

BENEFICIAL OWNERSHIP INFORMATION

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- ▶ Plain English Guidance!! -Questions remain
- ▶ <https://www.fincen.gov/boi/small-entity-compliance-guide>
- ▶ <https://www.fincen.gov/boi-faqs>
- ▶ <https://www.aicpa-cima.com/resources/download/beneficial-ownership-information-boi-faq-expanded>

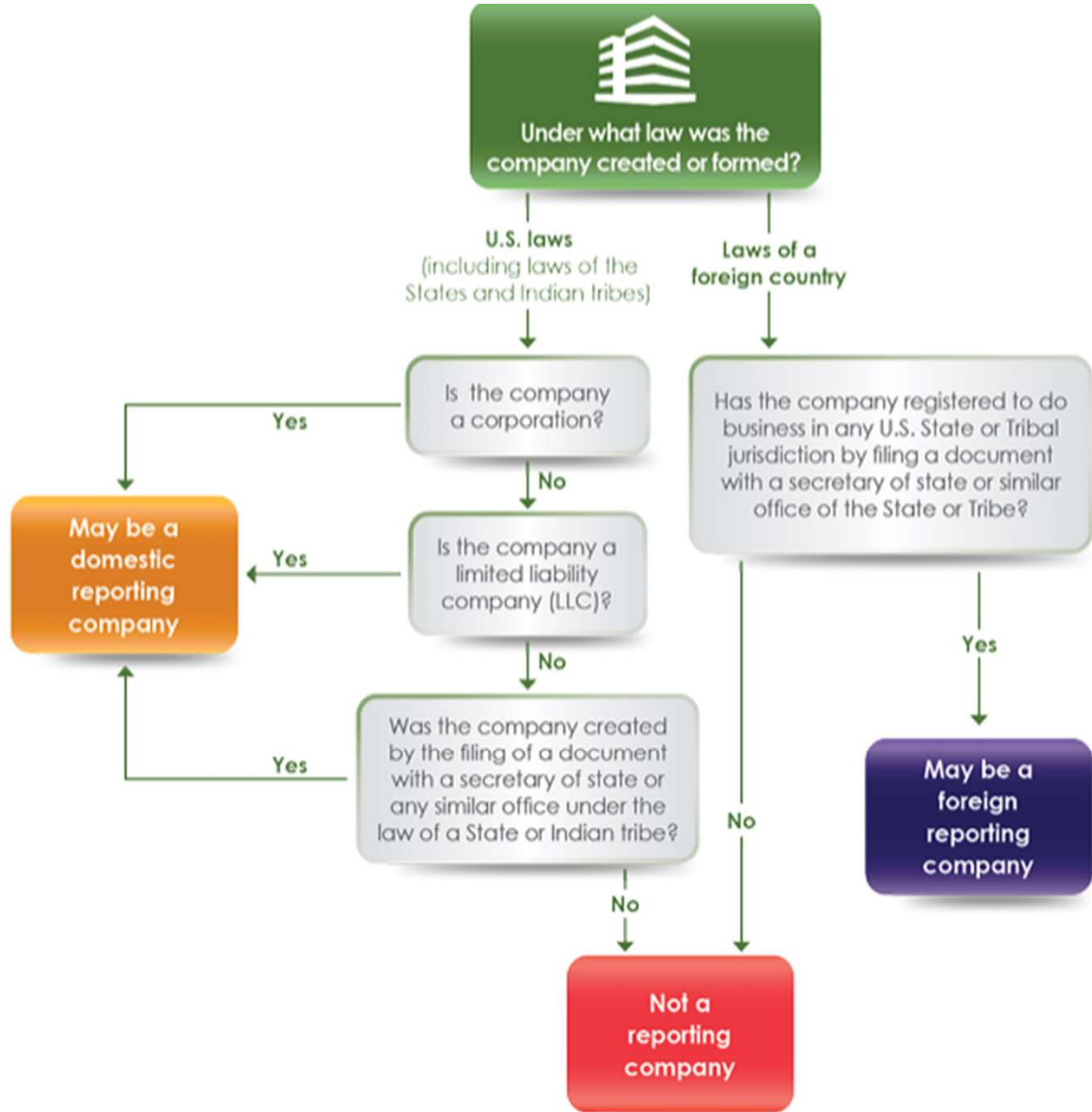
Practicing Law or Not?

