



MEMORANDUM

FEDERAL REPORTING REQUIREMENTS FOR BENEFICIAL INFORMATION ACT

Many companies in the United States must report information about their beneficial owners, the individuals who own or control them, to the Financial Crimes Enforcement Network (FinCEN), a bureau of the Treasury Department. Reporting is to be completed electronically through FinCEN's website: <https://boiefiling.fincen.gov/>.

WHO HAS TO REPORT?

A Reporting Company needs to register and report information about its beneficial owners, company applicant and control person to FinCEN. A Reporting Company can be any one of the following:

- a corporation,
- a limited liability company,
- an entity that was created in the United States by filing a document with a secretary of state or any similar office under the law of a state or Indian tribe; or
- a foreign company that has registered to do business in the United States or with any Indian tribe by such a filing.

WHO DOES NOT HAVE TO REPORT?

There are twenty-three types of entities identified in the Corporate Transparency Act that do not need to file BOI with FinCEN. The common feature of these entities is the fact that they have had to previously file beneficial ownership information in other contexts, such as applying for licenses, registering with the Securities and Exchange Commission and/or Internal Revenue Service, and/or complying with industry regulations. These entities are:

- | | |
|--|--|
| 1. Securities reporting issuer | 13. State-licensed insurance producer |
| 2. Governmental authority | 14. Commodity Exchange Act registered entity |
| 3. Bank | 15. Accounting firm |
| 4. Credit union | 16. Public utility |
| 5. Depository institution holding company | 17. Financial market utility |
| 6. Money services business | 18. Pooled investment vehicle |
| 7. Broker or dealer in securities | 19. Tax-exempt entity |
| 8. Securities exchange or clearing agency | 20. Entity assisting a tax-exempt entity |
| 9. Other Exchange Act registered entity | 21. Subsidiary of certain exempt entities |
| 10. Investment company or investment adviser | 22. Inactive entities |
| 11. Venture capital fund adviser | 23. Large operating company. |
| 12. Insurance company | |

Note: Only those large operating companies that meet all of the requirements below are considered exempt from BOI reporting requirements:

- The entity employs more than 20 full-time employees, which for purposes of this law means, with respect to a calendar month, an employee who is employed an average of at least 30 hours of service per week with an employer.



MEMORANDUM

- More than 20 full-time employees of the entity are employed in the states comprising the United States, the District of Columbia, the Indian lands (as that term is defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States.
- The entity has an operating presence at a physical office within the United States. "Operating presence at a physical office within the United States" means that an entity regularly conducts its business at a physical location in the United States that the entity owns or leases and that is physically distinct from the place of business of any other unaffiliated entity.
- The entity filed a Federal income tax or information return in the United States for the previous year demonstrating more than \$5,000,000 in gross receipts or sales. If the entity is part of an affiliated group of corporations within the meaning of 26 U.S.C. §1504, refer to the consolidated return for such group.
- The entity reported this greater-than-\$5,000,000 amount as gross receipts or sales (net of returns and allowances) on the entity's IRS Form 1120, consolidated IRS Form 1120, IRS Form 1120-S, IRS Form 1065, or other applicable IRS form.
- When gross receipts or sales from sources outside the United States, as determined under Federal income tax principles, are excluded from the entity's amount of gross receipts or sales, the amount remains greater than \$5,000,000.

WHAT TYPES OF INFORMATION NEED TO BE REPORTED?

A reporting company needs to report the name, address, and identification information (driver's license, passport number, or FinCEN identification number) for the following individuals:

1. **Beneficial Owners** are the individuals who directly or indirectly:
 - a. Exercises substantial control over a reporting company including:
 - i. Any individual holding position or exercising the authority of President, CFO, General Counsel, CEO, or COO or any officer regardless of title who performs the functions;
 - ii. Any individual with appointment or removal authority of any senior officer, the majority of the board of directors or similar body;
 - iii. Any individual who directs, determines, or has substantial influence over important decisions such as business, finance, or structure of the reporting company; or
 - iv. Any individual who has any other form of substantial control over a reporting company.
 - b. Owns or controls at least 25% of the ownership interests of a reporting company, with ownership interests including:
 - i. Equity, stock or voting rights;
 - ii. Capital or profit interest;
 - iii. Convertible instruments;
 - iv. Any put, call, straddle or other option or privilege to buy or sell; or
 - v. Any other instrument, contract, arrangement, understanding, relationship, or mechanism to establish ownership.
 - c. Exceptions from beneficial ownership definition:
 - i. Minor child
 - ii. Nominee, intermediary, custodian, or agent



MEMORANDUM

- iii. Employees that are:
 - Statutory employees
 - Empowered because of employment status rather than ownership position
 - Not considered to be senior officers
 - iv. Inheritor – future interest in the company through right of inheritance;
 - v. Creditor.
2. **Company Applicants** (only required for new reporting companies formed after January 1, 2024) are the individuals who:
- a. Direct the BOI filer – individual who directly filed the document that created the domestic reporting company or registered to the foreign reporting company; and
 - b. Direct or controls the BOI filing – lawyer or other agent who prepared and caused the documents to be filed (not the paralegal).
- Note: Companies or entities cannot be considered as company applicants and the number company applicants are limited to two individuals.

WHEN DOES A REPORTING COMPANY HAVE TO REPORT?

1. **Companies created or registered prior to January 1, 2024:** Reporting companies must report BOI by January 1, 2025.
2. **Companies created or registered on or after January 1, 2024:** Reporting companies must report BOI within 90 calendar days after receiving actual or public notice of the company's creation or registration is effective, whichever is earlier.
3. **Companies created or registered on or after January 1, 2025:** Reporting companies must report BOI within 30 calendar days after receiving actual or public notice that its creation or registration is effective.
4. **Companies who need to update or correct a BOI filing** must complete any such updates or corrections within 30 days of the event that triggers the need for an update or correction.

SUMMARY

Unless your company is (i) an exempt entity such as a nonprofit organization or (2) employs more than 20 full time employees and generates more than \$5,000,000 in annual gross sales, it most likely qualifies as a reporting company and must register and report information about its beneficial owners and control persons to FinCEN. The willful failure to do so may result in the imposition of civil or criminal penalties (on the company and/or its senior officers) of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or a fine of up to \$10,000.

For more information, please contact Blustin & Associates at info@blustinlaw.com.

Blustin & Associates, PLLC
19230 Evans Street NW, Suite 103
Elk River, MN 55330
(763) 355-9072
www.blustinlaw.com