

Own a Small Business? Start Preparing Now for This New Reporting Regulation

The Treasury Department is cracking down on shady business practices with a brand-new regulation. Starting on Jan. 1, 2024, small businesses must file a Beneficial Ownership Information (BOI) report as part of the U.S. Corporate Transparency Act (CTA). Businesses must submit these reports to the Financial Crimes Enforcement Network (FinCEN), which aims to increase financial transparency and prevent illegal practices like money laundering.

FinCEN estimates that the rule will impact around 32.6 million business entities in 2024 alone, including corporations, limited liability companies, limited partnerships, and others. Does this include your business? To find out, read our summary below and follow up by connecting with an expert on small business regulations, such as a **Certified Tax Planner**.

Who Has to Submit a BOI Report?

A recent survey of U.S.-based companies and law and accounting firms revealed that half of the companies polled would have to submit a BOI report, but almost three out of four had never heard about this requirement before taking the survey.

So which companies must comply with this new regulation? The rule applies to both domestic and foreign entities formed or registered to do business in the U.S.:

- Domestic entities are created by filing with a secretary of state or similar office under the laws of a U.S. state or Indian tribe;
- Foreign entities are formed under the laws of a country outside the U.S and registered to do business in any U.S. state or tribal jurisdiction.

However, a number of entities are exempt from submitting BOI reports – 23 types to be exact! Unfortunately for small business owners, most of these exemptions are for large companies and highly regulated businesses. Notable exemptions include:

- Large operating companies with more than 20 full-time employees in the U.S., more than \$5 million in gross receipts or sales within the U.S., and an operating presence at a physical office in the U.S.;
- Certain types of banks and credit unions;
- Some securities brokers and other companies registered with the SEC;
- Some companies associated with insurance;
- Public accounting firms;
- Some utility companies.

The “exemption” for some of these entities is not surprising, since many are already regulated by the government and must report their BOI information.

Who Is a Beneficial Owner?

As its name suggests, the BOI report mostly concerns information about “beneficial owners.” A beneficial owner is any person who has **substantial control** over a company, either directly or indirectly, or owns or controls at least 25 percent of the **ownership interests** of the company. Here are some examples:

First, a person has substantial control if they meet at least one of these four criteria:

1. is a senior officer;
2. has authority to appoint or remove certain officers or a majority of directors of the company;
3. is an important decision maker;
4. has any other form of substantial control over the company.

If that last item sounds rather broad, that’s intentional. FinCEN included this as a “catch-all” to ensure that innovative or flexible corporate restructures are in the reporting.

There are direct and indirect ways to express substantial control. Direct control could include board representation, control of a majority of voting power or voting rights, or control of a majority of rights associated with financing or interest. Indirect control is likely through financial or business relationships. If a person has control over intermediary entities that have substantial control over a company, this would be an example of indirect control.

Second, a person has ownership interest in a company if they hold any of the following:

- equity, stock, or voting rights;
- a capital or profit interest;
- convertible instruments;
- options or other non-binding privileges to buy or sell any of the foregoing;
- any other instrument, contract, or other mechanism used to establish ownership.

Note that you won’t have to report which category makes someone a beneficial owner; you just need to record information about anyone who qualifies.

Even a small company may have multiple beneficial owners, for instance, one who exercises substantial control and several others who control at least 25 percent of the ownership interests. One beneficial owner may also meet both criteria.

FinCEN does not require a maximum number of beneficial owners, but the bureau does expect that every reporting company can identify and report at least one beneficial owner.

What Information Needs to Be Reported?

Once you have determined that you have to submit a BOI report and you have identified your company's beneficial owners, you will need to collect the following information:

For the company:

- Full legal name;
- Any trade name or d/b/a name;
- Current U.S. address of the principal place of business (or primary location in the U.S. where the company conducts business);
- State, tribal, or foreign jurisdiction of formation;
- IRS Taxpayer Identification Number (TIN)—this could be an Employer Identification Number (EIN) or a tax identification number from a foreign jurisdiction and the name of the jurisdiction.

For each beneficial owner:

- Full legal name;
- Date of birth;
- Current residential street address;
- Unique identifying number from an acceptable identification document (see below);
- Image of the acceptable identification document, such as a U.S. passport, state driver's license, or ID document issued by a state, local government, or tribe (if an individual has none of these, a foreign passport is acceptable).

