

FinCEN Beneficial Ownership Information Reporting

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I. Purpose of the Reporting Requirements

A. The Corporate Transparency Act (the “CTA”) is the federal law that creates jurisdiction for FinCEN and the new BOI reporting requirements. These new regulations were passed to allow FinCEN to collect certain information from companies and disclose it to authorized government authorities and financial institutions who work to prevent criminals, terrorists, proliferators, and corrupt oligarchs from hiding illicit money or other property in the United States.

B. FinCEN, in their explanatory note about the regulations, remarked that “actors” use corporate structures like shell and front companies to hide their identities and ill-gotten gains.

1. Shell and front companies previously could allow criminals to illegally access and transact in the United States economy without an effective combative enforcement from the Government.

2. FinCEN also noted that most states lack BOI reporting regulations, which in the aggregate hinders the ability of (1) law enforcement to swiftly investigate entities created and used to hide ownership for illicit purposes and (2) a regulated sector to mitigate risks.

3. Further, illicit actors in the economy harm the success of small businesses, who make up most of the U.S. economy.

4. Ultimately, FinCEN proposed these regulations in part because it recognized the ease with which people can form a legal entity in the United States, that most of the states and the federal government do not regulate this area, and that there is no centralized or complete database of information about who owns and operates legal entities in the United States.

C. In addition to their domestic reasons, FinCEN noted that these new regulations would lend United States support to a growing international consensus of the importance of enhancing BOI transparency.

1. The United States hopes its own regulating efforts will spur similar efforts by foreign jurisdictions.

2. Last, outside of economic reasons, FinCEN emphasized that collecting this information is a matter of national security.

3. Yet, it wants to balance the Government’s needs to protect and strengthen national security while still minimizing the burden it might place on small businesses and reporting entities.

4. To put all these reasons together into one thought, the goal of the regulations is to identify linkages between potential illicit actors and opaque business entities in the U.S. economy.

II. Companies Who Are Required to File BOI Reports

A. Which companies must report?

1. There are two main categories of companies to distinguish when determining if a company is required to report: (1) domestic reporting companies and (2) foreign reporting companies.

2. The domestic reporting companies that are required to report are corporations, limited liability corporations, and any other entity that was created by filing an organizing document with a Secretary of State or similar office under the law of the state or Indian tribe (i.e., non-profit corporations).

3. The foreign reporting companies that are required to report are any corporation, limited liability corporation, or other entity formed under the law of a foreign country *and* registered to do business in any U.S. state or tribal jurisdiction by filing with the Secretary of State or similar state or Indian tribe governing office.

B. Are any entities exempt from reporting?

1. Overview

a. The definition of reporting companies is seemingly broad, and therefore it is more important to focus on the explicit exemptions who are not subject to the BOI reporting requirements.

b. The CTA exempts 23 entities from mandatory BOI reporting. FinCEN's Small Entity Compliance Guide gives the full list, with detailed checklists, to help entities determine whether they are exempt from the BOI reporting requirement.

c. The Small Entity Compliance Guide also gives hyperlinks to useful citations like the Securities Exchange Act of 1934 where entities can determine whether they meet a defined term. All 23 exemptions and the criteria by which a company can determine whether it is exempt are included below.

2. The Exemptions

a. Securities reporting issuer

An entity qualifies for this exemption if either of the following criteria apply:

(1) the entity is an issuer of a class of securities registered under section 12 of the Securities Exchange Act of 1934; or

(2) the entity is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934.

b. Government authority

An entity qualifies for this exemption if both of the following criteria are true:

(1) the entity is established under the laws of the United States, an Indian tribe, a State, or a political subdivision of a State, or under an interstate compact between two or more States; and

(2) the entity exercises governmental authority on behalf of the United States or any such Indian tribe, State, or political subdivision.

c. Bank

An entity qualifies for this exemption if one of three criteria are met:

(1) the entity is a “bank” as defined in section 3 of the Federal Deposit Insurance Act;

(2) the entity is a “bank” as defined in section 2(a) of the Investment Company Act of 1940; or

(3) the entity is a “bank” as defined in section 202(a) of the Investment Advisers Act of 1940.

d. Credit union

An entity qualifies for this exemption if either of the following criteria apply:

(1) the entity is a “Federal credit union” as defined in section 101 of the Federal Credit Union Act; or

(2) the entity is a “State credit union” as defined in section 101 of the Federal Credit Union Act.

