

SWC Business Brief



What You Need to Know About Reporting Beneficial Ownership Information



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INTRODUCTION

What You Need to Know About Reporting Beneficial Ownership Information

In 2021, the United States Congress passed the Corporate Transparency Act – a measure that creates a new *beneficial ownership information reporting requirement*. This requirement is part of the U.S. government’s efforts to make it harder for criminals, terrorists, and other bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures.

Starting Jan. 1, 2024, many companies will be required to report information to the U.S. government – *specifically to the Financial Crimes Enforcement Network (FinCEN)* – about who owns and controls them directly or indirectly. FinCEN begins accepting beneficial ownership information (BOI) reports on Monday, Jan. 1, 2024, electronically through a secure filing system accessed through its website at www.fincen.gov/boi.

However, the actual deadline for filing is based on the date of your company’s creation or registration to do business.

For example:

- A reporting company created or registered to do business before Jan. 1, 2024, has until Wednesday, Jan. 1, 2025, to file its initial beneficial ownership information report. (A reporting company is a business entity that’s required to report its beneficial ownership information; not all companies are required to do so. See the next section to determine whether your company is required to report its beneficial ownership information or not.)
- A reporting company established or registered between Jan. 1, 2024, and Jan. 1, 2025, must file its initial beneficial ownership

information report within 90 calendar days after receiving notice of its creation or registration. This deadline of 90 calendar days commences upon the company's receipt of official notice confirming its effective creation or registration, or following the initial public notice of the company's creation or registration by a secretary of state or similar office, whichever occurs first.

- Companies subject to reporting, established or registered on or after Wednesday, Jan. 1, 2025, must submit their initial BOI (Beneficial Ownership Information) reports to FinCEN within 30 calendar days from the official confirmation or public announcement validating the effectiveness of the company's creation or registration.

In this SWC Business Brief, we bring you up to speed on what you need to know to comply with the requirement to report beneficial ownership information for any reporting companies you own or control; for example, if you operate your small business as an S-Corp or LLC.

Warning! If you receive any correspondence claiming to be from a government agency instructing you to click a link or website address or scan a QR code to provide information about your company, **disregard it**. Such letters or email messages are fraudulent. Do not respond to them or click on any links or scan any QR codes they may contain. The Financial Crimes Enforcement Network (FinCEN) does not send unsolicited requests.



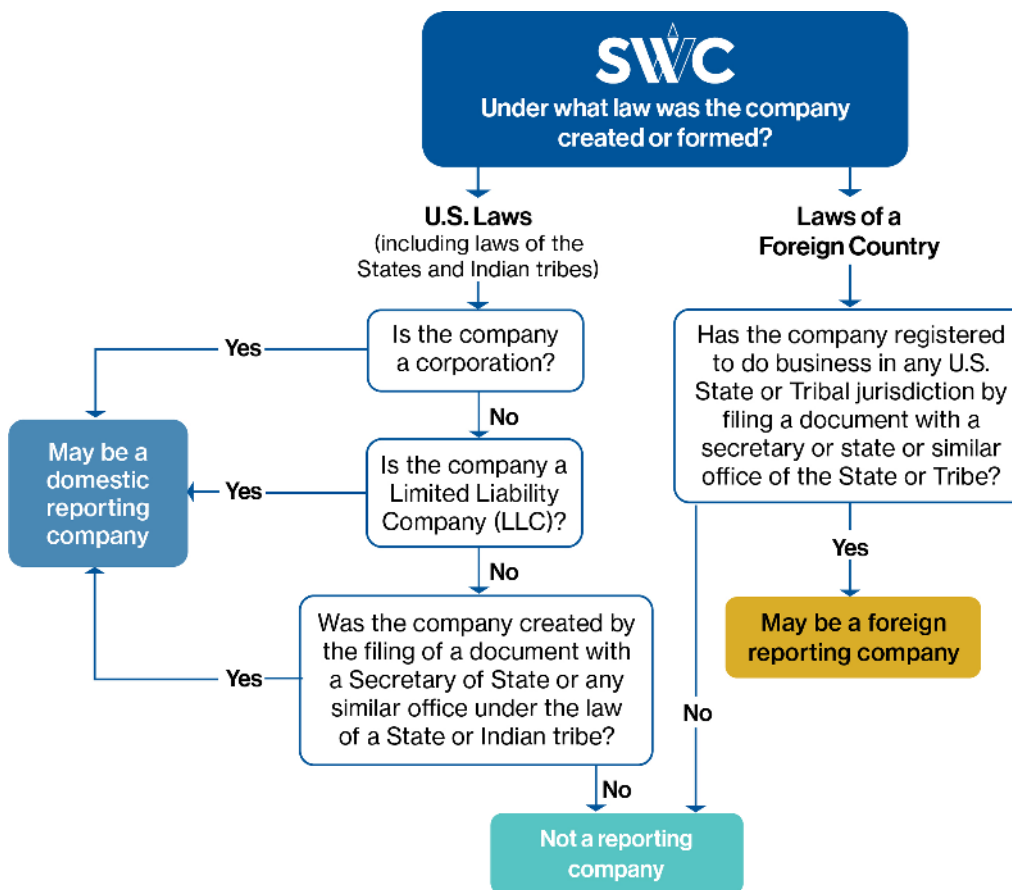
Determining Whether Your Company Is Required to Report Its Beneficial Ownership Information

