



## **What to Know about the Corporate Transparency Act and Beneficial Ownership Information Reporting**

**Updated June 24, 2024**

This handout is a reference guide for small businesses and nonprofits on the Corporate Transparency Act (“CTA”). The CTA is a 2021 law enforced by the United States Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”). Through transparency and accountability measures, the goal of the CTA is to help prevent money laundering, terrorist financing, corruption, and tax fraud. Effective January 1, 2024, the CTA requires that many companies doing business in the U.S. disclose Beneficial Ownership Information (“BOI”) to FinCEN. BOI includes information about a company, the people who control the company, and the people who helped create the company. Failure to comply with these requirements could lead to heavy civil and criminal penalties.

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### **Who needs to file the BOI report?**

Unless exempt, a company must report BOI to FinCEN. BOI is identifying information about any individuals who directly or indirectly own or control a company.<sup>1</sup>

#### ***Reporting Companies***

Two types of companies must report BOI to FinCEN:

1. Companies based in the U.S., such as LLCs, corporations, and other entities formed by filing with a Secretary of State or comparable office.
2. Companies based outside of the U.S. but registered to conduct business in the U.S., such as LLCs, corporations, and other entities.

In California, corporations (including some nonprofits), limited liability corporations, and limited partnerships must register with the Secretary of State.<sup>2</sup>

#### ***Exemptions***

23 kinds of companies are exempt from BOI reporting requirements, including large operating companies, many nonprofits, insurance companies, banks, and inactive entities.<sup>3</sup> The full list can be found

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<sup>1</sup> United States Department of the Treasury Financial Crimes Enforcement Network. “Beneficial Ownership Information Reporting: Frequently Asked Questions.” December 1, 2023: 1.

[https://www.fincen.gov/sites/default/files/shared/BOI\\_FAQs\\_Q%26A\\_12.1.23.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_FAQs_Q%26A_12.1.23.pdf).

<sup>2</sup> California Secretary of State. “Starting a New Business in California.” 2023: 4.  
<https://bpd.cdn.sos.ca.gov/bizfile/bizfile-brochure.pdf>.

<sup>3</sup> For full list of exempt entities, see United States Department of the Treasury Financial Crimes Enforcement Network, “Small Entity Compliance Guide,” December 2023: 4.

[https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf).

on page four of FinCEN’s [Small Entity Compliance Guide](#). You do not need to file a BOI report if your business qualifies for any of the exemption categories.

Once such exemption is for tax-exempt entities.<sup>4</sup> However, there is an outstanding question as to whether a newly incorporated nonprofit entity needs to register with FinCEN while it is waiting for its federal exemption from the IRS.<sup>5</sup> In light of this uncertainty, Public Counsel recommends that if you incorporated a tax-exempt entity (such as a nonprofit public benefit corporation) on or after January 1, 2024 but are awaiting a determination letter from the IRS regarding your tax-exempt status, that you file a BOI report as you near FinCEN’s 90-day deadline (see “[When do I need to file the BOI report?](#)” below).<sup>6</sup>

For example, if you submitted a streamlined application (1023-EZ) for tax-exempt status, you may receive your determination letter within 90 days and not have to file BOI. However, if you have been incorporated for nearly 90 days and are still awaiting your tax-exempt determination letter from the IRS, you may want to file a BOI report to avoid the risk of penalties.<sup>7</sup>

If your company filed a BOI report but receives tax-exemption, you can file an updated report indicating that it is no longer a reporting company on the website where you filed, <https://boiefiling.fincen.gov>.

If your federal tax-exempt status is revoked for more than 180 days, you must file a BOI report within 90 days. Learn more about how to avoid revocation of your federal exemption [here](#).<sup>8</sup>

## **Who are beneficial owners?**

A BOI report to FinCEN includes information about beneficial owners.

### ***Beneficial Owners***

A beneficial owner is any individual who directly or indirectly:

- a. Has ***substantial control*** over the reporting company’s decisions or operations; **AND/OR**
- b. Owns or controls at least 25% of the company’s ***ownership interests*** shares.<sup>9</sup>

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<sup>4</sup> “Small Entity Compliance Guide,” 11.

