud, and other illicit activities through enhanced transparency of entity structures and ownership, became federal law on January 1, 2021.

As we previously reported ([here](#), [here](#), [here](#), [here](#), & [here](#)), the issue of how and whether to track beneficial ownership of privately held entities has been hotly debated since at least 2006, with concerns about the anonymity of bad actors weighing heavily for governmental oversight on the one hand, and privacy and cost concerns weighing heavily on the other. Since the Act was passed, FinCEN has engaged in months of rulemaking, and certain non-exempt business entities (Reporting Companies) are now required to report Beneficial Ownership Information (BOI) to FinCEN, and to keep such information up to date.

WHO ARE REPORTING COMPANIES, BENEFICIAL OWNERS & COMPANY APPLICANTS?

The vast majority of privately held corporations, limited liability companies, limited partnerships, statutory trusts and other similar entities that are created in, or registered to do business in, any of the states in the United States—including the District of Columbia, Puerto Rico and other U.S. territories—are considered Reporting Companies. There are 23 categories of exempt entities (plus a catch-all category), including large operating companies, dormant entities, pooled investment vehicles, financial institutions, and tax-exempt entities. A Reporting Company must provide BOI about both its Beneficial Owners and Company Applicants.

A Beneficial Owner is any individual who, directly or indirectly, either:

- exercises “substantial control” over the Reporting Company; or
- owns or controls 25% or more of the “ownership interests” of the Reporting Company.

An individual exercises “substantial control” of a Reporting Company if an individual:

- serves as a senior officer of the Reporting Company (e.g., president, CEO, COO, CFO, general counsel and any other officer 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); or
- directs, determines, or has substantial influence over important decisions made by the Reporting Company.

A Company Applicant is any individual who directly files the document that creates or registers a Reporting Company, and, if more than one individual is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.

INFORMATION REQUIRED

Reporting Companies can prepare and file a BOIR online using the BOI E-Filing System or prepare a BOIR offline as a PDF and submit it later. The system can be used to file an initial report, correct/update a prior report, or inform FinCEN that a Reporting Company has newly qualified for an exemption. For initial, corrected, and updated reports, Reporting Companies must provide their legal name, tax identification number, jurisdiction of formation, and current business address. They can also request a FinCEN Identifier, a unique 12-digit number.

For initial, corrected, and updated reports, a Reporting Company—if it is a new company created or registered to do business in the U.S. on or after January 1, 2024—must identify its Beneficial Owners and Company Applicants in the same manner: by providing his or her full legal name, date of birth, current residential address and certain unique identifying information. The information could be the identifying number and issuing jurisdiction from either:

- a non-expired U.S. passport or driver’s license;
- a non-expired identification document issued by a State, local government, or Indian tribe; or,
- if the individual does not have any of the above, a non-expired passport issued by a foreign government.

Reporting Companies must also upload an image of the Beneficial Owner’s or Company Applicant’s identifying document. Alternatively, the unique identifying information requirement can be satisfied by simply providing the individual’s FinCEN Identifier—if he or she has one. A minor child can be a Beneficial Owner, but his or her parent must fill out this section in lieu of the child.

BOI is not publicly available, though FinCEN may disclose such information to:

- U.S. federal law enforcement agencies;
- other enforcement agencies upon court approval;
- non-U.S. law enforcement agencies, prosecutors, or judges upon request of a U.S. federal law enforcement agency; and
- financial institutions and their regulators upon consent of the Reporting Company.

DEADLINES AND PENALTIES

Reporting Companies incorporated, formed, or registered in the U.S. before January 1, 2024 must file an initial BOIR by January 1, 2025. Reporting Companies incorporated, formed, or registered in the U.S. on or after January 1, 2024 must file an initial BOIR within 90 days of creation or registration. Finally, Reporting Companies incorporated, formed, or registered in the U.S. on or after January 1, 2025 must file an initial BOIR within 30 days of creation or registration.

A Reporting Company’s failure to provide accurate information may result in (i) a maximum fine of \$500 per day per violation, (ii) imprisonment of up to two years, or (iii) a combination of both. These penalties may be imposed not only on the non-compliant Reporting Company but also on its senior officers and anyone who causes such non-compliance. There is a safe harbor available for an individual or entity that voluntarily and promptly corrects a false BOIR within 90 days of its submission. Penalties are even more stringent for individuals or entities who knowingly use or disclose BOI without proper authorization.

OUR COMMITMENT TO COMPLIANCE

Winston formed a Corporate Transparency Act Task Force to assist our clients with compliance. We will continue to publish Client Alerts and host webinars on the Act throughout 2024. Please click [here](#) for more information.

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