



The Corporate Transparency Act is Here:

What You Need to Know



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Overview

- Background of CTA
- Components of CTA
 - What is a “**Reporting Company**”?
 - Who is a “**Beneficial Owner**”?
 - Who is a “**Company Applicant**”?
 - What Information Must be Reported?
- When Must Information be Reported?
- Who May Use Beneficial Ownership Information?
- Penalties
- Examples



Background



Background

The Corporate Transparency Act (“**CTA**”) is a federal law, passed with bi-partisan support, first signed into law in 2021.

The stated intent of the Act is to establish federal legislation for the collection of beneficial ownership information of Reporting Companies in order to "(A) set a clear, Federal standard for incorporation practices, (B) protect vital United States national security interests, (C) protect interstate and foreign commerce, (D) better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and (E) bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards."



Background Cont.

Historically, there's been a lack of state law requiring companies to identify beneficial owners, which has enabled bad actors to conceal illicit activities through the use of shell companies to own businesses.

The Act requires that all corporations, limited liability companies and “other similar entities” that are formed within any U.S. State (including the District of Columbia, Puerto Rico and other U.S. Territories) or Indian tribe, as well as foreign entities that are registered to do business in the U.S. (collectively, “**Reporting Companies**”) disclose certain information regarding their beneficial owners (“**Beneficial Owners**”), as well as information about the individuals responsible for creating such entities, such as attorneys, corporate registered agents, etc. (“**Company Applicants**”).



Background Cont.

The Financial Crimes Enforcement Network (“**FinCEN**”) is the division of the U.S. Treasury Department charged with implementing and enforcing the CTA.

Information regarding Reporting Companies and their Beneficial Owners and Company Applicants is required to be submitted to FinCEN via a portal available online on FinCEN’s website: www.fincen.gov/boi

An official website of the United States Government



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Beneficial Ownership Information
 Information about the individuals who ultimately own or control them.

U.S. Beneficial Ownership Information Registry Now Accepting Reports
 January 01, 2024
Existing Companies Have One Year to File; New Companies Must File Within 90 Days of Creation or Registration

WASHINGTON -- Today, the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) began accepting beneficial ownership information reports. The bipartisan Corporate Transparency Act, enacted in 2021 to curb illicit finance, requires many companies doing business in the United States to report

FinCEN Issues Analysis of Identity-Related Suspicious Activity
 January 09, 2024

FinCEN Issues Final Rule Regarding Access to Beneficial Ownership Information
 December 21, 2023

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Beneficial Ownership Information
 Learn About Reporting Requirements



Money Services Businesses Information
 MSB Registrant Search and MSB Registration



E-Filing
 Electronic Filing System for Bank Secrecy Act Forms



SAR Statistics
 Interactive Suspicious Activity Report Statistics



https://www.fincen.gov/boi

An official website of the United States Government

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Beneficial Ownership Questions?

BOI | BENEFICIAL OWNERSHIP INFORMATION

Many companies are required to report information to FinCEN about the individuals who ultimately own or control them. FinCEN began accepting reports on January 1, 2024. Learn more about reporting deadlines.

Prepare

- How do I file?
- Do I qualify for an exemption?
- How do I get a FinCEN ID?

File

- File a report using the BOI E-Filing System
- Create a FinCEN ID (optional)

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Alert: FinCEN has been notified of recent fraudulent attempts to solicit information from individuals and entities who may be subject to reporting requirements under the Corporate Transparency Act. The fraudulent correspondence may be titled "Important Compliance Notice" and asks the recipient to click on a URL or to scan a QR code. Those e-mails or letters are fraudulent. FinCEN does not send unsolicited requests. Please do not respond to these fraudulent messages, or click on any links or scan any QR codes within them.



Components of the CTA



Components of CTA

- What is a “**Reporting Company**”?
- Who is a “**Beneficial Owner**”?
- Who is a “**Company Applicant**”?
- What Information Must be Reported?



What is a “Reporting Company”?

A corporation, limited liability company, or other entity that is:

- i. created by the filing of a document with the secretary of state or similar office under the laws of a state or Indian tribe; or
- ii. formed under the law of a foreign country and registered to do business in the United States by the filing of a document with the secretary of state or similar office under the laws of a state or Indian tribe.



What is **NOT** a “Reporting Company” subject to the CTA?

