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SMALL ENTITY COMPLIANCE GUIDE

Prepared by Capua Law Firm, PA
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CAPUA LAW

BOONE, NC

118 N. Depot Street
Boone, NC 28607

T 828.264.0260 | F 828.378.0236

ASHEVILLE, NC

58 ½ N. Lexington Avenue
Asheville, NC 28801

T 828.264.0260 | F 828.378.0236

MIAMI, FL

500 NW 24th Street
Miami, FL 33137

T 828.264.0260 | F 828.378.0236

CAPUALAW.COM



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WHY CAPUA LAW?

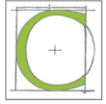
Paul Capua founded Capua Law in 2009 with a core value: service.

Our small team of qualified lawyers and legal professionals are dedicated to serving your interests by providing high caliber representation in practical and affordable terms. Through countless acts of service, we hope to become an essential part of your team.

THE FIRM'S PRACTICE AREAS

CONSTRUCTION | BUSINESS | EMPLOYMENT
REAL ESTATE (COMMERCIAL AND RESIDENTIAL) | ESTATE PLANNING





INTRODUCTION

As of January 1, 2024, all small entities operating in the United States are required to file Beneficial Ownership Information (BOI) Reports containing information about the entity itself and two categories of individuals: beneficial owners and company applicants. Reports must be filed electronically using the Financial Crime Enforcement Network's (FinCEN's) secure filing system and must be updated whenever there is a change to the information included in an entity's report.

Although many have raised speculation and concern about why these reports are required, the information required, and the public availability of owner information, the scope of their use and availability is limited to a select group of agencies with authority to access the information.

The BOI reporting requirements were implemented under the Corporate Transparency Act in 2021 as a national security tool to assist in identifying shell companies that may be used for illicit activity. Information reported to FinCEN is stored in a secure, non-public database, and access to the information is limited to authorized agencies, including federal law enforcement and national security agencies, state and local law enforcement agencies with a court order, the Treasury Department, government agencies that oversee financial institutions, and financial institutions themselves with the reporting company's consent.

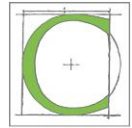
Although yet another reporting requirement for your company may seem daunting, this article will help quickly guide you through determining:

- I. Whether your entity is required to file a BOI Report,
- II. What information your entity is required to disclose in its BOI Report,
- III. When and how BOI Reports need to be filed, and
- IV. What to do if changes or inaccuracies occur.

I. WHICH COMPANIES HAVE TO REPORT

Companies Required to Report

Put simply, an entity is only required to file a BOI Report if they meet the Reporting Rule's definition of a "reporting company" and do not qualify for an exemption. Under the Reporting Rule, there are two categories of companies that are required to file a BOI Report: Domestic Reporting Companies and Foreign Reporting Companies.



Domestic Reporting Company

A Domestic Reporting Company is one created under U.S. laws, including corporations, LLC's, and companies created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian tribe.

Foreign Reporting Company

A Foreign Reporting Company is one created or formed under the laws of a foreign country and has registered to do business in any U.S. State or Tribal jurisdiction by filing a document with a secretary of state or similar office of the State or Tribe.

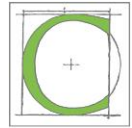
If your entity meets the definitions of either a Domestic Reporting Company or a Foreign Reporting Company, you must file a BOI Report through FinCEN.

Exempt Entities

The Reporting Rule exempts twenty-three entity types from filing a BOI Report.

Exemption No.	Exemption Short Title
1	Securities reporting issuer
2	Governmental authority
3	Bank
4	Credit union
5	Depository institution holding company
6	Money services business
7	Broker or dealer in securities
8	Securities exchange or clearing agency
9	Other Exchange Act registered entity
10	Investment company or investment adviser
11	Venture capital fund adviser
12	Insurance company
13	State-licensed insurance producer
14	Commodity Exchange Act registered entity
15	Accounting firm
16	Public utility
17	Financial market utility
18	Pooled investment vehicle
19	Tax-exempt entity
20	Entity assisting a tax-exempt entity
21	Large operating company
22	Subsidiary of certain exempt entities
23	Inactive entity

Each type of exempt entity must meet a specific checklist to qualify. If you believe your entity may qualify under any of the types listed above, please contact an attorney at Capua Law to further investigate whether your entity meets the necessary qualifications.