e. Depository institution holding company

An entity qualifies for this exemption if either of the following criteria apply:

(1) the entity is a “bank holding company” as defined in section 2 of the Bank Holding Company Act of 1956; or

(2) the entity is a “savings and loan holding company” as defined in section 10(a) of the Home Owners’ Loan Act.

f. Money transmitter business

An entity qualifies for this exemption if either of the following criteria apply:

- (1) the entity is a money transmitting business registered with FinCEN; or
- (2) the entity is a money services business registered with FinCEN.

g. Broker or dealer in securities

An entity qualifies for this exemption if both of the following criteria are true:

- (1) the entity is a “broker” or “dealer,” as those terms are defined in section 3 of the Securities Exchange Act of 1934; and
- (2) the entity is registered under section 15 of the Securities Exchange Act of 1934.

h. Securities exchange or clearing agency

An entity qualifies for this exemption if both of the following criteria are true:

- (1) the entity is an “exchange” or “clearing agency,” as those terms are defined in section 3 of the Securities Exchange Act of 1934; and
- (2) the entity is registered under sections 6 or 17A of the Securities Exchange Act of 1934.

i. Other Exchange act registered entity

An entity qualifies for this exemption if both of the following criteria are true:

- (1) the entity is not a securities reporting issuer as defined in Exemption i, broker or dealer in securities as defined in Exemption vii, or securities exchange or clearing agency as defined in Exemption viii; and
- (2) the entity is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934.

j. Investment company or investment adviser

An entity qualifies for this exemption if both of the following criteria are true:

- (1) the entity is an “investment company,” as defined in section 3 of the Investment Company Act of 1940, or “investment adviser,” as defined in section 202 of the Investment Advisers Act of 1940; and

(2) the entity is registered with the Securities and Exchange Commission under either the Investment Company Act of 1940 or the Investment Advisers Act of 1940.

k. Venture capital fund adviser

An entity qualifies for this exemption if both of the following criteria are true:

(1) the entity is an investment adviser that is described in section 203(1) of the Investment Advisers Act of 1940; and

(2) the entity has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission.

l. Insurance company

An entity qualifies for this exemption if the entity is an “insurance company” as defined in section 2 of the Investment Company Act of 1940.

m. State-licensed insurance producer

An entity qualifies for this exemption if both of the following criteria are true:

(1) the entity is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

(2) the entity has an operating presence at a physical office within the United States. The term “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.

n. Commodity Exchange Act registered entity

(1) An entity qualifies for this exemption if either of the following criteria apply:

(a) the entity is a “registered entity” as defined in section 1a of the Commodity Exchange Act; or

(b) the entity is one of the list entities in the Small Entity Compliance Guide under this Exemption #14.

(2) Those listed entities are ones registered with the Commodity Futures Trading Commission under the Commodity Exchange

Act, and include: “Futures commission merchant” as defined in section 1a; “Introducing broker” as defined in section 1a; “Swap dealer” as defined in section 1a; “Major swap participant” as defined in section 1a; “Commodity pool operator” as defined in section 1a; “Commodity trading advisor” as defined in section 1a; or “Retail foreign exchange dealer” as described in section 2(c)(2)(B).

o. Accounting firm

An entity qualifies for this exemption if it is a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002.

p. Public utility

An entity qualifies for this exemption if both of the following criteria are true:

- (1) the entity is a “regulated public utility” as defined in 26 U.S.C. 7701(a)(33)(A); or
- (2) the entity provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States.

q. Financial market utility

An entity qualifies for this exemption if it is a financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010.

r. Pooled investment vehicle

- (1) An entity qualifies for this exemption if both of the following criteria are true:
 - (a) the entity is a pooled investment vehicle if either
 - (b) it is an investment company, as defined in section 3(a) of the Investment Company Act of 1940; or
 - (c) it is a company that would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a-3(c)); and is identified by its legal name by the applicable investment adviser in its Form ADV, (or successor form) filed with the Securities and Exchange Commission or will be so identified in the next annual updating amendment to Form ADV required to be filed by the applicable investment adviser pursuant to rule 204-1 under the Investment Advisers Act of 1940; and

(d) the entity is operated or advised by a bank; a credit union; a broker or dealer in securities; an investment company or investment adviser; or a venture capital fund adviser.