- 20+ types of entities are exempted from the definition and therefore do not have to comply with the reporting requirements applicable to Reporting Companies
- Notable types of exempt entities:
 - Many financial services companies including banks, investment companies, insurance companies, investment advisers, insurance producers subject to state regulation, credit unions, and certain accounting firms
 - Several types of 501(c) organizations including churches, nonprofit organizations, and charities
 - Publicly traded companies
 - Public utilities
 - Large private companies (see following slide)
 - Wholly owned subsidiaries of an exempt entity
 - Inactive entities (see following slide)



All Exemptions

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



Large private company exemption

Any entity that:

- employs more than 20 employees on a full-time basis in the United States;

Note:

- Employees must average 30 services hours per week or 130 service hours per month to be considered, with other adaptations for non-hourly employees
- Entity seeking exemption must directly employ the employees – employees may **not** be consolidated

- shows \$5 million or more in gross receipts or sales in the aggregate from U.S. sources in its previous year's income tax return; **and**

Note:

- Entity that files a consolidated return can use amount reported on return for the consolidated group.

- has an operating presence at a physical office in the U.S.

Note:

- Must be a physical office and not shared space (other than shared space with affiliates).



Inactive entity exemption

Any “inactive” entity that:

- was in existence on or before January 1, 2020;
- is not engaged in active business;
- is not owned by a foreign person, whether directly or indirectly, wholly or partially;
- has not experienced any change in ownership in the preceding twelve-month period;
- 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 12-month period; **and**
- 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



Who is a “Beneficial Owner”?

“Beneficial Owner” means, with respect to an entity, an individual who, *directly or indirectly*, through any contract, arrangement, understanding, relationship, or otherwise:

1. exercises substantial control over the entity; **or**

Indicators

- Senior officers
- Authority over appointment or removal of a senior officer or majority of directors (or similar body)
- Direction, determination, or decision of, or substantial influence over, important matters of the reporting company


1. owns or controls, directly or indirectly, not less than 25 percent of the ownership interests of the entity.

Important Considerations

- Covers all ownership interests of any class or type (including warrants, options and profits interests)
- Debt instruments could be considered if they enable the holder to exercise the same rights as one of the ordinary ownership interests, including the ability to convert the instrument into the ordinary ownership interests



Beneficial Owners – Substantial Control




SENIOR OFFICER
any individual holding the position or exercising the authority of a:

1. President
2. Chief financial officer (CFO)
3. General counsel (GC)
4. Chief executive officer (CEO)
5. Chief operating officer (COO)

or any other officer, regardless of official title, who performs a similar function as these officers




APPOINTMENT OR REMOVAL AUTHORITY
any individual with the ability to appoint or remove any **SENIOR OFFICER** or a majority of the board of directors or similar body



IMPORTANT DECISION-MAKER
any individual who directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding the reporting company's:

1. **Business**, such as:
 - Nature, scope, and attributes of the business
 - The selection or termination of business lines or ventures, or geographic focus
 - The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts
2. **Finances**, such as:
 - Sale, lease, mortgage, or other transfer of any principal assets
 - Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget
 - Compensation schemes and incentive programs for senior officers
3. **Structure**, such as:
 - Reorganization, dissolution, or merger
 - Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures



CATCH-ALL
any other form of substantial control over the reporting company. Control exercised in new and unique ways can still be substantial. For example, flexible corporate structures may have different indicators of control than the indicators included here



Beneficial Owners –

Holder, directly or indirectly, of 25% or more of the “ownership interest”





Who is NOT a “Beneficial Owner”?

1. a minor child as defined in the state in which the entity is formed (*must report information of the parent or guardian of the minor child*);
2. an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual (*must report information of individual whom nominee is acting*);
3. an individual acting solely as an employee of a reporting person and whose control over the economic benefits from such entity is derived solely from the employment status of the person (excludes “senior officers”);
4. an individual whose only interest in a reporting company is through a right of inheritance; or
5. a creditor of a reporting person, unless the creditor meets the requirements of a “beneficial owner” based on substantial control or ownership or control of not less than 25% of the ownership interests.



Who is a “**Company Applicant**”?

A “Company Applicant” is an individual who either:

1. directly files the document that creates a domestic reporting company or first registers a foreign entity to do business in the U.S.; **or**
2. is primarily responsible for directing or controlling the filing of the relevant document by another, if more than one individual is involved in the filing.