<sup>5</sup> Woolf, Steven M. “The New Beneficial Ownership Report Rules: Most Nonprofits Are Exempt from Filing – But Beware of the Exceptions!” National Council of Nonprofits. February 20, 2024. <https://www.councilofnonprofits.org/articles/new-beneficial-ownership-report-rules-most-nonprofits-are-exempt-filing-beware-exceptions#:~:text=The%20CTA%20is%20designed%20to,carried%20out%20through%20shell%20companies>.

<sup>6</sup> If you incorporated before January 1, 2024, BOI is not due until January 1, 2025, so if you are expecting your federal tax-exemption letter by then, you will not need to register with FinCEN. Also, note the 90-day deadline to register if incorporated on or after January 1, 2024, becomes a 30-day deadline for entities that incorporate after January 1, 2025.

<sup>7</sup> This advice is current as of the date this publication was created. This publication may not be updated as new guidance becomes available.

<sup>8</sup> Public Counsel. “‘Now that you’re incorporated’ Observance of Corporate Formalities and Other Post-Incorporation Matters.” March 2020. <https://publiccounsel.org/wp-content/uploads/2022/08/Now-That-Youre-Incorporated-Memo.pdf>.

<sup>9</sup> “Beneficial Ownership Information Reporting: Frequently Asked Questions,” 10.

### ***Substantial Control***

Someone with substantial control can be any of the following:

- a. A senior officer (president, chief financial officer, general counsel, chief executive officer, etc.)
- b. Someone with given authority to appoint or remove certain officers or a majority of directors or similar body of the reporting company
- c. An important decision-maker for the reporting company<sup>10</sup>
- d. Someone with any other form of substantial control over the reporting company<sup>11</sup>

### ***Ownership Interest***

Ownership interest is a stake and its corresponding rights in a company.<sup>12</sup> Reporting companies may have multiple types of ownership interests.

Ownership interest includes owning stock, having voting rights as a shareholder, or having a profit interest in an LLC or partnership.

**Note that a reporting company can have multiple beneficial owners. You must disclose anyone who meets the beneficial owner standards.**

### ***Exemptions***

The definition of a beneficial owner has five exemptions.<sup>13</sup> If an individual who would otherwise be considered a beneficial owner qualifies for any of the following exemptions, the company does not need to include that individual in its BOI report:

1. The individual is a minor child.
2. The individual acts as a nominee, intermediary, custodian, or agent on behalf of an actual beneficial owner.
  - a. This exemption includes accountants and lawyers who provide general services.
3. The individual is an employee of the reporting company.
  - a. This employee cannot be a senior officer, and all substantial control and economic benefits must derive from their employment.
4. The individual's only interest in the reporting company is a future interest through a right of inheritance.
  - a. Once this individual inherits the interest, the exemption no longer applies, and they are considered a beneficial owner.

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<sup>10</sup> Decision-making power is the capacity to make or influence critical business decisions. FinCEN uses three categories to determine who is an important decision-maker: 1) business decisions (company's strategic focus, significant operational changes, etc.); 2) financial decisions (investments, budget approvals, etc.); and 3) structural decisions (mergers, governance amendments, etc.).

See "Beneficial Ownership Information Reporting: Frequently Asked Questions," 8.

<sup>11</sup> This is a broadly defined category that encompasses any other kind of substantial control. For example, if an individual holds a Power of Attorney that grants them the authority to make decisions on behalf of a company or its owner, they may be considered a beneficial owner with substantial control under this catch-all provision. See "Beneficial Ownership Information Reporting: Frequently Asked Questions," 6.

<sup>12</sup> "Small Entity Compliance Guide," 22.

<sup>13</sup> "Small Entity Compliance Guide," 29-31.

5. The individual is a creditor of the reporting company.

### **What happens if I don't file the BOI report?**

Failure to file, correct, and update your company's BOI report within the appropriate timeline can result in severe civil and criminal penalties. Civil penalties include a fine of up to \$500 each day that the violation continues, and criminal penalties include up to two years imprisonment and/or a fine of up to \$10,000. Senior officers can be held accountable for failure to file a required BOI report, providing fraudulent or false information, and willfully causing a company not to file its report or file fraudulently.<sup>14</sup>

Companies that make a mistake or omission in their initial report can correct their mistakes within 90 days of the deadline of the initial report without penalties.