- ▶ There has been some debate about whether non-attorney practitioners advising clients on the requirements of the Corporate Transparency Act “CTA” or the Beneficial Ownership Information “BOI” reporting form could be considered unauthorized practice of law
- ▶ Practitioners may wish to contact their state regulators, insurance carriers, and/or legal counsel to further discuss this issue
- ▶ This is required under the Bank Secrecy Act NOT the IRC so this information will be reported directly to FinCEN
 - ▶ Same authority that requires the FBAR - FinCEN114 - we can help with those so why is this different???? - AON insurance points out that enforcement of the CTA has not been delegated to the IRS like the FBAR regs...Therefore, E & O may not cover... CAMICO will states they cover but prefer you to file the form for the client until future guidance is issued

Does My Company have to Report Beneficial Owners?

- ▶ Companies are only required to report BOI to FinCEN if they meet the Reporting Rule's definition of a "reporting company."
- ▶ Two categories: Domestic and Foreign
 - ▶ Domestic includes United States territories (Guam, Puerto Rico, etc.)
- ▶ 23 specific types of entities are exempt
 - ▶ Large operating company (not so large, thankfully - \geq \$5m and \geq 20 FTE)
- ▶ Safe harbor from penalty exists for amended reports filed within 90 days of the original report deadline. Willful failure to report may result in penalties up to \$500 per day (\$10,000 max) and imprisonment up to 2 years.

Reporting Company Definition Flowchart



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

Reporting Company Exemptions

Large operating company (Exemption #21)

An entity qualifies for this exemption if all **six** of the following criteria apply:

<p>1. The entity employs more than 20 full time employees, when applying the meaning of full-time employee provided in 26 CFR 54.4980H-1(a) and 54.4980H-3. In general, “full-time employee” means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>2. More than 20 full-time employees of the entity are employed in the “United States,” as that term is defined in 31 CFR 1010.100(hhh).</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. The entity has an operating presence at a physical office within the United States. “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.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>4. The entity entity 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. If the entity is part of an affiliated group of corporations within the meaning of 26 U.S.C. 1504, refer to the consolidated return for such group.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>5. The entity reported this greater-than-\$5,000,000 amount 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.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>6. When gross receipts or sales from sources outside the United States, as determined under Federal income tax principle, are excluded from the entity’s amount of gross receipts or sales, the amount remains greater than \$5,000,000.</p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No</p>

Who is a Beneficial Owner of my Company?

- ▶ A beneficial owner is any individual who, directly or indirectly:
 - ▶ Exercises **substantial control** over a reporting company
 - ▶ **OR** controls at least 25 percent of a reporting company's **ownership interests**
- ▶ There is no maximum on the number of beneficial owners who must be reported to FinCEN.
- ▶ Substantial control may be directly (board representation, voting rights) or indirectly (control of an intermediary entity).
 - ▶ Trusts may create complexity - Not a reporting entity but everyone around them may potentially be ---Trustee (employees of a Corporate trustee, trust protector, trust advisors, beneficiaries, settlors.....
- ▶ Exempt parties include minor children, custodians, employees (unless owner or substantial control), inheritors, and creditors.