What information must be reported?

Reporting Company

- Full legal name
- Any trade name or "doing business as" (DBA) name
 - » Report all trade names or DBAs.
- Complete current U.S. address
 - » Report the address of the principal place of business in United States, or, if the reporting company's principal place of business is not in the United States, the primary location in the United States where the company conducts business.
- State, Tribal, or foreign jurisdiction of formation
- For a foreign reporting company only**, State or Tribal jurisdiction of first registration
- Internal Revenue Service (IRS) Taxpayer Identification Number (TIN) (including an Employer Identification Number (EIN))
 - » **If a foreign reporting company has not been issued a TIN**, report a tax identification number issued by a foreign jurisdiction and the name of such jurisdiction.

Each Beneficial Owner and Company Applicant

Not all reporting companies are required to report information about company applicants. See Chapter 3 for assistance in identifying whether your company is required to report company applicant information.

- Full legal name
- Date of birth
- Complete current address
 - » Report the individual's residential street address, except for company applicants who form or register a company in the course of their business, such as paralegals. For such individuals, report the business street address. The address is not required to be in the United States.
- Unique identifying number and issuing jurisdiction from, and image of, **one** of the following non-expired documents:
 - » U.S. passport
 - » State driver's license
 - » Identification document issued by a state, local government, or tribe
 - » **If an individual does not have any of the previous documents**, foreign passport

NOTE: Reporting Companies formed before January 1, 2024, do not need to report Company Applicant information, and no Reporting Company needs to update Company Applicant information.



What information needs to be reported if an entity is exempt from the “**Reporting Company**” definition, per the exemptions described above?

1. An entity that is exempt does not, itself, need to file a report regarding its Beneficial Owners or its Company Applicant(s).
2. If an exempt entity qualifies as a “Beneficial Owner” of another entity that is a “Reporting Company” and thereby needs to be disclosed on the beneficial owner report for such Reporting Company, the exempt entity simply needs to disclose its legal name (or FinCEN ID).



What is a FinCEN ID?

1. Any individual or entity that might be a “Beneficial Owner” or “Company Applicant” for one or more other business entities may instantaneously obtain a FinCEN ID by filing an application containing the information otherwise required to be supplied by such individual or entity in connection with the filing of a beneficial owner report.
2. The FinCEN ID application may be found here: <https://fincenid.fincen.gov/landing>.
3. Once a FinCEN ID is obtained, only the FinCEN ID needs to be disclosed by such individual or entity on any future beneficial owner report pertaining to the individual or entity.
4. A “Reporting Company” may also check a box to receive its own FinCEN ID at the time that the Reporting Company submits its beneficial owner report.



When Must Information be Reported?



Initial Reporting Requirements

- For any Reporting Company that has been formed or registered before January 1, 2024: not later than January 1, 2025.
- For any Reporting Company formed or registered in calendar year 2024: information must be reported not later than 90 days after formation (i.e. the filing of the Certificate/Articles with the applicable Secretary of State's office).
- For any Reporting Company formed or registered in calendar year 2025 or afterwards: not later than 30 days after formation (i.e. the filing of the Certificate/Articles with the applicable Secretary of State's office).



Updates

- If there is any change to the reported information about a Reporting Company or its Beneficial Owners, you must file an updated report no later than 30 days after the date of the change.

NOTE:

- There is a 90 day safe harbor for corrections of inaccurately reported information.
- I've received many questions about Driver's Licenses. You only need to report a change to your Driver's License (including by uploading a new photo of your driver's license) if: (a) your name changes, (b) the state of issuance changes, (c) your mailing address changes, (d) your Driver's License ID# changes (which should only occur if you request a change, presumably as a result of identity theft). **Get your Driver's Licenses updated with your correct address!**
- Exempt entities that no longer meet an exemption are required to submit to FinCEN the required beneficial ownership report not later than 30 days after the exemption ceases.



Who May Use Beneficial Owner Information?



Who may access and use information submitted in a beneficial owner report?

