

FinCEN Updates FAQs on Beneficial Information Reporting Requirements

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The material set forth below was developed before the 2024 and 2025 district court injunctions regarding the CTA (which were subsequently stayed and continue to be litigated). As a result, the material set forth below, including filing deadlines, may not be current. Please consult FinCEN's [website](#) for the latest filing due dates and other information regarding the CTA and its requirements.

INTRODUCTION

On October 3, the Financial Crimes Enforcement Network (FinCEN) published updated guidance in the form of 25 new and revised [frequently asked questions \(FAQs\)](#) regarding beneficial ownership information (BOI) reporting requirements under the Corporate Transparency Act (CTA). This client alert covers important updates from FinCEN regarding the following topics:

- Reporting company exceptions.
- Effect of corporate conversions and new registrations to do business on an entity's BOI reporting obligations.
- Practical filing guidance for reporting companies.
- Practical filing guidance with respect to beneficial owners.

REPORTING COMPANY EXCEPTIONS

Subsidiary Exemption

The "subsidiary exemption" exempts an entity from the BOI reporting requirements if such entity's ownership interests are, directly or indirectly, wholly owned or wholly controlled by qualified exempt reporting companies.^[1] In the latest update, FinCEN has taken the position that an entity, which is wholly owned or wholly controlled by qualified exempt reporting companies would qualify for the subsidiary exemption even if such companies are not affiliated with each other.

However, an entity whose ownership interests are partially controlled by a qualified exempt reporting company and

partially controlled by a nonexempt entity and/or an exempt company that relies on the pooled investment vehicle exemption (Exemption #18) would not be able to rely on the subsidiary exemption because its ownership interests are not 100% controlled or owned by qualified reporting companies.

Pooled Investment Vehicles Managed by Exempt Reporting Advisors

Under the pooled investment vehicle (PIV) exemption (Exemption #18), PIVs operated or advised by certain types of entities, such as an investment adviser registered with the Securities and Exchange Commission (SEC) under the Investment Company Act of 1940 or the Investment Advisers Act of 1940 (Advisers Act), would be exempt from the BOI reporting obligations. In the latest update, FinCEN has provided some helpful guidance on the application of the PIV exemption. Specifically:

- A PIV that is operated or managed by an advisor that is not registered with the SEC, including an exempt reporting adviser (ERA), would not qualify the entity for the PIV exemption.
- A PIV is exempt, however, if it is operated or advised by a venture capital fund adviser — which is an entity described in Section 203(l) of the Advisers Act, and which has filed Item 10, Schedule A, and Schedule B of Part 1A of form ADV with the SEC.
- PIVs operated by ERAs that rely on another exemption from registration with the SEC under the Advisers Act are not exempt from the BOI reporting obligations.

Large Operating Companies Operating From a Personal Residence

Under the large operating company exemption (Exemption #21), a company is exempt from the BOI reporting obligations if it has 20+ full-time employees in the U.S., can demonstrate it has \$5 million+ in gross receipts or sales on its tax return, and has an operating presence at a physical office within the U.S. where it regularly conducts business. FinCEN has taken the position that a personal residence can satisfy the physical office criteria as long as the reporting company *itself* owns or leases the U.S. personal residence and regularly conducts business at the residence. The residence must be physically distinct from the place of business of any other unaffiliated entity.

EFFECT OF CORPORATE CONVERSIONS AND DOING BUSINESS REGISTRATIONS

Corporate Conversions

In the latest update, FinCEN has taken the position that a conversion of an entity from one corporate type to another, such as an LLC to a corporation, might create a new reporting company that must file a BOI report (BOIR) with FinCEN depending on the state law or the law of the Indian Tribe.

Where the conversion creates a new domestic reporting company, that new reporting company is required to file an initial BOIR even if it is only in existence for a short time. Even if a conversion filing does not create a new domestic reporting company, a reporting company that undergoes such a conversion may nonetheless be required to submit an updated BOIR to FinCEN after the conversion if certain information has changed, such as its

legal name or jurisdiction of formation.

Under the corporate statutes of many states such as Delaware, the conversion of an entity from one corporate type to another does not create a new entity. These corporate statutes of many states provide that a converted entity's legal existence commenced upon the formation/incorporation of the entity that converted its legal status. Thus, it is reasonable to take the position that the conversion of a Delaware corporation to a Delaware LLC does not create a new entity requiring a new BOI filing. However, the converted entity should update its BOIR to reflect any changes resulting from such conversion.

State Business Registrations

A reporting company's filing to do business in a new state does not in and of itself trigger a new BOIR or update requirement. After a reporting company files its initial BOIR listing its jurisdiction of formation, it may register to do business in a new state by filing with the secretary of state, or similar office of that state. FinCEN clarifies that this new state registration does not trigger a new reporting obligation for the reporting company because such filings merely authorize an existing domestic or foreign reporting company to do business under the laws of another state or tribe.

PRACTICAL FILING GUIDANCE – REPORTING COMPANIES

BOIR Filers

Reporting companies have flexibility to authorize anyone to file its BOIR with FinCEN, including employees, owners, and third-party service providers. Companies can consult with service providers such as lawyers, accountants, or enrolled agents, but such consultation is not required. BOIR filers must provide their names and contact information, and certify on behalf of the reporting company that the information is true, correct, and complete.

FinCEN and the CTA do not prevent nonattorney third-party service providers from assisting a reporting company with its BOIR or submitting the BOIR as authorized. However, whether this constitutes unauthorized practice of law is a question of state law.