There are two types of *reporting companies* (companies required to report beneficial ownership information):

- **Domestic reporting companies:** Corporations, limited liability companies (LLCs), and any other entities created by filing a document with a secretary of state or any similar office in the United States; and
- **Foreign reporting companies:** Corporations, LLCs, and other entities formed under the law of a foreign country that have registered to do business in the United States by filing a document with a secretary of state or any similar office.

What You Need to Know About Reporting Beneficial Ownership Information *(cont'd)*

Twenty-three entity types are exempt from reporting requirements, including banks, credit unions, insurance companies, accounting firms, public utilities, tax-exempt entities, publicly traded companies that meet specified requirements, and certain large operating companies. Consult FinCEN's [Small Entity Compliance Guide](#) to determine whether your company qualifies for an exemption. *The Compliance Guide* includes the following flowchart to help you make the correct determination:



Note that a sole proprietorship is not a reporting company unless it was created (or, in the case of a foreign sole proprietorship, registered to do business) in the United States by filing a document with a secretary of state or similar office. Filing a document with a government agency to obtain an IRS employer identification number (EIN), a fictitious business name, or a professional or occupational license does not create a new entity, and therefore does not make a sole proprietorship a reporting company.

Determining Whether You Are a Beneficial Owner

A beneficial owner is an individual who either directly or indirectly meets either of the following conditions:

- Exercises substantial control over the reporting company. An individual can exert significant influence over a reporting company through four distinct means. If the individual falls within any of the categories outlined below, they are deemed to be exercising substantial control:
 - Is a **senior officer** (president, chief financial officer, general counsel, chief executive officer, chief operating officer, or any other officer who performs a similar function).
 - Has **authority to appoint or remove** certain officers or a majority of directors (or similar body) of the reporting company.
 - Is an **important decision-maker** for the reporting company. An individual who directs, determines, or has substantial influence over the company's business, finances, or structure.
 - Has **any other form of substantial control** over the reporting company as explained further in FinCEN's [Small Entity Compliance Guide](#).
- Owns or controls at least 25 percent of the reporting company's ownership interests. Ownership interests encompass various forms such as equity shares, stocks, voting rights, or any other method employed to indicate ownership. FinCEN's [Small Entity Compliance Guide](#) includes a helpful checklist to determine whether any exceptions apply to individuals who might otherwise qualify as beneficial owners.



Reporting Your Company Applicant(s)

If your company was created or registered *on or after* Jan. 1, 2024, it may be required to report its company applicant(s) – the name of the individual who directly files the document that creates or registers the company (with the secretary of state or similar entity) and, if more than one person is involved in the filing, the name of the individual who is primarily responsible for directing or controlling the filing.