(2) There is an additional special rule for this exemption related to foreign pooled investment vehicles. If the entity meets the criteria for this exemption and was formed under the laws of a foreign country, it is subject to a separate reporting requirement as detailed further below.

s. Tax-exempt entity

An entity qualifies for this exemption if any of the following four factors are true:

(1) the entity is an organization that is described in section 501(c) of the Internal Revenue Code of 1986 (for the purposes of this subsection, the “Code”) and exempt from tax under section 501(a) of the Code;

(2) the entity is an organization that is described in section 501(c) of the Code, and was exempt from tax under section 501(a) of the Code, but lost its tax-exempt status less than 180 days ago;

(3) the entity is a political organization, as defined in section 527(e)(1) of the Code, that is exempt from tax under section 527(a) of the Code; or

(4) the entity is a trust described in paragraph (1) or (2) of section 4947(a) of the Code.

t. Entity assisting a tax-exempt entity

An entity qualifies for this exemption if all four of the following criteria are met:

(1) the entity operates exclusively to provide financial assistance to, or hold governance rights over, any tax-exempt entity;

(2) the entity is a United States person as defined in section 7701(a)(30) of the Internal Revenue Code of 1986;

(3) the entity is beneficially owned or controlled exclusively by one or more United States persons that are United States citizens or lawfully admitted for permanent residence. “Lawfully admitted for permanent residence” is defined in section 101(a) of the Immigration and Nationality Act; and

(4) the entity derives at least a majority of its funding or revenue from one or more United States persons that are United States citizens or lawfully admitted for permanent residence.

u. Large operating company

An entity qualifies for this exemption if all six of the following criteria are met:

(1) the entity employs more than 20 full time employees, when applying the meaning of full-time employee provided in 26 CFR 54.4980H-1(a) and 54.4980H-3 (“full-time employee” 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);

(2) more than 20 full-time employees of the entity are employed in the States of the United States, the District of Columbia, the Indian lands (as defined in the Indian Gaming Regulatory Act), and the Territories and Insular Possessions of the United States;

(3) 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;

(4) 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);

(5) 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; and

(6) when gross receipts or sales from sources outside the United States, as determined under Federal income tax principle, are excluded from the entity’s amount of gross receipts or sales, the amount remains greater than \$5,000,000.

v. Subsidiary of certain exempt entities

An entity qualifies for this exemption if the entity’s ownership interests are controlled or wholly owned, directly or indirectly, by any of the foregoing

exempt entities except for a money transmitter business (Exemption vi); a pooled investment vehicle (Exemption viii); an entity assisting a tax-exempt entity (Exemption xx); and an inactive entity (Exception xxiii).

w. Inactive entity

An entity qualifies for this exemption if all six of the following criteria are met:

- (1) the entity was in existence on or before January 1, 2020;
- (2) the entity is not engaged in active business;
- (3) the entity is not owned by a foreign person, whether directly or indirectly, wholly or partially. “Foreign person” means a person who is not a United States person. A United States person is defined in section 7701(a)(30) of the Internal Revenue Code of 1986 as a citizen or resident of the United States, domestic partnership and corporation, and other estates and trusts;
- (4) the entity has not experienced any change in ownership in the preceding twelve-month period;
- (5) the entity has not sent or received any funds in an amount greater than \$1,000, either directly or through any financial account in which the entity or any affiliate of the entity had an interest, in the preceding twelvemonth period; and
- (6) the entity does not otherwise hold any kind or type of assets, whether in the United States or abroad, including any ownership interest in any corporation, limited liability company, or other similar entity

III. Which Individuals Are Included On BOI Reports?

A. Overview

1. There are two main types of individuals who must be included on BOI reports: beneficial owners and company applicants.

(a) Within each category, there are separate rules and nuances to determine whether an individual must be reported.

(b) Subsection IIIB, IIIC, and IIID discuss the beneficial owner category. Subsection IIIE discusses the company applicant category.

2. As a summary, beneficial owners include those owners who have substantial control over the reporting company or those owners who own or control at

least 25 percent or more of the ownership interests of the reporting company. Beneficial ownership information is required on every reporting company's BOI report regardless of when the company was created or first registered.

3. Company applicants are individuals who directly created or registered the reporting company or individuals who had substantial involvement in the creation or registration of the company.

(a) Company applicant information is only needed from a reporting company if that reporting company was created on or after January 1, 2024.

(b) For those companies who qualify and must report company applicant information, it is only required in the reporting company's first BOI report.