II. INFORMATION THAT MUST BE INCLUDED IN BOI REPORTS

Once you've determined that your company is required to file a BOI Report, the next step is determining who in your company needs to be included on the report and what information must be disclosed.

Entity Information

All entities required to file a BOI Report must include the following company information: (1) full legal name; (2) any trade name or "doing business as" (DBA) name; (3) the entity's complete current U.S. address; (4) the state, tribe, or foreign jurisdiction of formation; and (5) Internal Revenue Service Taxpayer Identification Number (including an Employer Identification Number (EIN)).

If your entity is a foreign reporting company, you may list the State or Tribal jurisdiction of first registration as your jurisdiction of formation. Also, if your foreign reporting company has not been issued a TIN, report a tax identification number issued by the foreign jurisdiction along with the name of such jurisdiction.

Use of FinCEN ID

While completing your BOI Report, you will have the option to create FinCEN IDs for both the entity and Beneficial Owners. These IDs are not required but may be useful for expediting future reports using the same information.

Beneficial Owners

As defined by FinCEN, a "Beneficial Owner" falls into one of two categories: company owners and those who exercise substantial control over the entity. When completing your report, you are not required to identify the category to which each Beneficial Owner belongs. However, because there is no limit on the number of Beneficial Owners that a company must report, determining who qualifies may become more complicated depending on the size and complexity of your entity.

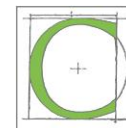
A. DETERMINING COMPANY OWNERS

Owners of a company that qualify as Beneficial Owners are those that own or control at least 25 percent of the ownership interest of a reporting company. Although this determination may not be difficult for smaller entities, calculating ownership percentage becomes more complicated when factoring in the various forms and mechanisms for establishing ownership.

Examples of Forms of Ownership

1. Equity
2. Stock
3. Voting rights
4. Capital or profit interest
5. Convertible instruments
6. Options to buy or sell any form of ownership

Apart from the various forms that ownership may take, it is important to keep in mind that there are also two distinct types of ownership. The first, and most easily identifiable, is "direct" ownership. Direct ownership refers to individuals who, through one form or another, possess ownership or control over an ownership interest in your company. This can include joint ownership among one or more other persons of an undivided ownership interest.



The second type is “indirect” ownership. Indirect ownership refers to individuals who have ownership or control over your company through another intermediary entity or entities. In other words, rather than owning interests in your company themselves, those with indirect ownership hold their ownership interest through a separate entity, such as a holding company, trust, partnership, or other structure.

Once you’ve identified the forms and types of ownership interest in your reporting company, you next need to calculate the percentage of ownership interests held directly or indirectly by individuals who own or control at least 25 percent of the company’s ownership interest. Because this calculation requires the consideration of many factors, there is no one-size-fits-all approach. If you have any questions regarding the forms or types of ownership interest that pertain to your company, it is important that you reach out to an attorney or other qualified individual to help determine which individuals may qualify and provide guidance on the best way to calculate ownership percentages.

B. DETERMINING WHO EXERCISES SUBSTANTIAL CONTROL

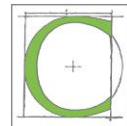
In addition to those who own or control at least 25 percent of your reporting company, Beneficial Owners are also any who exercise substantial control over the company. For the purposes of the BOI Report, an individual exercises substantial control over a reporting company if the individual meets any of the four general criteria:

1. The individual is a senior officer (e.g., President, CFO, CEO, COO, General counsel, or any other officer who performs a similar function);
2. The individual has authority to appoint or remove certain officers or a majority of directors of the reporting company;
3. The individual is an important decision-maker; or
4. The individual has any other form of substantial control over the reporting company.