Indicators of Substantial Control



SENIOR OFFICER

any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers



APPOINTMENT OR REMOVAL AUTHORITY

any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body



IMPORTANT DECISION-MAKER

any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. **Business**, such as:
 - Nature, scope, and attributes of the business
 - The selection or termination of business lines or ventures, or geographic focus
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. **Finances**, such as:
 - Sale, lease, mortgage, or other transfer of any principal assets
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
 - Compensation schemes and incentive programs for senior officers
3. **Structure**, such as:
 - Reorganization, dissolution, or merger
 - 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



CATCH-ALL

any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here



Ownership Interests

Total combined voting power of all classes
of the individual's ownership interests
÷
Total outstanding voting power of all classes
of ownership interests entitled to vote
=
Individual's voting power %

Total combined value of the individual's
ownership interests
÷
Total outstanding value of all classes of
ownership interests
=
Individual's ownership interest value %

Individual's capital and profit interests
÷
Total outstanding capital and profit interests
=
Individual's capital and profit interests %

Sample Substantial Control Questions

Substantial control question:	Answer	If response is "Yes":
1. Does your company have a president, chief financial officer, general counsel, chief executive officer, or chief operating officer?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are senior officers in your company.
2. Does your company have any other officers that perform functions similar to those of a President, chief financial officer, general counsel, chief executive officer, or chief operating officer? <i>Note:</i> One individual may perform one or more functions for a company, or a company may not have an individual who performs any of these functions.	<input type="checkbox"/> Yes <input type="checkbox"/> No	
3. Does your company have a board of directors or similar body AND does any individual have the ability to appoint or remove a majority of that board or body?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are individuals with appointment or removal authority over your company.
4. Does any individual have the ability to appoint or remove a senior officer of your company?	<input type="checkbox"/> Yes <input type="checkbox"/> No	
5. Does any individual direct, determine, or have substantial influence over important decisions made by your company, including decisions regarding your company's business, finances, or structure? <i>Note:</i> Certain employees who might fit this description are nevertheless exempt from the beneficial owner definition. See section 2.4 for more information.	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are important decision-makers over your company.
6. Are there any other individuals who have substantial control over your company in ways other than those identified in 1-5 above?	<input type="checkbox"/> Yes <input type="checkbox"/> No	There are individuals to whom the catch-all would apply.