4. The following subsections contain more crucial information about each category.

B. Beneficial Owners – Substantial Control

Beneficial owners are one of two types of individuals. First, a beneficial owner could be an individual who directly or indirectly exercises "substantial control" over the reporting company. Substantial control depends on the power that is exercised by the individual. FinCEN gives four categories for when substantial control might be found:

1. The individual is a "Senior Officer"

"Senior Officers" include the company's President, Chief Financial Officer, General Counsel, Chief Executive Officer, Chief Operating Officer, or any other officer who performs a similar function as these officers.

2. The individual has authority to appoint or remove

The individual is a beneficial owner if he/she has the authority to appoint or remove any Senior Officer or a majority of the board of directors (or similar body) of the reporting company.

3. The individual is an important decision-maker for the reporting company

a. An important decision maker is any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's business, finances, or structure.

b. Business important decisions include ones regarding the nature, scope, and attributes of the business; the selection or termination of business lines or ventures or geographic focus; and the entry into or termination or the fulfillment or non-fulfillment of significant contracts.

c. Financial important decisions include the sale, lease, mortgage, or other transfer of any principal assets; major expenditures or investment, issuance of any equity, insurance of any significant debt, or approval of the operating budget; and compensation schemes and incentive programs for Senior Officers.

d. Structural important decisions relate to reorganization, dissolution, or merger, and amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar documents, bylaws, and significant policies or procedures.

4. The individual has any other form of substantial control over the reporting company

a. This last category is a catch-all of sorts. Control exercised in new and unique ways can still be substantial.

b. FinCEN's provided example states that flexible corporate structures may have different indicators of control than indicators included here.

Note: This tells me that FinCEN essentially wants companies to report if there is a doubt.

C. Beneficial Owners – Ownership Interest

1. Second, reporting companies must report all individuals who own or control at least 25 percent or more of the ownership interests of the reporting company.

2. Ownership interests are arrangements that establish ownership rights in the reporting company, including 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 (except if the option or privilege is created and held by others without the knowledge or involvement of the reporting company); and any other instrument, contract, or other mechanism used to establish ownership.

3. Companies are required to report beneficial ownership information for both substantial control beneficial owners and ownership interest beneficial owners regardless of when the company was created.

4. The Small Entity Compliance Guide, on pages 19-28, gives help steps and guidance for how companies can walk through identifying their beneficial owners.

D. Exceptions from the Beneficial Owner Definition

FinCEN gives five exceptions to the definition of a beneficial owner. If an exception applies, then the reporting company does not need to report the individual as a beneficial owner in its BOI report.

1. Minor Child

a. If the individual is a minor child under the law of the State or Indian tribe in which the domestic reporting company is created or the foreign reporting company is first registered, then he/she is not a beneficial owner.

b. Instead, the reporting company may report information about the parent or legal guardian of the minor child. The reporting company is permitted to report the minor child's information.

c. However, if it does not, under this exception, it should report the parent or legal guardian's information. Once the child reaches the age of majority, the exception no longer applies.

2. Nominee, intermediary, custodian, or agent

a. If the individual merely acts on behalf of an actual beneficial owner, then he/she is not a beneficial owner.

b. This typically applies for individuals who perform ordinary advisory or other contractual services (like tax professionals).

c. The actual beneficial owner must still be reported.

3. Employee

An individual qualifies for an exception if all three of the following criteria are met:

a. the individual is an employee of the reporting company (the term employee generally means that an individual is subject to the will and control of the employer in what and how to do work, and that the employer may discharge the individual from work);

b. the individual's substantial control over, or economic benefits from, the reporting company are derived solely from the employment status of the individual as an employee; and

c. the individual is not a Senior Officer.

4. Inheritor

An individual qualifies for this exception if the individual's only interest in the reporting company is a future interest through a right of inheritance. Once the individual inherits the interest, the exception no longer applies.

5. Creditor

a. An individual qualifies for this exception if the individual is a creditor of the reporting company.

b. Creditor means an individual who would meet the definition of a beneficial owner of the reporting company solely through rights or interests for the

payment of a predetermined sum of money, such as a debt incurred by the reporting company, or a loan covenant or other similar right associated with such right to receive payment that is intended to secure the right to receive payment or enhance the likelihood of repayment.