Unlike determining those who exercise the requisite degree of ownership, determining “substantial control” is a much more subjective assessment. If you have any concerns regarding whether an individual meets the above qualifications, and they do not meet any of the exceptions detailed below, it’s best to err on the side of caution and include them as a Beneficial Owner. If, however, you need greater clarity on these criteria and whether individuals within your company should be listed as a Beneficial Owner, it’s best to seek the advice of counsel.

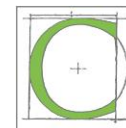
C. EXCEPTIONS

FinCEN has provided five exceptions to the definition of beneficial owner. When an individual who would otherwise be a Beneficial Owner qualifies for an exception, you do not need to report that individual as a Beneficial Owner in the company’s BOI Report.



Excepted Individuals	
1. Minor children	<p>This exception applies if the Beneficial Owner is a minor child as defined by the law of the territory in which the entity was first formed.</p> <p>If this exception applies, the information of the child's parent or legal guardian must be reported in lieu of the minor child's information.</p>
2. Nominee, intermediary, custodian, or agent	<p>This exception applies if the individual merely acts on behalf of an actual beneficial owner as the beneficial owner's nominee, intermediary, custodian, or agent.</p> <p>Individuals who perform ordinary advisory or other contractual services (such as tax professionals) likely qualify for this exception.</p>
3. Employee	<p>This exception applies if the employee meets all three of the following:</p> <ul style="list-style-type: none">a) The individual is an employee of the reporting company;b) The individual's substantial control is derived from their employment status; andc) The individual is not a senior officer exercising the authority of, or performing similar functions to, the President, CEO, COO, or any other officer.
4. Inheritor	<p>This exception applies if the individual's only interest in the reporting company is a future interest through a right of inheritance, such as through a will providing a future interest in a company.</p>
5. Creditor	<p>This exception applies if the individual is a creditor of the reporting company, meaning that their status as Beneficial Owner is solely based on rights or interests for the payment of a debt incurred by, or loan covenant with, the reporting company.</p>

If you're unsure whether any of your Beneficial Owners qualify for one of the exceptions above, please contact counsel to help determine what information must be included on your BOI Report.



D. REQUIRED INFORMATION FOR BENEFICIAL OWNERS

Once you've determined which individuals qualify as Beneficial Owners, the next step is ensuring that you've included all of the necessary information in your BOI Report. For each individual, you'll need to include: (1) full legal name; (2) date of birth; (3) complete current address; and (4) a unique ID number and the issuing jurisdiction.

With regard to the unique ID number and issuing jurisdiction, FinCEN recommends the use of a state, local government, or tribal ID such as a driver's license, or a foreign or domestic passport. You must also upload a PDF copy of the ID when filing your report. Because changes to any of this information will require that you file an amended BOI Report, as explained more fully below, we recommend using a passport for the unique ID number and PDF copy whenever possible.

As with every other requirement or category of the BOI Reports, there are exceptions and special rules regarding the information that must be included in certain circumstances. If you believe your entity qualifies for any exception or meets the criteria for special reporting requirements, please consult with an attorney to confirm that you are reporting your company and its Beneficial Owners correctly.

Reporting of Company Applicants

If your reporting company was created or registered before January 1, 2024, you do not need to include any company applicant information in your BOI Report. Whether filing through the portal or with the use of FinCEN's downloadable document, there is a box to select which indicates the reporting company was formed before January 1, 2024. Once selected, this section is complete and there is no more information you need to provide. However, if your reporting company was created or registered after January 1, 2024, you must identify the company applicant and disclose the required information. Every company required to disclose a company applicant will have a "direct filer." Your company may also have an "indirect filer," otherwise known as the person who directs or controls the filing that first created or registered your company. In either case, no reporting company will report more than two individuals as the company applicants.

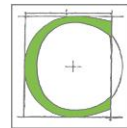
Direct Filer

- The individual who directly filed the document that created a domestic reporting company, or first registered a foreign reporting company.
- The individual would have physically or electronically filed the document with the secretary of state or similar office.
- A direct filer must be identified by all reporting companies that have a company applicant reporting requirement.