- U.S. Federal agencies engaged in national security, intelligence, or law enforcement activity
- State, local, and Tribal law enforcement agencies
- Foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (foreign requesters)
- Financial institutions using information to facilitate compliance with customer due diligence (CDD) requirements under applicable law (**Note**: the consent of the Reporting Company is required in this case)
- Federal functional regulators and other appropriate regulatory agencies acting in a supervisory capacity assessing financial institutions for compliance with CDD requirements under applicable law
- Treasury officers and employees

Note: The CTA has confidentiality rules and restrictions applicable to these parties, and there are enhanced penalties in the event there is unauthorized use, access or disclosure of reported information by these parties.



Penalties



Penalties for noncompliance with the CTA

Individuals and entities obligated to report information:

- Civil penalties of up to \$500 for each day that a violation continues or has not been remedied; **and**
- Criminal penalties including fines of up to \$10,000 and possible imprisonment of up to two (2) years for any person who willfully (i) provides, or attempts to provide, false or fraudulent beneficial ownership information, or (ii) fails to report complete or updated beneficial ownership information to FinCEN.

Individuals and entities authorized to use/access reported information:

- Civil penalties of up to \$500 for each day that a violation continues or has not been remedied; **and**
- Criminal penalties of up to \$250,000 and possible imprisonment of up to five (5) years for any person who knowingly discloses or knowingly uses BOI obtained by that person from a report submitted to, or an authorized disclosure made by, FinCEN, unless such disclosure is authorized under the CTA.

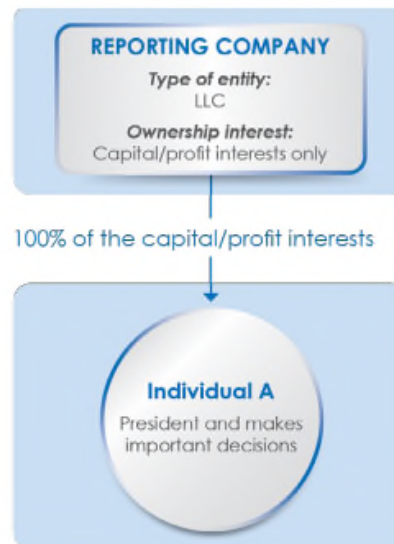
Note: These amounts are increased to \$500,000 and 10 years of prison if someone uses or discloses BOI in the manner prohibited above while violating another law of the U.S. or as part of a pattern of illegal activity involving more than \$100,000 in any 12 month period.



Examples

Example 1

The reporting company is a limited liability company (LLC). Individual A is the sole owner and president of the company and makes important decisions for the company. No one else owns or controls ownership interests in the company or exercises substantial control over the company.





Answer - Example 1

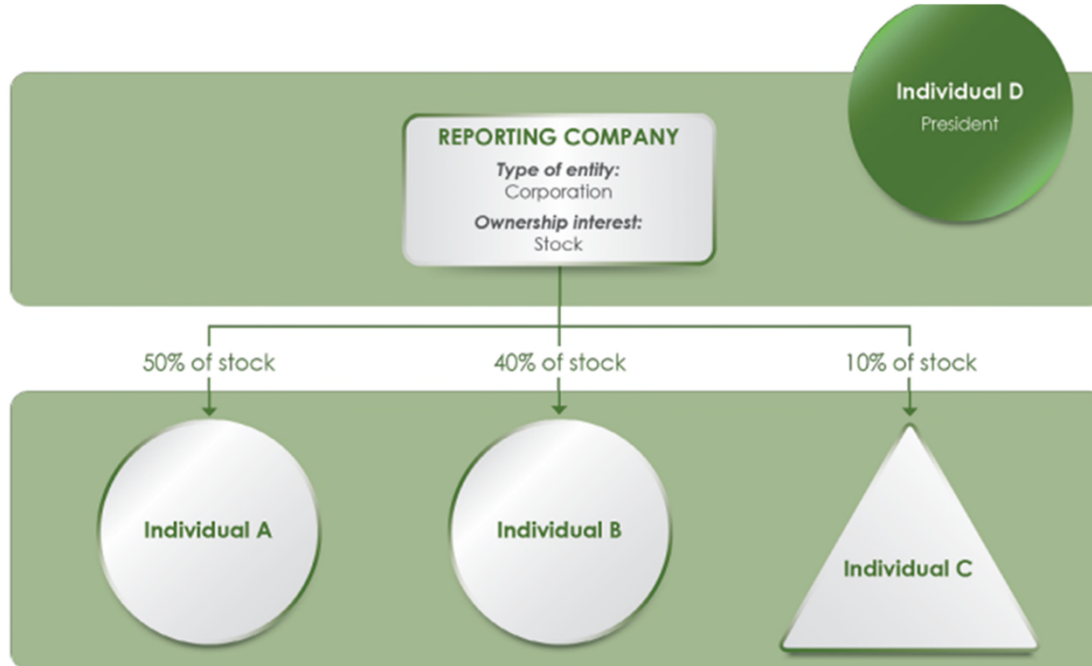
Individual A is a beneficial owner of the reporting company in two different ways, assuming no other facts.