E. Company applicants

1. Who are company applicants?

a. Direct filers

Company applicants can fall into one of two reporting categories. First, there are direct filers. Direct filers are individuals who directly filed the document that created a domestic reporting company, or the individual who directly filed the document that first registered a foreign reporting company. This individual would have physically or electronically filed the document with the secretary of state or a similar office. If more than one individual was involved in the filing, then two company applicants must be reported.

b. Individuals who direct or control the filing action

1. The second category of company applicants are individuals who were primarily responsible for directing or controlling the filing of the creation or first registration document.

(a) Even though this individual may not have actually filed the document, he/she is still a company applicant for reporting purposes.

(b) This category of company applicant is only required when more than one individual is involved in the filing of the document that created or first registered the company. Therefore, this category may not be applicable to all reporting companies.

2. In addition, FinCEN provided in their Small Entity Compliance Guide that no reporting company will have more than two company applicants.

For example, “Individual A is creating a new company. Individual A prepares the necessary documents to create the company and files them with the relevant State or Tribal office, either in person or using a self-service online portal. No one else is involved in preparing, directing, or making the filing.” Individual A is a company applicant because Individual A directly filed the document that created the company. Individual A was the only person involved in the filing and thus there is only one company applicant.

Another example: “Individual A is creating a company. Individual A prepares the necessary documents to create the company and directs Individual B to file the documents with the relevant State or Tribal office. Individual B then directly files the documents that create the company.” Individual B is a direct filer and Individual A was primarily responsible for directing or controlling the filing. Therefore, both Individuals are company applicants.

2. Is my company required to report company applicants?

a. A domestic reporting company is required to report its company applicants if it was created on or after January 1, 2024. A foreign reporting company is required to report its company applicants if it first registered to do business in the United States on or after January 1, 2024.

b. Otherwise, domestic or foreign reporting companies who were created or registered to do business before January 1, 2024 will not need to report company applicants. As a reminder, regardless of creation/registration date, all reporting companies must report beneficial owners.

IV. What information must companies report?

When reporting beneficial ownership information for both beneficial owners and company applicants, the reporting company must include the following information:

A. For each reporting company

1. Legal Name
2. Any Trade Names
3. Any Doing Business As Names
4. Complete address for the principal place of business in the United States, or if there is no principal place of business in the United States, then the primary location in the United States where the company conducts business
5. Jurisdiction in which it was formed or first registered depending on whether it is a United States or Foreign Company
6. Taxpayer Identification Number (including Employer Identification Number)

B. From Each Individual

1. Legal Name
2. Date of Birth
3. Current Address – residential street address

4. Identifying number, issuing jurisdiction, and image of one of either a State driver's license, a U.S. passport, a identification document issued by a state, local government, or tribe; or if none of the previous apply, then a foreign passport

C. Special Reporting Rules

1. Owned by Exempt Entity

a. In the case where ownership interests in a reporting company are held through one or more entities, all of which are themselves exempt from the reporting company definition, then information about those beneficial owners do not need to be reported.

b. Reporting companies may report the names of all the exempt entities instead of the information about the individuals.

2. Minor Child

a. As previously stated, information about a minor child does not need to be reported so long as information about the child's parent or legal guardian is reported.

b. The BOI report must indicate that the information given relates to the parent or legal guardian instead of the child.

3. Foreign Pooled Investment Vehicle

a. As included above, foreign pooled investment vehicles are an exempt reporting entity.

b. However, reporting companies that fall under this exemption, and are specifically a foreign pooled investment company, must nonetheless report one individual who exercises substantial control over the company.

c. If there is more than one individual, then the individual who exercises the greatest authority over the strategic management of the company must be reported.

4. Company applicants

As a reminder, companies created before January 1, 2024 do not need to report company applicant information, just beneficial owners. In this case, these reporting companies must specify on the BOI report that the company was created or registered before January 1, 2024.

D. FinCEN Identifiers

1. Because reporting companies will be required to file BOI reports annually, and because much of the information reported may be the same year to year, reporting

companies and/or individuals may request a FinCEN identifier to report in subsequent years in place of all the required information.

2. A FinCEN identifier is a unique identifying number that FinCEN issues upon request that correlates to information already held by FinCEN.

3. Individuals can electronically apply for FinCEN identifiers with an application that includes the same information annually reported in (IV)(B). After an application is submitted, the individual would immediately receive a FinCEN identifier unique to the individual.

4. Afterwards, companies may report that FinCEN identifier for the individual instead of listing all the required individual information.

