



BOI REPORTS - IDENTIFYING BENEFICIAL OWNERS

Who is a beneficial owner of a reporting company?

According to the Financial Crimes Enforcement Network (FinCEN), every reporting company should be able to identify and report on at least one beneficial owner. However, some reporting companies may have multiple beneficial owners. If there is more than one person who meets the definition of a beneficial owner, then each individual must be included in the beneficial owner report. FinCEN defines a beneficial owner as any person who, directly or indirectly:

- 1) exercises “substantial control” over a reporting company and/or
- 2) owns or controls at least 25 percent of the ownership interest of a reporting company.

Essentially, the regulation applies to anyone who can direct, determine, exert significant influence, or make important decisions on behalf of the entity.

Let’s talk about substantial control.

FinCEN has laid out four general criteria for determining if an individual exercises “substantial control” over a reporting company. If a person meets any of the below, they would qualify under the definition:

- 1) the individual is a senior officer (president, CEO, CFO, COO, general counsel, etc.);
- 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 (has substantial influence over a company’s finances, structure, or the businesses nature, scope, and attributes); or
- 4) the individual has any other form of substantial control over the reporting company.

What about ownership interest?

If an individual owns or controls at least 25% of the company’s ownership interests, they can be considered a beneficial owner. It’s important to note that a reporting company may have various types of ownership interests, and any of them can be considered as an ownership interest.

- equity, stock, or voting rights;
- a capital or profit interest;
- convertible instruments;
- options or other non-binding privileges to buy or sell any of the foregoing;
- and any other instrument, contract, or other mechanism used to establish ownership.

Looking for additional guidance?

FinCEN’s Small Entity Compliance Guide provides more detailed examples of what constitutes substantial control and in-depth explanations of various types of ownership interests. The guide also includes useful checklists and scenarios that can assist reporting companies in identifying beneficial owners. To access the guide, please visit the following link: <http://tinyurl.com/FinCENSmallEntityGuide>.

Please note: This document is not intended as legal advice and should not be relied upon as such. We suggest speaking with your legal and tax professionals before deciding if the Corporate Transparency Act will impact you and your business.