First, Individual A exercises substantial control over the company because Individual A is a senior officer of the company (the president).

Second, Individual A is also a beneficial owner because Individual A owns 25 percent or more of the reporting company's ownership interests. Because no one else owns or controls ownership interests in the LLC or exercises substantial control over it, and assuming there are no other relevant facts, Individual A is the only beneficial owner of this reporting company, and Individual A's information must be reported to FinCEN.

Example 2

The reporting company is a corporation. The company's total outstanding ownership interests are shares of stock. Three people (Individuals A, B, and C) own 50 percent, 40 percent, and 10 percent of the stock, respectively, and one other person (Individual D) acts as the president, for the company, but does not own any stock.





Answer - Example 2

Assuming there are no other relevant facts, Individuals A, B, and D are all beneficial owners of the company and their information must be reported. Individual C is not a beneficial owner.

Individual A owns 50 percent of the company's stock and therefore is a beneficial owner because 50 percent is greater than the threshold of 25 percent or more of the company's ownership interests.

Individual B owns 40 percent of the company's stock and therefore is a beneficial owner 40 percent is also greater than the threshold of 25 percent or more of the company's ownership interests.

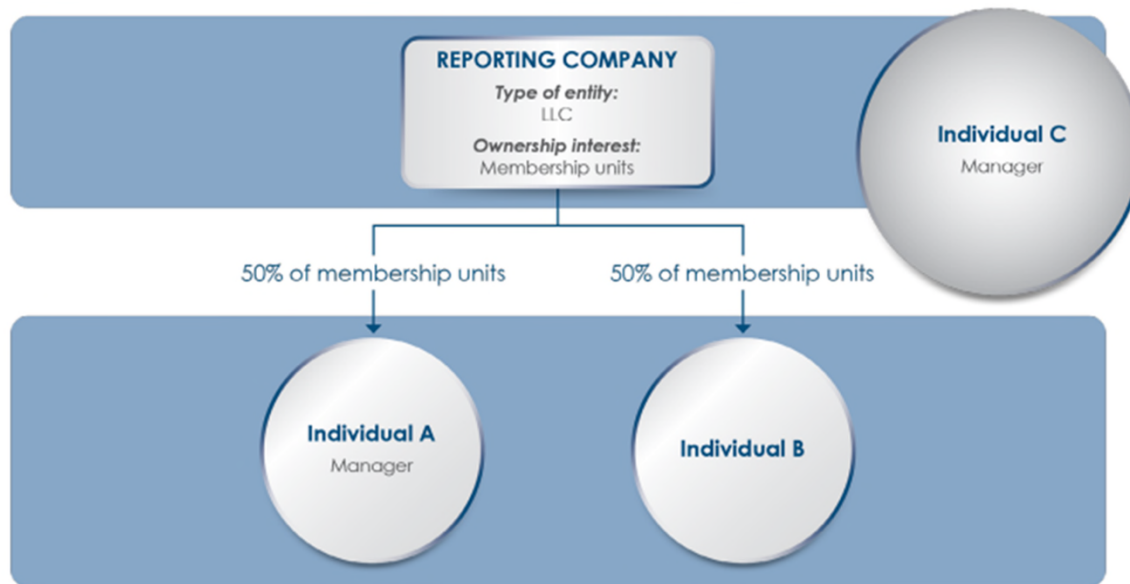
Individual C is not a senior officer of the company and does not directly or indirectly exercise any substantial control over the company.

Individual C also owns 10 percent of the company's stock, which is less than the 25 percent or greater interest needed to qualify as a beneficial owner by virtue of ownership interests. Individual C is therefore not a beneficial owner of the company.