REPORTING COMPANY

Type of entity:
Corporation

Ownership interest:
Stock

Individual D
President

50% of stock

40% of stock

10% of stock

Individual A

Individual B

Individual C

REPORTING COMPANY

Type of entity:
LLC

Ownership Interest:
Membership units

Individual C

Manager

50% of membership units

50% of membership units

Individual A

Manager

Individual B

Reporting Company

REPORTING COMPANY

Type of entity:
Corporation
Ownership interest:
Stock



50% of stock

50% of stock

Direct Owners

Company Y

Company Z

30% of stock

70% of stock

25% of stock

25% of stock

25% of stock

25% of stock

Indirect Owners

Individual A
CFO

Individual B

Individual A
CFO

Individual C
CEO & President

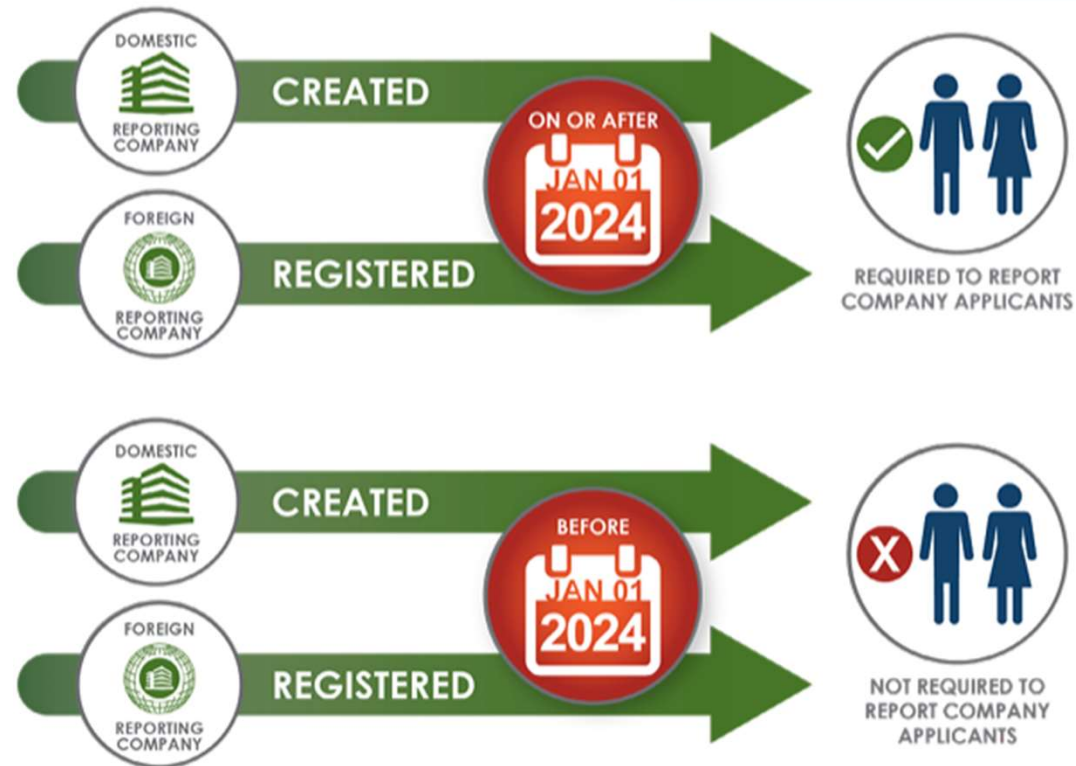
Individual D

Individual E

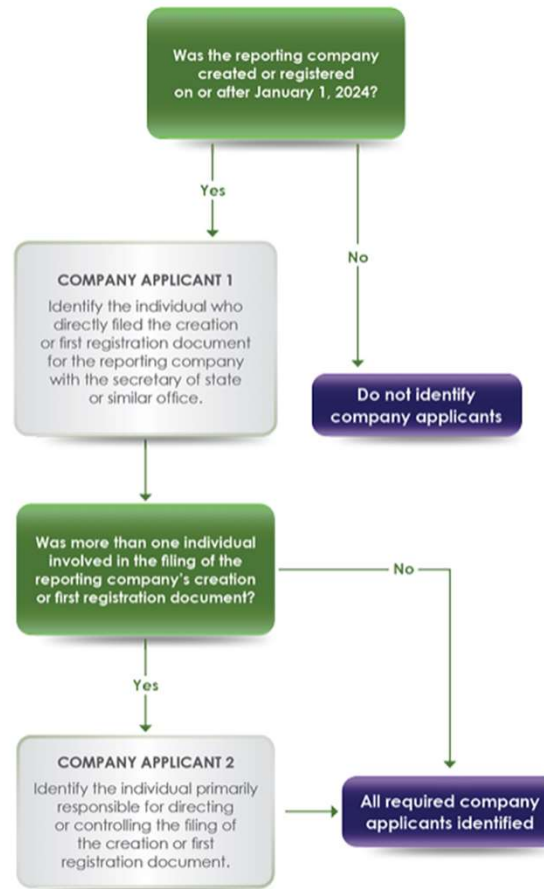
Does my Company Have to Report its Company Applicants?

- ▶ A reporting company is required to report its company applicants if it is either a:
 - ▶ Domestic reporting company created on or after January 1, 2024, or
 - ▶ A foreign reporting company first registered to do business in the United States on or after January 1, 2024.
- ▶ If created or registered to do business prior to January 1, 2024, a reporting company is not required to report its company applicants.
- ▶ Only an individual can be a company applicant.
- ▶ Two types of company applicants: Direct filer (who filed the report) and filing action control (who directed filing of the report).