### **What do I need to file the BOI report?**

What must be reported to FinCEN depends on when the company was registered with a Secretary of State.<sup>15</sup>

- If a reporting company is created or registered **on or after January 1, 2024**, it must report information about the company, its beneficial owners, and its company applicants.
- If a reporting company was created or registered **before January 1, 2024**, it must report information about the company and its beneficial owners. It does not need to provide information about its company applicants.

#### ***Company Applicant***

A company applicant is the person (or people) who prepared or filed the business's formation documents to legally create the entity.<sup>16</sup> Reporting companies created or registered **after January 1, 2024**, must identify one or more "direct filer" company applicant(s) who physically or electronically filed the entity's registration documents.

Two people can qualify as company applicants:

1. The individual who directly files the documents that create or register the company
2. If more than one person is involved in the filing that creates or registers the company, whoever is primarily responsible for directing or controlling the filing.

Company applicants must be individuals, not other companies or legal entities. Company applicants can also be beneficial owners of a reporting company. A reporting company does not need to issue an updated BOI report if the company applicant no longer has a relationship with the entity at any point after the initial report is filed.

<sup>14</sup> "Small Entity Compliance Guide," 15.

<sup>15</sup> *Ibid*, 37-43.

<sup>16</sup> *Ibid*, 34-36.

### ***Company Information***

A reporting company must include the following in its report to FinCEN:

- a. Name of the company
- b. Any trade names of the company
- c. Current street address of its principal place of business in the United States
  - i. For foreign reporting companies, the current address from which it conducts its business in the United States
- d. Office through which the company was formed or registered (e.g., California Secretary of State)
- e. Company Taxpayer Identification Number (“TIN”)<sup>17</sup>

Additionally, the company must disclose whether a report is its initial report or a correction or update of a prior report.

### ***Beneficial Owner Information***

For each beneficial owner, the reporting company must disclose their:

- a. Legal name
- b. Date of birth
- c. Residential address
- d. Identification number from a document like a driver's license or passport<sup>18</sup>

Note that the initial BOI should only include the beneficial owners as of the time of filing.

### ***Company Applicant Information***

The company applicant(s) must be disclosed on the BOI report for companies created or registered after January 1, 2024. Company applicant(s) must disclose their:

- a. Legal name
- b. Date of birth
- c. Residential address or business address (if the applicant(s) are employees of a different entity hired by the reporting company)
- d. Identification number from a document like a driver's license or passport<sup>19</sup>

## **When do I need to file the BOI report?**

While no annual BOI reporting requirement exists, all non-exempt companies must report BOI.

- If your company was created or registered **before January 1, 2024**, submit BOI by **January 1, 2025**.<sup>20</sup>

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<sup>17</sup> You can find your Taxpayer Identification Number through the IRS. Learn more [here](#).

<sup>18</sup> Acceptable forms of identification include non-expired driver’s licenses, identification documents issued by the government or a tribe, and United States or foreign passports. “Small Entity Compliance Guide,” 38.

<sup>19</sup> “Small Entity Compliance Guide,” 38.

<sup>20</sup> *Ibid*, 42.

- If your company is created or registered **between January 1, 2024, and January 1, 2025**, submit BOI **90 days** from when you filed the company’s articles of incorporation with the Secretary of State.<sup>21</sup>
- If your company is created or registered **after January 1, 2025**, submit BOI **30 days** from when you filed the company’s articles of incorporation with the Secretary of State.<sup>22</sup>

### ***Report Updating***

If there are any changes to the beneficial ownership or company information submitted in your initial filing, **you must submit an updated report no later than 30 days after the date of the change.**<sup>23</sup>

Examples of changes that require an updated BOI include changing the company’s name, hiring new beneficial owners, and any change to a beneficial owner’s information. Note that company applicant information cannot be removed from BOI, even if the listed applicants no longer have a relationship with the reporting company. Filing an updated BOI report is not required if a company applicant’s information changes.