Individual D is president of the company. As a senior officer of the company, Individual D exercises substantial control over the company and is therefore a beneficial owner, regardless of whether or not Individual D owns or controls 25 percent or more of the company's ownership interests.

Example 3

The reporting company is an LLC with two managers, Individuals A and C. Individual A also owns 50 percent of the “membership units” in the LLC while Individual C does not. Individual B owns the remaining membership units in the LLC but is not a manager.





Answer - Example 3

Owners of membership units (which are a type of “capital or profit interest” ownership interest) in an LLC are sometimes called “members” of the LLC. A member may not automatically be required, or authorized, to make decisions for the LLC; depending on the internal organization of the LLC, however, a member may also be a “manager.” In this example, Individual A is a member and a manager. Individual B is a member but not a manager, while Individual C is a manager but not a member. All three are beneficial owners of the reporting company.

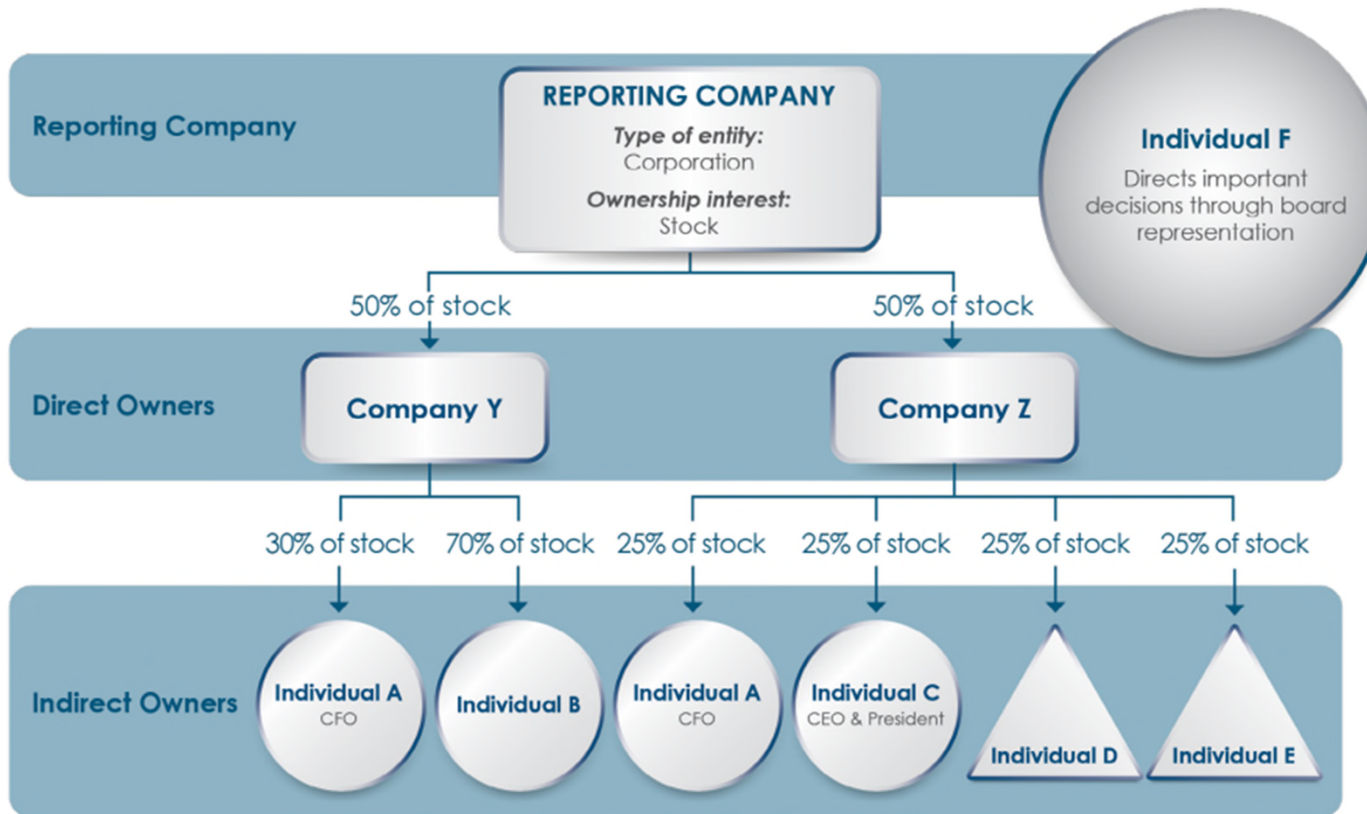
Individual A is a manager of the LLC and owns 50 percent of the company’s membership units. Individual A exercises substantial control over the LLC because Individual A makes important decisions for the LLC in the role of manager. Individual A also owns 50 percent (which is greater than the 25 percent or more threshold) of the company’s ownership interests. Individual A is therefore a beneficial owner of the reporting company in two different ways, by exercising substantial control and owning or controlling 25 percent or more of the ownership interests.