Company Applicant Reporting Requirement



Company Applicant Definition



What Specific Information Does my Company Need to Report?

- ▶ Do not need to report information on the following:
 - ▶ Owned by exempt entity
 - ▶ Minor children
 - ▶ Foreign pooled investment vehicle
 - ▶ Company applicant reporting for existing companies
- ▶ A **FinCEN identifier** is a unique identifying number FinCEN issues to individuals or reporting companies upon request after information has been reported to FinCEN.
 - ▶ Provide name, date of birth, address, and identifying number and image of a document such as a license or passport
 - ▶ Only one FinCEN identifier is issued to an individual or reporting company

Required Information Checklists

Reporting Company

- Full legal name
- Any trade name or "doing business as" (DBA) name
 - » Report all trade names or DBAs.
- Complete current U.S. address
 - » Report the address of the principal place of business in United States, or, if the reporting company's principal place of business is not in the United States, the primary location in the United States where the company conducts business.
- State, Tribal, or foreign jurisdiction of formation
- For a foreign reporting company only.** State or Tribal jurisdiction of first registration
- Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))
 - » **If a foreign reporting company has not been issued a TIN,** report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

Each Beneficial Owner and Company Applicant

Not all reporting companies are required to report information about company applicants. See Chapter 3 for assistance in identifying whether your company is required to report company applicant information.

- Full legal name
- Date of birth
- Complete current address
 - » Report the individual's residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- Unique identifying number and issuing jurisdiction from, and image of, **one** of the following non-expired documents:
 - » U.S. passport
 - » State driver's license
 - » Identification document issued by a state, local government, or tribe
 - » **If an individual does not have any of the previous documents,** foreign passport

When and how Should my Company file its Initial BOI Report?

- ▶ If your company exists prior to January 1, 2024, the deadline for the initial BOI report is January 1, 2025.
- ▶ If your company is established on or after this date, you have 30 days after receiving public notice that registration is effective. **EXTENSION TO 90 DAYS FOR 2024 ENTITIES - AICPA WANTS MORE TIME TO FILE AND LET THEM KNOW!!!!**
- ▶ Entities created after 2024 will have 30 days.
- ▶ If your company previously qualified for an exemption but has since lost its status, you have 30 **calendar** days from the date of disqualification to file a BOI report.
- ▶ The filing system for BOI reports is currently being developed and will not be available until January 1, 2024. As such, FinCEN will not accept reports prior to this date.

Initial Reporting Requirement

NPRM (RIN1506-AB62)
Gives 90 Days for
2024 Entities



The reporting requirement is effective on January 1, 2024. FinCEN will begin accepting beneficial ownership information reports on that date.



INITIAL REPORTS

Required by all companies that meet the definition of **reporting company** and are not **exempt** from that definition.



Existing reporting companies

Created or registered to do business in the United States before January 1, 2024.
Reports due by **January 1, 2025**.



New reporting companies

Created or registered to do business in the United States on or after January 1, 2024.
Reports due within **30 calendar days** of receiving actual or public notice that the creation or registration of the reporting company is effective.

What if There are Changes to, or Inaccuracies, in Reported Information?

- ▶ If there is any change to required information, your company has 30 days to file an updated BOI report.
 - ▶ Example changes include registration of a new DBA, changes in beneficial owners, or name/address changes provided in a previous BOI report
- ▶ Corrected reports are due within 30 days after reporting company becomes aware or has reason to know of an inaccuracy.
- ▶ There are no penalties for filing an **inaccurate** BOI report provided it is corrected within 90 calendar days of filing.
- ▶ If you file a BOI report and later qualifies for an exemption, you may file an updated report to indicate this new exemption status.
- ▶ **STATES ARE REQUIRED TO NOTIFY FILERS UPON INITIAL FORMATION / REGISTRATION OF THE REQUIREMENT TO PROVIDE BOI AND THE APPROPRIATE COMPANY REPORTING FORM**