Address to Be Used When a Company Does not have a US Principal Place of Business

FinCEN provided guidance in identifying the address a reporting company should use in its BOIR if it does not have a principal place of business in the U.S., including:

- If a reporting company does not have a principal place of business in the U.S., it should report the U.S. address where it conducts business.
- If a reporting company conducts its business at multiple locations in the U.S., then it should report the address where it receives important correspondence.
- If neither of these apply, then the reporting company should report the U.S. address of the person who is designated to accept service of legal process on its behalf, such as the registered agent or the registered office.

Beneficial Owners and Company Applicants Who Are in an ACP

FinCEN is mindful of the important privacy interests that address confidentiality programs (ACP) protect, so it will accept the ACP address that the state provided to the beneficial owner or company applicant instead of that person's residential address. If a reporting company uses this option, FinCEN recommends that the company collect and retain documentation showing that the person participates in an ACP.

PRACTICAL FILING GUIDANCE – BENEFICIAL OWNERS

Maximum and Minimum Number of Beneficial Owners

FinCEN defines a beneficial owner as an individual who either, directly or indirectly, a) exercises substantial control over the reporting company, such as a manager or senior officer, or b) owns or controls at least 25% of the company's ownership interests. The most recent FinCEN update clarifies that there is no maximum number of beneficial owners that a company can report. Further, FinCEN recognizes that some reporting companies might not be able to identify any individual who owns 25% or more of the company because ownership interests can be highly fractionated. In that case, the reporting company should report all individuals who exercise substantial control as its beneficial owners. FinCEN expects each reporting company to identify at least one beneficial owner at minimum.

Community Property and Beneficial Ownership Analysis

In states with community property laws, a reporting company must look to specific state law to determine beneficial ownership consequences. For example, FinCEN notes that if "both spouses own or control at least 25% of the ownership interests of a reporting company under state law, then both spouses should be reported to FinCEN as beneficial owners unless an exception applies."

Acceptable Identification Documents

The CTA requires reporting beneficial owners to submit a unique identifying number found in one of the following acceptable forms of identification for individuals:

- A nonexpired U.S. driver's license (including any driver's license issued by a commonwealth, territory, or possession of the U.S.);
- A nonexpired identification document issued by a U.S. state or local government, or Indian Tribe;
- A nonexpired passport issued by the U.S. government (including a nonexpired U.S. passport card); or
- A nonexpired passport issued by a foreign government (permitted only when an individual does not have one of the other three forms of identification listed above).

It was previously unclear what constituted “non-expired identification document issued by a U.S. State or local government or Indian Tribe.” FinCEN has now clarified that identification documents issued by a U.S. state or local government or Indian Tribe means documents issued by such authorities for use as proof of a holder’s identity. For example, a nonexpired ID card issued by a state’s department of corrections, which identifies a currently or formerly incarcerated individual, would be an acceptable form of identification. Documents that do not prove a holder’s identity (such as a birth certificate), or merely grant the holder access to government services (such as a library card), would not be acceptable forms of identification.

Mismatched Names

At times, a person’s current full legal name will not match the name on their identification document, such as when the person recently changed their name. In this case, the person may use an acceptable identifying document that does not include their full legal name when submitting the BOIR or applying for a FinCEN ID. However, as soon as the individual obtains a new ID that includes a changed name, address, or identifying number, they should update their FinCEN ID, or the reporting company should update the BOIR by submitting an image of the new ID.

Access to BOIR Personal Information

In an era where privacy is of utmost importance, clients wonder whether the personal information they disclose on a BOIR will be protected. In the latest FAQs update, FinCEN reiterated that BOIR data is stored in a secure, nonpublic database using rigorous information security methods and that access to such data is currently limited to several types of officials, including federal agencies engaged in national security, intelligence, or law enforcement activity; state, local, and tribal law enforcement agencies with court authorization; Department of Treasury officials; foreign law enforcement agencies, judges, prosecutors, and others who submit a request related to national security; financial institutions with customer due diligence requirements under applicable law; and federal functional regulators, and appropriate regulatory agencies that supervise or assess financial institutions. Beneficial owner information is exempt from disclosure under the Freedom of Information Act (FOIA).

Troutman Pepper proactively monitors updates regarding the CTA and advises clients on CTA matters. If you have any questions about how this new guidance may impact your reporting practices or obligations, we invite you to reach out to the authors or your primary Troutman Pepper contact.

[1] For purposes of this alert, “qualified exempt reporting companies” are reporting companies, which are exempt from the BOI reporting obligations by reason of any of the following exemptions: securities reporting issuer (as defined in Exemption #1), governmental authority (as defined in Exemption #2), bank (as defined in Exemption #3), credit union (as defined in Exemption #4), depository institution holding company (as defined in Exemption #5), broker or dealer in securities (as defined in Exemption #7), securities exchange or clearing agency (as defined in Exemption #8), other Exchange Act registered entity (as defined in Exemption #9), investment company or investment adviser (as defined in Exemption #10), venture capital fund adviser (as defined in Exemption #11),

insurance company (as defined in Exemption #12), state-licensed insurance producer (as defined in Exemption #13), Commodity Exchange Act registered entity (as defined in Exemption #14), accounting firm (as defined in Exemption #15), public utility (as defined in Exemption #16), financial market utility (as defined in Exemption #17), tax-exempt entity (as defined in Exemption #19); or large operating company (as defined in Exemption #21).

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