5. Companies can request a FinCEN identifier when it submits a BOI report electronically by checking the corresponding box on the reporting form.

6. There may be changes to an individual's or reporting company's information after a FinCEN identifier is issued. In that case, the individual or company need only correct the information as detailed later in this memorandum.

V. How do companies report?

A. Reports can be filed electronically using FinCEN's secure filing system online. FinCEN stores BOI reports in a secure database and only shares information with authorized users for purposes specified by the law. Once available, information about the form will be posted on FinCEN's [beneficial ownership information webpage](#).

B. FinCEN has made out these reporting requirements to seem long overdue. It claims that the main purpose of the requirements is for national security and economic protection against actors who would use shell or holding companies to hide illicit gains.

C. The process of actually reporting appears simple enough, but most businesses seem to qualify as a reporting company and must nonetheless add this additional task to their annual reporting procedures. The resources I found most helpful are included below. Please let me know how else I can help on this.

VI. When must companies begin reporting?

A. The reporting requirements are not in effect until January 1, 2024. No reports giving BOI will be accepted prior to that date. However, beginning on January 1, 2024, companies must file a BOI report at some point during each calendar year.

B. A reporting company created or registered to do business before January 1, 2024, will have until January 1, 2025 to file its initial beneficial ownership information report.

C. A reporting company created or registered on or after January 1, 2024, will have 30 days to file its initial beneficial ownership information report. This 30-day deadline runs from the time the company receives actual notice that its creation or registration is effective, or after a

secretary of state or similar office first provides public notice of its creation or registration, whichever is earlier.

D. If a reporting company that was previously exempt from the reporting requirements loses its exempt status, that reporting company must file a report within 30 days of the date on which the company stops qualifying for the exemption.

VII. Are there any filing fees?

There are no fees associated with submitting a BOI report.

VIII. Who can access reported BOI?

A. FinCEN will permit 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 BOI.

1. But the use of the requested BOI must be for authorized activities related to national security, intelligence, and law enforcement.

2. Financial institutions will also have access to BOI in certain circumstances, with the consent of the reporting company.

3. Those financial institutions' regulators will have access to beneficial ownership information when they supervise the financial institutions.

B. It seems like FinCEN is still developing the rules that will govern access to and handling of BOI.

1. However, it is clear that BOI will not be accessible by the public, unlike the PA BCL reporting.

2. BOI 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.

3. FinCEN will 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.

IX. Failure to file a BOI Report, Late Reports, or Inaccurate Information

A. If a company believes that a report it filed with FinCEN contains incorrect or inaccurate information, it can voluntarily submit a report correcting the information within 90 days of the deadline for the original report. For example, if a company filed a BOI report with FinCEN on December 31, 2025 and then recognizes it reported inaccurate information, the company could file a corrective report until March 31, 2026 for the 2025 reporting year.

B. Of course, the company must still file a BOI report for the 2026 calendar year.

C. However, if a company realizes it made a mistake in its BOI report and it willfully fails to report completed or updated BOI, the FinCEN will have authority to determine appropriate enforcement in consideration of its enforcement factors below.¹

1. Nature and seriousness of the violations, including the extent of possible harm to the public and the amounts involved
2. Impact or harm of the violations on FinCEN's mission to safeguard the financial system from illicit use, combat money laundering, and promote national security
3. Pervasiveness of wrongdoing within an entity, including management's complicity in, condoning or enabling of, or knowledge of the conduct underlying the violations
4. History of similar violations, or misconduct in general, including prior criminal, civil, and regulatory enforcement actions
5. Financial gain or other benefit resulting from, or attributable to, the violations
6. Presence or absence of prompt, effective action to terminate the violations upon discovery, including self-initiated remedial measures
7. Timely and voluntary disclosure of the violations to FinCEN
8. Quality and extent of cooperation with FinCEN and other relevant agencies, including as to potential wrongdoing by its directors, officers, employees, agents, and counterparties
9. Systemic nature of violations. Considerations include, but are not limited to, the number and extent of violations, failure rates (e.g., the number of violations out of total number of transactions), and duration of violations.
10. Whether another agency took enforcement action for related activity. FinCEN will consider the amount of any fine, penalty, forfeiture, and/or remedial action ordered

¹ https://www.fincen.gov/sites/default/files/shared/FinCEN%20Enforcement%20Statement_FINAL%20508.pdf