If you discover an error in the initial BOI, **you must submit a corrected filing within 30 days after the company becomes aware of the inaccuracy or has reason to know about the error.**

You can update or change your report on the website where you filed the report,

<https://boiefiling.fincen.gov>

## **How do I file the BOI report?**

BOI can be filed on FinCEN’s website, <https://boiefiling.fincen.gov>.<sup>24</sup> There is no fee for filing.

### ***Pre-Filing***

Make sure that you have the following information readily available before you begin:

- a. Your company’s incorporating documents
- b. Your company’s recent tax filings
- c. Beneficial owner(s) name, date of birth, residential address, and clear photos/scans of identification documents
- d. IF APPLICABLE: company applicant(s) name, date of birth, residential address, and clear photos/scans of identification documents

### ***Reporting***

You can either file your BOI through a PDF or fully online. Choose whichever method is easiest for you. Select the kind of report you are making (initial report, corrected report, updated report, newly exempt entity) on the first page, “Filing Information.”

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<sup>21</sup> *Ibid.*

<sup>22</sup> *Ibid.*

<sup>23</sup> *Ibid*, 44-47.

<sup>24</sup> *Ibid*, 43.

### ***Part I: Company Information***

1. Make sure to select “3. Request to receive FinCEN ID” in Part I (“Reporting Company Information”). Save your FinCEN ID in your records.<sup>25</sup>
2. Enter your company’s full legal name as recorded on the documents that created or registered the business. If your company has any trade names, also include those.
3. Select what form of identification you want to use for the report. If your company has a United States Employer Identification Number, select “EIN.” If your company uses a United States Social Security Number, select “SSN-ITIN” or “ITIN.” If your company’s tax identification number was issued by a non-American country, select “Foreign.”
  - a. You can find your EIN, SSN-ITIN, or ITIN on your company or personal tax forms.
4. Enter the applicable tax identification number as selected above.
5. Select the country and state that your business was registered in.
6. Submit the company’s address.

### ***Part II: Company Applicant(s)***

1. For companies submitting BOI for the first time, you must submit your company applicant(s).
  - a. Remember, company applicants are individuals, not companies or legal entities.
2. Fill out all information about the company applicant, including a photo of their identification document.

### ***Part III: Beneficial Owner(s)***

1. Fill out all information about the beneficial owners, including a photo of their identification document.

### ***Submit***

1. Fill out your contact information and submit your report.
2. Download a transcript of your report after submitting it. Save it with your company’s records.

## **Additional Resources**

For more information on BOI reporting requirements, please visit:

- U.S. Department of the Treasury Financial Crimes Enforcement Network, Beneficial Ownership Information. <https://www.fincen.gov/boi>.
- United States Department of the Treasury Financial Crimes Enforcement Network. “Beneficial Ownership Information Reporting: Frequently Asked Questions.” December 2023. [https://www.fincen.gov/sites/default/files/shared/BOI\\_FAQs\\_Q%26A\\_12.1.23.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_FAQs_Q%26A_12.1.23.pdf).
- United States Department of the Treasury Financial Crimes Enforcement Network. “Small Entity Compliance Guide.” December 2023. [https://www.fincen.gov/sites/default/files/shared/BOI\\_Small\\_Compliance\\_Guide.v1.1-FINAL.pdf](https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf).

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<sup>25</sup> FinCEN Identifiers are a unique number that FinCEN will issue to an individual or reporting company upon request after the individual/reporting company provides certain info to FinCEN. When an individual who is a beneficial owner or company applicant has obtained a FinCEN identifier, reporting companies may report the FinCEN identifier of that individual in the place of that individual’s otherwise required personal information on a beneficial ownership information report. FinCEN IDs are not required but can be helpful.

- U.S. Department of the Treasury Financial Crimes Enforcement Network. “An Introduction to Beneficial Ownership Information Reporting.”  
<https://www.fincen.gov/sites/default/files/shared/BOI-Informational-Brochure-April-2024.pdf>.

**This document provides general guidance only and should not be construed as legal advice. The information in this document may change over time. If your small business or nonprofit needs legal assistance, or if you have further questions about these topics, please contact Public Counsel’s Community Development Project at (213) 385-2977, ext. 200. The Community Development Project provides free legal assistance to qualifying low-income entrepreneurs and qualifying nonprofit organizations that share our mission of serving low-income communities and addressing issues of poverty within Los Angeles County.**