

Final Rulemaking Update

CTA: Beneficial Ownership Reporting Reinstated with Extended Reporting Deadlines

On Monday December 23, the New Orleans-based 5th U.S. Circuit Court of Appeals stayed (temporarily lifted) an order blocking the nationwide enforcement of the Corporate Transparency Act (**CTA**) and its requirements for certain companies to submit Beneficial Ownership Information Reports (**BOIR**). The three-judge panel determined that the government had made a strong showing that it was likely to succeed on the merits in defending the CTA's constitutionality.

As a result of this decision, reporting companies that have not already made such filings are required to submit information on their beneficial owners, and for newly created entities, their company applicants. Following the stay of the injunction, FinCEN issued an update extending the reporting deadlines as follows:

- Reporting companies that were created or registered prior to January 1, 2024, have until January 13, 2025, to file their initial beneficial ownership information reports with FinCEN. (These companies would otherwise have been required to report by January 1, 2025.)
- Reporting companies created or registered in the United States on or after September 4, 2024, that had a filing deadline between December 3, 2024, and December 23, 2024, have until January 13, 2025, to file their initial beneficial ownership information reports with FinCEN.
- Reporting companies created or registered in the United States on or after December 3, 2024, and on or before December 23, 2024, have an additional 21 days from their original filing deadline to file their initial beneficial ownership information reports with FinCEN.
- Reporting companies that are created or registered in the United States on or after January 1, 2025, have 30 days to file their initial beneficial ownership information reports with FinCEN after receiving actual or public notice that their creation or registration is effective.

Given the impending deadlines and potential penalties for non-compliance, we suggest that clients consult with legal counsel as needed to confirm reporting obligations and take steps to submit required filings by the reporting deadlines. To assist in that effort, attached at the link below is a PDF reporting form that can be prepared offline at your own pace and saved as you go, then submitted directly to FinCEN's BOI E-Filing website (<https://boiefiling.fincen.gov>). Reports can also be completed [online](#) and do not require Adobe Reader.

FinCEN estimated that a typical, simple company would spend about ninety minutes to complete and file CTA's required report, which may be filed for free.

We have provided relevant definitions and answers to certain questions from FinCEN regarding reporting obligations below for your reference. Additional FAQs can be found [here](#).

D. 1. Who is a beneficial owner of a reporting company?

A beneficial owner is an individual who either directly or indirectly: (1) exercises substantial control (see Question D.2) over the reporting company, or (2) owns or controls at least 25% of the reporting company's ownership interests (see Question D.4). Because beneficial owners must be individuals (i.e., natural persons), trusts, corporations, or other legal entities are not

considered to be beneficial owners. However, in specific circumstances, information about an entity may be reported in lieu of information about a beneficial owner (see Question D.12).

FinCEN's Small Entity Compliance Guide provides checklists and examples that may assist in identifying beneficial owners (see Chapter 2.3 "What steps can I take to identify my company's beneficial owners?").

[Updated April 18, 2024]

i. How many beneficial owners can a reporting company have?

An individual might be a beneficial owner through substantial control, ownership interests, or both. A reporting company can have multiple beneficial owners; there is no maximum number of beneficial owners who must be reported.

[Issued October 3, 2024]

ii. What if a reporting company does not have any individuals who own or control at least 25 percent?

FinCEN expects that every reporting company will be substantially controlled by one or more individuals, and therefore that every reporting company will be able to identify and report at least one beneficial owner to FinCEN.

[Issued October 3, 2024]

D. 2. What is substantial control?

An individual can exercise substantial control over a reporting company in four different ways. If the individual falls into any of the categories below, the individual is exercising substantial control:

- The individual is a senior officer (the company's president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function).
- The individual has authority to appoint or remove certain officers or a majority of directors (or similar body) of the reporting company.
- The individual is an important decision-maker for the reporting company. See Question D.3 for more information.
- The individual has any other form of substantial control over the reporting company as explained further in FinCEN's Small Entity Compliance Guide (see Chapter 2.1, "What is substantial control?").

[Updated October 3, 2024]

E. 1. Who is a company applicant of a reporting company?

Only reporting companies created or registered on or after January 1, 2024, will need to report their company applicants.

A company that must report its company applicants will have only up to two individuals who could qualify as company applicants:

1. The individual who directly files the document that creates or registers the company; and

2. If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.

In addition, Chapter 3.2, “Who is a company applicant of my company?” of FinCEN’s Small Entity Compliance Guide includes additional information to help identify company applicants.

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E. 2. Which reporting companies are required to report company applicants?

Not all reporting companies have to report their company applicants to FinCEN.

A reporting company must report its company applicants only if it is either a:

- Domestic reporting company created in the United States on or after January 1, 2024; or
- Foreign reporting company first registered to do business in the United States on or after January 1, 2024.

A reporting company does not have to report its company applicants if it is either a:

- Domestic reporting company created in the United States before January 1, 2024; or
- Foreign reporting company first registered to do business in the United States before January 1, 2024.

Below is summary of the company applicant reporting requirement. Chapter 3.1, “Is my company required to report its company applicants?” of FinCEN’s Small Entity Compliance Guide includes additional information.

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K. 2. What penalties do individuals face for violating BOI reporting requirements?

As specified in the Corporate Transparency Act, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. However, this civil penalty amount is adjusted annually for inflation. As of the time of publication of this FAQ, this amount is \$591.

A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

[Updated April 18, 2024]

If you have questions or need assistance in completing your required filings after January 1, please reach out to Standish Compliance.

See BOIR Form - <https://boiefiling.fincen.gov/fileboir>