Individual B owns 50 percent (which is greater than the 25 percent or more threshold) of the LLC’s membership units. That makes Individual B a beneficial owner of the LLC even though Individual B is not a manager and does not make important decisions or otherwise exercise substantial control over the LLC.

Individual C is a manager of the LLC and makes important decisions on its behalf, thereby exercising substantial control over it. Individual C does not own any of the LLC’s membership units (the ownership interests) but is nevertheless still a beneficial owner because the individual exercises substantial control.

Example 4

A reporting company is a corporation with multiple indirect owners through Company Y and Company Z.





Answer - Example 4

In this example, Individuals A, B, C, and F are beneficial owners.

Individual A is the reporting company's Chief Financial Officer and is therefore a senior officer, which under the Reporting Rule means that Individual A exercises substantial control over the company. Individual A also indirectly owns 27.5 percent of the reporting company's stock through direct ownership of Company Y and Company Z, which each own 50 percent of the reporting company's stock. (Individual A owns 30 percent of Company Y's stock and 25 percent of Company Z's stock. Therefore, Individual A owns 15 percent of the reporting company's stock through Company Y ($50\% \times 30\% = 15\%$) and 12.5 percent of the reporting company's stock through Company Z ($50\% \times 25\% = 12.5\%$). Adding these two percentages together equals 27.5 percent of the reporting company's stock.) Individual A is therefore a beneficial owner in two different ways, by exercising substantial control and owning or controlling 25 or more of the ownership interests of the reporting company.

Individual B indirectly owns 35 percent of the reporting company's stock through Company Y, which owns 50 percent of the reporting company's stock. (Individual B owns 70 percent of Company Y's stock ($50\% \times 70\% = 35\%$)). Individual B does not exercise substantial control. Individual B is a beneficial owner by owning or controlling 25 percent or more of the reporting company's ownership interests.



Answer - Example 4 (Continued)

Individual C is the reporting company's Chief Executive Officer and president and is therefore a senior officer who exercises substantial control. Individual C indirectly owns 12.5 percent of the reporting company's stock. To calculate Individual C's indirect ownership interests in the reporting company, multiply the ownership interest of Individual C in Company Z by the ownership interest of Company Z in the reporting company. Individual C owns 25 percent of Company Z's stock and Company Z owns 50 percent of the reporting company's stock. Therefore, Individual's C ownership interests in the reporting company are 12.5 percent ($25\% \times 50\% = 12.5\%$), which is less than the 25 percent ownership interest threshold. Accordingly, Individual C's ownership interests in the reporting company do not make Individual C a beneficial owner, but Individual C is nevertheless a beneficial owner because Individual C exercises substantial control over the reporting company.

Similar to Individual C, Individuals D and E own 25 percent of Company Z's stock, and each therefore indirectly owns 12.5 percent of the reporting company's stock. In contrast to Individual C, Individuals D and E do not exercise substantial control over the reporting company. Individuals D and E are not beneficial owners.

Individual F is on the company's board of directors and makes important decisions on the reporting company's behalf, thereby exercising substantial control over it. Individual F does not own or control any stock in the reporting company. Individual F is therefore a beneficial owner by exercising substantial control over the reporting company, but not through holding ownership interests in it.



Citation

The foregoing examples were obtained directly from FinCEN's Beneficial Ownership Information Reporting Requirements, Small Entity Compliance Guide, December 2023 - Version 1.1, available at the following link: https://www.fincen.gov/sites/default/files/shared/BOI_Small_Compliance_Guide.v1.1-FINAL.pdf.



Walk-Through of FinCEN's Online BOIR Application

www.fincen.gov/boi



Questions?

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