If a beneficial owner has obtained a [FinCEN identifier](#) and provided it to the reporting company, that company may include that identifier instead of the information about the individual.

Starting on Jan. 1, 2024, all the above information must also include the company applicant, the person who directly files or is primarily responsible for filing the document that creates or registers the company. If the company applicant is someone who forms or registers companies as part of their business, such as paralegals, they can report their business street address, which doesn't have to be in the U.S.

If you created or registered your company before Jan. 1, 2024, you do not need to report any company applicant information. You can simply specify on the BOI report that you created or registered the company before Jan. 1, 2024.

What Special Reporting Rules Should Companies Know?

As is par for the course with a new regulation, there are several special reporting rules to take note of before preparing your BOI report:

Owned by an exempt entity: If a beneficial owner holds ownership interests through one or more entities and those entities are exempt from the reporting requirement, you do not need to report information about the beneficial owner themselves. Instead, you can report the names of the exempt entities.

Minors: You do not need to report information about a beneficial owner who is a minor (under the age of 18), but you should report the required information about the parent or legal guardian.

Foreign pooled investment vehicle: Pooled investment vehicles form one of the exemptions from the BOI regulation. If you formed your company under the laws of a foreign country and *would* be a reporting company if not for the pooled investment vehicle exemption, you do not need to report information about each beneficial owner and company applicant. However, you must report *one* beneficial owner who exercises the greatest substantial control over the company.

When Is the Deadline to Report?

The deadline to file your initial BOI report depends on when you created or registered your company:

- **Created or registered before Jan. 1, 2024:** Deadline is Jan. 1, 2025;
- **Created or registered after Jan. 1, 2024:** Deadline is 30 days after the date of registration; a new rule that would [extend this deadline to 90 days](#) is currently under consideration.

FinCEN claims the filing should take a little over an hour. There is no fee to file, but there are penalties for failure to file, which can even extend to imprisonment for long-term delinquency.

Will This BOI Information Be Safe?

As the start date for this regulation draws near, some have raised privacy concerns. How will business owners store, protect, and access data? FinCEN has stated that [protecting BOI is a top priority](#): “The beneficial ownership IT system will be cloud-based and will meet the highest Federal Information Security Management Act level.”

Outside of the Treasury Department, who might have access to this information? FinCEN has the authority to disclose BOI under specific circumstances to these entities:

- U.S. federal, state, local, and tribal government agencies requesting it for specific purposes;
- foreign law enforcement, judges, prosecutors, central authorities, and competent authorities;

- financial institutions using the information for lawful customer due diligence;
- federal functional regulators and other appropriate agencies that are involved in financial institutions' due diligence;
- The U.S. Treasury.

FinCEN would also disclose BOI to federal agencies for security, intelligence, or law enforcement activity if a FinCEN review determines this is justified. Any foreign requesters would have to make their BOI requests through intermediary federal agencies; they would also have to meet conditions of treaty or international agreement and would not receive direct access to the database.

Unfortunately, bad actors are already at work to undermine this new regulation. The Better Business Bureau reports that [scammers have started mailing official-looking letters](#) to business owners from the “United States Business Regulations Department, Corporate Transparency Act Division, Process and Filing Center.” Scammers are craftily blending personal information collected from data breaches with official-looking seals and watermarks. These fake letters even have a notice ID number and prompt you to visit a website or scan a QR code to report your information.

If you receive this letter, **disregard its instructions and instead report it to the [BBB Scam Tracker](#)**. All BOI filing will be electronic, and the filing website is still in development.

Summary

FinCEN's BOI initiative promises to expose “bad actors” in international business dealings and fight money laundering. Companies, created or registered before Jan. 1, 2024, will have a full year to prepare and file their BOI information. The quick turnaround will apply to companies established in 2024 onward, so entrepreneurs should factor this new requirement into their plans as they check off the boxes on their compliance checklist.

New regulations like this can initially feel overwhelming for small business owners who are already juggling so many tasks and responsibilities. Enlisting the help of experts can be crucial to ensure these businesses are meeting their legal obligations and getting ahead of required filings like BOI reports and tax returns. To reduce stress and help you prepare for the new year, **start by reaching out to a Certified Tax Planner today.**