Final Rule: Questions and Answers

FinCEN has prepared the following questions and answers (Q&As) in anticipation of inquiries relating to the Beneficial Ownership Information Final Rule.

These Q&As are explanatory only and do not supplement or modify any obligations imposed by statute or regulation. Please refer to the Beneficial Ownership Information Reporting Requirement Revision and Deadline Extension, available at https://fincen.gov/boi/Reference-materials.

1. **What are the key changes between the interim final rule (IFR) and the final rule?**

   The final rule adopts all of the changes made on an interim basis by the IFR as permanent changes to the beneficial ownership information (BOI) reporting requirements. Most notably, the final rule permanently removes the requirement for U.S. companies and U.S. persons to report BOI to FinCEN.

   In addition, the final rule makes two substantive changes that expand on the relief the IFR extended relating to U.S. persons.

   - It exempts foreign companies from the requirement to report U.S. person "company applicants" (*i.e.*, the individuals who helped those foreign companies register to do business in the United States).
   - It exempts U.S. persons who have applied for FinCEN identifiers (FinCEN IDs) from having to update or correct the information they provided to FinCEN when they applied.

2. **What is beneficial ownership information?**

   Beneficial ownership information (BOI) refers to identifying information about the individuals who directly or indirectly own or control a company.

3. **Who is still required to report BOI under the final rule?**

   "Reporting companies" under the revised reporting requirements include only those entities that are formed under the law of a foreign country and have registered to do business in any U.S. State or Tribal jurisdiction by the filing of a document with a secretary of state or similar office.

   There are multiple types of entities that are exempt from the reporting requirements. Foreign entities potentially falling under the definition of "reporting company" should carefully review the qualifying criteria before concluding whether the foreign company must report BOI.

4. **Will FinCEN remove previously submitted BOI? And if so, by when?**

   FinCEN is committed to the values of privacy and information security. As discussed in the final rule preamble, FinCEN is implementing a process to delete information about any individuals—company applicants, beneficial owners, or recipients of a FinCEN ID—that

FinCEN reasonably believes was provided by a U.S. person (e.g., U.S. passport, U.S. driver's license). As part of this process, FinCEN anticipates working with the National Archives and Records Administration (NARA) to ensure FinCEN is abiding by all applicable Federal records laws.

5. What information must "reporting companies" report?

Reporting companies do not need to report BOI of any U.S. persons, including U.S. company applicants and U.S. person beneficial owners.

A reporting company is required to report:

- Its legal name;
- Any trade names, "doing business as" (d/b/a), or "trading as" (t/a) names;
- The current street address of its principal place of business if that address is in the United States, or, for reporting companies whose principal place of business is outside the United States, the current address from which the company conducts business in the United States;
- Its foreign jurisdiction of formation;
- The State or Tribal jurisdiction where it first registers; and
- Its Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN)), or where a reporting company has not been issued a TIN, a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

6. Why is FinCEN requiring reporting from only foreign companies?

Through its National Money Laundering Risk Assessments and other products, Treasury has long emphasized the risks of foreign illicit actors accessing the U.S. financial system through the use of legal entities created in foreign jurisdictions but registered to do business in the United States. Having taken into account those risks, the final rule—like the IFR—reflects Treasury's focus on ensuring a targeted, risk-based approach to the collection of beneficial ownership information.

Importantly, in developing the final rule, Treasury considered that there are alternative sources of information to mitigate the risks posed by domestic entities. When investigating potential illicit activity, Treasury, law enforcement, and other authorities continue to have a variety of tools available to them to obtain information on domestic companies. For example, the continuing requirement for covered financial institutions to collect a legal entity customer's beneficial ownership information under the Customer Due Diligence Rule is an important part of covered financial institutions' overall anti-money laundering and countering the financing of terrorism programs, as it provides covered financial institutions (and law enforcement upon request) valuable information about their legal entity customers. That obligation will serve to mitigate certain illicit finance risks associated with exempting domestic reporting companies from reporting their BOI.

7. Who is a beneficial owner of a reporting company?

A beneficial owner is an individual who either directly or indirectly: (1) exercises substantial control over the reporting company, or (2) owns or controls at least 25% of the reporting company's ownership interests. Because beneficial owners must be individuals (*i.e.*, natural persons), trusts, corporations, or other legal entities are not considered to be beneficial owners. However, in specific circumstances, information about an entity may be reported in lieu of information about a beneficial owner.

Please note that reporting companies are not required to report the BOI of any U.S. persons who are beneficial owners or company applicants. Furthermore, U.S. persons are exempt from having to provide BOI to any reporting company for which they are beneficial owners or company applicants.

8. Who is a company applicant of a reporting company?

A company that must report its company applicants will have only up to two individuals that could qualify as company applicants:

- The individual who directly files the document that registers the company; and
- If more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing.

9. Is a reporting company required to report information about U.S. persons who are company applicants?

No. Reporting companies are exempt from the requirement to report information about any U.S. persons who are company applicants. U.S. persons are also exempt from the requirement to provide their information with respect to any reporting company for which they are company applicants.

10. What is a FinCEN identifier?

A "FinCEN identifier" is a unique identifying number that FinCEN will issue to an individual or a reporting company upon request after the individual or reporting company provides certain information to FinCEN. An individual or a reporting company may only receive one FinCEN identifier.

11. Who needs to update or correct information submitted to obtain a FinCEN identifier?

U.S. persons who have obtained FinCEN identifiers are not required to update or correct the information they previously provided to FinCEN in order to obtain those FinCEN identifiers.

Individuals who are not U.S. persons must update or correct information through the FinCEN identifier application that is also used to request a FinCEN identifier. Individuals who are not U.S. persons must report ***any change*** to the information they previously submitted to obtain the FinCEN identifier within 30 calendar days after the date on which the change occurred.

If the information was inaccurate when filed and remains inaccurate, the individual who is not a U.S. person shall file a corrected application correcting all inaccuracies within 30 calendar days after the date such individual becomes aware or has reason to know of the inaccuracy.

Reporting companies with a FinCEN identifier must update or correct the company's information by filing an updated or corrected BOI report, as appropriate.

12. What is the rule's effective date and when do reporting companies need to comply with it?

The final rule will become effective upon publication in the *Federal Register*.

It imposes no reporting requirements additional to those that were already in effect, so there is no need for a transition period prior to the effective date to allow anyone not already obligated to prepare for new compliance obligations.