Note that only reporting companies created or registered *on or after* Jan. 1, 2024, will need to report their company applicant(s). If a

reporting company was created or registered prior to Jan. 1, 2024, it is not required to report its company applicants.

A company applicant may not be removed from a Beneficial Ownership Information report even if the company applicant no longer has a relationship with the reporting company.

Knowing What Information Your Reporting Company Must Report

A reporting company is required to report the following information:

About the Company...

- Its legal name
- Any trade names, “doing business as” (d/b/a) names, or “trading as” (t/a) names
- The current street address of its principal place of business if that address is in the U.S. or, for a company outside the U.S., the current address from which the company conducts business in the U.S. (a P.O. box number is not acceptable)
- Its jurisdiction of formation or registration
- Its Taxpayer Identification Number (TIN) or, for a company outside the U.S., a tax identification number issued by a foreign jurisdiction and the name of the jurisdiction
- Whether it is filing an initial report, or a correction or an update of a prior report



About Each Beneficial Owner...

- The individual’s name
- Date of birth
- Residential address
- An identifying number from an acceptable identification document such as a passport or U.S. driver’s license, and the name of the issuing state or jurisdiction of identification document (and supply an image of the identifying document)

About Each Company Applicant... (only for companies created or registered on or after January 1, 2024)

- The individual’s name

- Date of birth
- Address (residential address or business address if the company applicant works in corporate formation—for example, as an attorney or corporate formation agent)
- An identifying number from an acceptable identification document such as a passport or U.S. driver's license, and the name of the issuing state or jurisdiction of identification document (and supply an image of the identifying document)

Recognizing the Penalties for Non-Compliance

As specified in the Corporate Transparency Act, anyone who willfully violates the Beneficial Ownership Information reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. That person 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.

Understanding Who Can Access Your Beneficial Ownership Information

Beneficial ownership information reported to FinCEN will be stored in a secure, non-public database using rigorous information security methods and controls typically used in the Federal government to protect non-classified yet sensitive information systems at the highest security level. A company's beneficial ownership information may be made available to:

- Federal, State, local, and Tribal officials, as well as certain foreign officials who submit a request through a U.S. Federal government agency to obtain the information for authorized activities related to national security, intelligence, and law enforcement
- Financial institutions, in certain circumstances, with the consent of the reporting company
- Regulators when they supervise the aforementioned financial institutions



What You Need to Know About Reporting Beneficial Ownership Information *(cont'd)*

FinCEN is developing the rules that will govern access to and handling of beneficial ownership information. It will also work closely with those authorized to access beneficial ownership information to ensure that they understand their roles and responsibilities to ensure that the reported information is used only for authorized purposes and handled in a way that protects its security and confidentiality.

Reporting and updating beneficial ownership information is easy. You can do it electronically through a secure online filing system at the [FinCEN's website](#) starting Jan. 1, 2024. You don't need to be a lawyer or an accountant.

However, if you're having trouble deciding whether you qualify as a beneficial owner, or whether a business entity you own or control is a reporting company – or you have any other questions or concerns about complying with the Corporate Transparency Act or its beneficial ownership information reporting requirement – contact your company's legal counsel for guidance.

Disclaimer: *The information in this SWC Business Brief about reporting beneficial ownership information is provided for general informational purposes only and may not reflect current financial thinking or practices, and is not to be considered advice of a legal nature. No information contained in this Business Brief should be construed as financial advice or legal advice from the staff at SWC (Stees, Walker & Company, LLP), nor is the information contained in this post intended to be a substitute for financial counsel or legal counsel on any subject matter or intended to take the place of hiring a Certified Public Accountant or Attorney in your jurisdiction. No reader of this Business Brief should act or refrain from acting on the basis of any information included in, or accessible through, this Business Brief without seeking the appropriate legal advice on the particular facts and circumstances at issue from a licensed legal professional in the recipient's state, country or other appropriate licensing jurisdiction.*



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