

Beneficial Ownership Information Reporting Requirements Effective January 1, 2024

Effective January 1, 2024, the Corporate Transparency Act of 2021 requires numerous types of legal entities to report beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. BOI includes information about the entity, its beneficial owners, and in certain cases its company applicants. BOI is reported to FinCEN through a Beneficial Ownership Information Report (BOIR).

The purpose of this summary is to provide general information about BOI reporting, including who must report, what they must report, and when they must report.

Who

An entity is required to report beneficial ownership information if it is a “reporting company” and does not qualify for an exemption. The most common examples of reporting companies are limited liability companies and corporations formed pursuant to state law. Notable exceptions include large operating companies, tax-exempt organizations, banks, and accounting firms.

What

Beneficial ownership information is information about an entity, its beneficial owners, and, in certain cases, its company applicants. The person submitting beneficial ownership information to FinCEN must certify that the information is true, correct, and complete.

The BOIR is a one-time filing, but an amended report must be filed if the relevant information changes. There is no filing fee.

When

FinCEN began accepting BOIRs electronically through its secure filing system on January 1, 2024.

If a reporting company **already exists** as of January 1, 2024, it has until **January 1, 2025**, to file its BOIR.

If a reporting company is created on or after **January 1, 2024 and before January 1, 2025**, it must file its BOIR **within 90 days** after its creation.

If a reporting company is created on or after **January 1, 2025**, it must file its BOIR within 30 days after its creation.

If there is any change to the required information about a reporting company or its beneficial owners in a BOIR that was previously filed, the reporting company must file an updated BOIR no later than 30 days after the date on which the change occurred.

If the reporting company identifies an inaccuracy in a BOIR that was previously filed, the reporting company must correct it no later than 30 days after the date the reporting company becomes aware of the inaccuracy or had reason to know of it.

Where

Reporting companies may complete BOIRs electronically by accessing the BOI E-Filing portal at <https://boiefiling.fincen.gov>.

The E-Filing portal permits a reporting company to choose one of the following methods to submit a BOIR:

- Upload finalized PDF version of BOIR and submit online.
- Fill out Web-based version of BOIR and submit online.

A reporting company may submit its BOIR through either of these methods, both of which require the filing to be done online as BOIRs cannot be mailed or faxed to FinCEN. In each case, the person who submits a BOIR will need to provide his or her name and email address to FinCEN.

The person who submits a BOIR will receive confirmation of submission when a BOIR is accepted by FinCEN.

FinCEN also offers system-to-system BOIR transmission via secure Application Programming Interface (API) for those, including third-party service providers, who are interested in automating the BOIR filing process.

How to Report Beneficial Ownership Information

Complete a BOIR by providing the following information:

- For the reporting company:
 - Full legal name;
 - Any trade name or “doing business as” name;
 - Complete current U.S. address;
 - Jurisdiction of formation; and
 - IRS Taxpayer Identification Number (TIN), including an Employer Identification Number (EIN).

- For each beneficial owner and each company applicant required to be reported:
 - Full legal name;
 - Date of birth;
 - Complete current address;
 - Unique identifying number and issuing jurisdiction from one of the following nonexpired documents:
 1. U.S. passport;
 2. identification document issued by a State, local government, or Indian Tribe issued for the purpose of identifying the individual;
 3. State-issued driver’s license; or
 4. if none of 1-3 are available, a foreign passport; and
 - An image of the document from which the unique identifying number was obtained.

A “beneficial owner” is any party that owns at least 25% of the entity, or exercises substantial control over the business and operations of the entity, including most executive officers. A reporting company may have multiple beneficial owners.

Reporting companies may provide a FinCEN identifier for a beneficial owner or company applicant instead of the information listed above.

Company Applicants

Reporting Companies created in 2024 or after are subject to an additional requirement - it must identify and report its “company applicants”. A company applicant includes the “direct filer” (the individual who actually files the document that creates the entity) and may include a second person who controls the filing process. Examples of a direct filer include an owner, a corporate officer, a secretary, a paralegal, or an attorney.

For any individual classified as a company applicant, the same information as that required for a beneficiary must be filed.

Penalties

Failure to timely file a required BOIR may result in significant penalties – a civil penalty of up to \$500 per day, and/or criminal penalties including a fine and possible imprisonment. These may be imposed on the senior officers of the entity.

Conclusion

The breadth of the BOIR filing requirements have taken many by surprise. **Virtually every small business entity will need to file, even if it has no activity or is disregarded for income tax purposes.** The obligation to update the information on file within 30 days of a change in ownership, address, etc. is especially onerous.

For existing companies, it may be advisable to wait until later in 2024 to file their BOIRs for a couple of reasons. First, if a change of owner, address, etc., occurs later this year, that change can be reflected on the original BOIR filing, and it would not be necessary to file an amended BOIR. Furthermore, it is possible that the BOIR filing requirements may be modified or suspended by Congressional action or pending litigation.

Please contact us if you would like our assistance in determining whether your entity is subject to the BOIR filing requirements and in filing the BOIR if required. For new entities that our firm creates on behalf of clients, please see the attached.

GOMEL, DAVIS & WATSON, LLP
January 2024

GOMEL, DAVIS & WATSON, LLP
BOIR Filing for New Entities formed in 2024

If our firm creates a new entity on behalf of a client by filing an organizing document with the applicable state agency, and the filing is subject to the above BOIR requirements, the following shall apply:

1. Unless the client requests otherwise, the client will be responsible for filing the BOIR. In that event, the attorney at our firm who filed the document should be listed as a company applicant. Let us know if you need any additional information to complete this step.
2. At the request of the client, our firm will file the BOIR on behalf of the client's new entity. The client will need to timely provide any information we request in order to file the BOIR. We will invoice the client for our time on this task in accordance with our normal billing procedures. We anticipate that most of the work will be handled by our paralegals.