

## FAQs, Guidelines & Checklist

# FINCEN BENEFICIAL OWNERSHIP INFORMATION REPORTING



### » What is a “Reporting Company” and who are its “Beneficial Owners” (as defined by FinCEN)?

- The U.S. Treasury Financial Crimes Enforcement Network (“[FinCEN](#)”) defines “Reporting Company” as any entity to which the Corporate Transparency Act’s (the “[Act](#)”) reporting obligations apply.
  - As a threshold matter, the Act only applies to entities that are formed through a filing with a governmental agency (e.g., Secretary of State) and to which an exemption does not apply.
  - For example, common law trusts and general partnerships that are not established by virtue of a governmental filing do not fall under the ambit of the Act.
- A “Beneficial Owner” is any *individual* who, directly or indirectly:
  - Exercises “substantial control” over a Reporting Company; or
  - Owns or controls at least 25% of the entity’s ownership interests.

### » When is a “Reporting Company” exempt from the Act’s reporting obligations?

- The Act provides an exemption from reporting obligations for the following twenty-three (23) specific entity types:
  1. Securities reporting issuers;
  2. Governmental authorities;
  3. Banks;
  4. Credit unions;
  5. Depository institution holding companies;
  6. Money services businesses;
  7. Securities brokers or dealers;
  8. Securities exchanges or clearing agencies;
  9. Other Exchange Act registered entities;
  10. Investment companies or investment advisers;
  11. Venture capital fund advisers;
  12. Insurance companies;
  13. State-licensed insurance producers;
  14. Commodity Exchange Act registered entities;

15. Accounting firms;
16. Public utilities;
17. Financial market utilities;
18. Pooled investment vehicles;
19. Tax-exempt entities;
20. Entities assisting a tax-exempt entity;
21. Subsidiaries of certain exempt entities;
22. Inactive entities; and
23. Large operating companies.

- To qualify for this exemption, an entity must: (i) employ 20+ “full-time employees within the U.S.” (as defined by the Internal Revenue Service Code); (ii) have an “operating presence” at a physical office in the U.S.; and (iii) have filed a tax return for the previous year with U.S. gross receipts/sales of \$5 million USD or greater.

#### » **When do I need to file a Beneficial Ownership Information Report (“BOIR”)?**

- If the entity was in existence *before January 1, 2024*, the initial BOIR should be filed by December 31, 2024.
- If the entity was created (or foreign company registered to do business) *on or after January 1, 2024*, the initial BOIR must be filed within 90 calendar days of the entity’s formation.
- Any entity created or registered *on or after January 1, 2025*, must submit the initial BOIR within 30 calendar days of the entity’s formation.

#### » **Who bears the responsibility of filing the BOIR?**

- Under the Act, the Reporting Company itself bears the responsibility of filing its BOIR with FinCEN and filing any amendments thereto, as applicable.
- For example, with smaller enterprises, this responsibility may fall under the managing member (in the case of a limited liability company); general partner (in the case of a limited partnership); trustee (in the case of a statutory trust); or the corporate secretary (in the case of a corporation). With larger enterprises, such responsibility is typically assigned to the general counsel or someone within the Reporting Company’s legal department.

#### » **What is substantial control?**

- An individual exercises substantial control over an entity if they:
  - Serve as a senior officer of the Reporting Company (regardless of what their actual title is);
  - Have the authority to appoint or remove senior officers or a majority of the directors of the Reporting Company; or
  - Direct, determine or substantially influence the Reporting Company’s important decisions (e.g., making business, financial and organizational decisions for the entity).
- **NOTE:** When determining which individuals exercise substantial control, you must consider *any* other forms of substantial control that your corporate structure recognizes, even if it is not explicitly identified above. All individuals who exercise substantial control over a Reporting Company MUST be identified and reported.

#### » **What is an ownership interest?**

- An entity may have multiple types of ownership interests (e.g., equity, stock or voting rights; a capital or profit interest; convertible instruments; options to buy or sell an ownership interest).
- Any individual that owns or controls (or could through the exercise of rights own or control) 25% or more of any of the above MUST be identified and reported *unless* there is an applicable exception.

