

FinCEN Updates Beneficial Ownership Information FAQs (11/22/2023)

Federal Tax Updates

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By Federal Tax Update Staff

The Financial Crimes Enforcement Network (FinCEN) has updated its [Beneficial Ownership Information \(BOI\) FAQs](#) to include new questions about the reporting process, reporting companies, beneficial owners, company applicants, reporting requirements, initial reports, and reporting company exemptions.

Beneficial owner information (BOI) reporting. The Corporate Transparency Act (CTA) established uniform beneficial ownership information reporting requirements for certain corporations, limited liability companies, partnerships, and other entities created in or registered to do business in the US. The CTA authorizes FinCEN to collect that information and disclose it to authorized government authorities and financial institutions, subject to certain safeguards and controls.

Beneficial ownership information that must be reported to FinCEN includes: the full legal names, dates of birth, and addresses for all individuals who have "substantial control" over the entity or who own at least 25% of it.

Beginning January 1, 2024, many companies in the US will have to report information about their beneficial owners to FinCEN.

New FAQs. The [answers to the following FAQs](#) may be of particular interest to attorneys, accountants and other tax practitioners:

D.6. Is my accountant or lawyer considered to be a beneficial owner?

A. Whether an accountant or a lawyer is a beneficial owner depends on the work they perform. Accountants and lawyers who provide general accounting or legal services are not beneficial owners because ordinary, arms-length advisory or other third-party professional services to a reporting company are not "substantial control."

In addition, a lawyer or accountant who is designated as an agent of the reporting company may qualify for the "nominee, intermediary, custodian, or agent" exception from the beneficial owner definition. However, an individual who holds the position of general counsel in a reporting company is a "senior officer" of that company and, therefore, is a beneficial owner.

D.10. Is a reporting company's designated "partnership representative" or "tax matters partner" a

beneficial owner?

A. A reporting company's "partnership representative," or "tax matters partner," is not automatically a beneficial owner of the reporting company. However, such an individual may qualify as a beneficial owner of the reporting company if the individual exercises substantial control over the reporting company or owns or controls at least 25% of the company's ownership interests.

E.3. Is my accountant or lawyer a company applicant?

A. The BOI rules require reporting companies created or registered on or after January 1, 2024, to report their company applicants. A company applicant is:

1. The individual who directly files the document that creates or registers the company; or
2. The individual who is primarily responsible for directing or controlling the filing, if more than one person is involved in the filing.

An accountant or lawyer could be a company applicant, depending on their role in filing the document (e.g., Articles of Incorporation, Articles of Organization, etc.) that creates or registers a reporting company. An accountant or lawyer may be a company applicant if they directly filed the document that created or registered the reporting company or was primarily responsible for directing or controlling the filing if more than one person was involved in the filing.

For example, an attorney at a law firm that offers business formation services may be primarily responsible for overseeing preparation and filing of a reporting company's incorporation documents. A paralegal at the law firm may directly file the incorporation documents at the attorney's request. Under those circumstances, the attorney and the paralegal are both company applicants for the reporting company.

For more information regarding the BOI rules, see [Checkpoint's Federal Tax Coordinator ¶S-3650.0](#)