Indirect Filer

- The individual who directs or controls the filing of the document that created or first registered your company with the secretary of state or similar office.
- This is only required to be reported when more than one individual is involved in the filing of the document that created or first registered your company.

Once you've identified whether you need to disclose the reporting company's filers and how many, the information needed is the same as disclosures for Beneficial Owners, detailed above.



III. WHEN AND HOW TO REPORT

Deadlines

The new Reporting Rule went into effect on January 1, 2024, and three different deadlines have been set by which reporting companies need to file their initial BOI Report. The deadline that applies to your company will depend on when the company was first created or, in the case of foreign companies, first registered to do business in the United States.

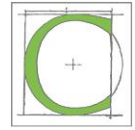
<i>Before January 1, 2024:</i>	<u>January 1, 2025</u>
<i>On or after January 1, 2024:</i>	<u>90 calendar days</u> after receiving actual or public notice that creation/registration is effective.
<i>On or after January 1, 2025:</i>	<u>30 calendar days</u> after receiving actual or public notice that creation/registration is effective.

“Actual” notice refers to a direct communication from the secretary of state or a similar office stating that the creation or registration has gone into effect. “Public” notice occurs when the company’s creation or registration appears on a publicly accessible registry maintained by the secretary of state or a similar office. For all reporting companies created or registered after January 1, 2024, the deadline by which their initial BOI Report runs from the time the company receives actual or public notice, whichever is earlier.

It’s important to note that notice practices vary by jurisdiction, and you may not receive advanced warning about which notice is to come first. After creation or registration, be prepared to monitor publicly accessible registries to ensure that you’re aware of your deadline as far in advance as possible.

Filing

If your company is required to file a BOI Report, you must do so electronically through FinCEN’s secure filing system, which can be found at <https://boiefiling.fincen.gov/>. From this link, you have the option of entering your information through portal on the website, or downloading a PDF BOI Report. If you chose to file through the PDF document, a “Ready to File” option is embedded in the document once you’ve completed all of the required fields. The FinCEN system then provides a confirmation of receipt once a completed report has been filed.



IV. CHANGES TO OR INACCURACIES IN BOI REPORTS

An updated BOI Report is required whenever there is a change to any of the information included in the initial BOI Report. When a change does occur, the reporting company has 30 days from the date of the change to file the updated BOI Report through the same secure filing system as the initial BOI Report.

Changes & Inaccuracies

Changes that require an updated BOI Report include without limitation changes to the reporting company's information, changes in the beneficial owners of the company, and any changes to the information of the beneficial owners. Keep in mind any additional update requirements related to special reporting rules for minor children and any other exceptions that your reporting company is claiming. In the event that your reporting company qualifies for an exemption after the initial report is filed, the company is still required to file an updated BOI Report indicating its newly exempt status.

If an inaccuracy is identified in a BOI report that your company filed, the company must correct it no later than 30 days after the date your company became aware of the inaccuracy or had reason to know of it. This includes any inaccuracy in the required information provided about your company, its beneficial owners, or its company applicants. There are no penalties for filing an inaccurate BOI report provided it is corrected within 90 calendar days of when it was filed.

Penalties

Failing to comply with the new reporting requirements, or inaccuracies in your company's BOI Report discovered 90 calendar days after filing, may subject your company and/or its senior officers to penalties.

In the event that an individual willfully fails to report complete or updated Beneficial Owner information as required, FinCEN will determine the appropriate enforcement response on a case-by-case basis, which may include civil and/or criminal penalties.

Willful failure of the reporting company to file its initial or updated BOI Report may also result in civil or criminal penalties, including fines of up to \$500 for each day that the violation continues, or criminal penalties including imprisonment for up to two years and/or fines of up to \$10,000. It's important to note that senior officers of an entity that fails to file a required BOI Report may be held accountable for that failure.

As with any federal reporting requirement, the laundry list of exceptions and applications can be frustrating to navigate. Hopefully this guide will prove useful in addressing any number of your concerns, but if you find yourself with questions still, please feel free to contact Capua Law for further assistance.