- **NOTE:** Currently, the only exceptions to the definition of Beneficial Owner(s) are for minor children, employees, agents/custodians, inheritors and creditors.
  - In the case of a minor child, a parent or legal guardian must be disclosed in his/her place until the child reaches the age of majority in his/her home jurisdiction.
  - In the case of an employee, the exception applies only to the extent the employee does not concurrently serve as an officer of the Reporting Company or other position exercising substantial control (e.g., chairman of the board).

» **Who is a “Company Applicant” (as defined by FinCEN) and when must they be reported?**

- The Company Applicant(s) are the individual(s) that *directly* handle the filing of a Reporting Company’s formation document(s) with the Secretary of State’s office.
  - **NOTE:** No more than two (2) Company Applicants may be reported on a BOIR.
- Example: If a supervisor/attorney delegates a Reporting Company’s formation filing to a paralegal/administrative assistant, then the paralegal/administrative assistant is disclosed as Applicant #1 and the supervisor/attorney is disclosed as Applicant #2.
- **NOTE:** *Only* Reporting Companies created on or after January 1, 2024, are required to disclose Company Applicants. Reporting Companies in existence before January 1, 2024, are NOT required to disclose Company Applicants.

» **What is a FinCEN Identifier (“FinCEN ID”) and when do I use it?**

- A FinCEN ID is a unique identification number generated by FinCEN for the sole purpose of filing BOIRs that may be disclosed in lieu of personal information.
- Individuals may separately obtain a FinCEN ID by providing the same information required by the BOIR (see our FinCEN Checklist). **NOTE:** This occurs outside of the BOIR filing.
- Reporting Companies may obtain a FinCEN ID by checking the box “Request to receive FinCEN ID” when completing the BOIR.
- Individuals and Reporting Companies are NOT required to obtain FinCEN IDs but may do so in order to streamline the BOIR filing process and to avoid continued disclosure of personal information in each BOIR.
- **NOTE:** Once a FinCEN ID is obtained, such ID number is entered where indicated within the BOIR in lieu of completing the various other data fields.

# FinCEN BOIR Checklist

To complete your initial BOIR, you will need the following information:

## » Reporting Company:

- Full legal name of the entity;
- Any trade names/DBAs (if applicable);
- Mailing address of the principal place of business;
- State of formation; and
- Taxpayer ID (i.e., EIN).

## » Beneficial Owners and Company Applicants

- Full legal name of the individual;
- Date of Birth;
- Current address; and
  - o **NOTE:** For Beneficial Owners, you must report the individual's residential address. A business address may be provided in lieu of a residential address for Company Applicants only.
- An image (e.g., JPEG file) of the individual's non-expired passport, state driver's license or other national/state government issued identification document.
- **NOTE:** If an individual has separately obtained a FinCEN ID, such ID may be disclosed on the BOIR in lieu of reporting/uploading the above information.

## » What if I need to make a change to information after submitting a BOIR?

- If there is *any change* to the information that was initially reported, an updated BOIR must be submitted within 30 days of when the change occurred.
  - o **NOTE:** Reporting Companies that become qualified for an exemption *after* filing its BOIR should submit an updated BOIR to indicate that the Reporting Company is newly exempt from reporting obligations.
- If a Reporting Company determines that *previously reported information was inaccurate* when filed, a corrected BOIR must be submitted within 30 days of the date in which the Reporting Company became aware of the inaccuracy or had reason to know of the inaccuracy.

## » Questions? Require further assistance?

- Please contact Attorney Vincent Merola (vmerola@murthalaw.com) or Attorney Destiny Bajonero (dbajonero@murthalaw.com) for additional information.
- **NOTE:** Per firm policy, Murtha Cullina LLP does not file BOIRs on behalf of clients, except where special circumstances may apply. However, we are happy to address any questions you may have with respect to Corporate Transparency Act compliance, and we are available to virtually assist clients with their BOIR filings through Zoom or similar platforms.

**NOTE: BY PROVIDING THIS GUIDANCE AND CHECKLIST, MURTHA CULLINA LLP IS NOT PROVIDING LEGAL ADVICE AS TO WHETHER ANY FILING NEEDS TO BE MADE IN ANY PARTICULAR CIRCUMSTANCE OR WHAT THAT FILING MUST CONTAIN IN ORDER TO SATISFY THE LEGAL REQUIREMENTS.**