



ALERTS

FinCEN Updates Guidance On Identifying Company Applicants Under The CTA

January 19, 2024

Highlights

FinCEN issues guidance on reporting company applicants in BOI filings

Attorneys and accountants may be considered reportable company applicants

Updated guidance identifies corporate service companies and other entity registration service providers as company applicants

Neither automated websites nor third-party mailing services reportable as company applicants, but law firm mailroom employees might be

On Jan. 12, the Financial Crimes Enforcement Network (FinCEN) updated its [Frequently Asked Questions on Beneficial Ownership Information Reporting](#) to include new guidance aimed at helping reporting companies identify company “applicants” under the 2024 beneficial ownership information (BOI) reporting rule.

As part of the BOI reporting process – overseen by FinCEN – reporting companies created or registered on or after Jan. 1, 2024, will be required

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to identify at least one company applicant.

Under the BOI reporting rule, a maximum of two individuals can qualify as a reporting company's applicants. The rule defines a company "applicant" as (1) the individual who directly files the document that creates or registers the company, and (2) if more than one person is involved in the filing, the individual who is primarily responsible for directing or controlling the filing. All reporting companies are required to report the individual identified in (1).

Early FinCEN guidance indicated that accountants, lawyers, or paralegals who assist with the creation of reporting companies may be considered company applicants if they directly make formation or registration filings or are primarily responsible for directing or controlling such filings.

FinCEN initially provided the following 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."

Now, FinCEN has provided additional clarification for company applications and registrations processed by corporate service providers and other agents.

In the FAQ document, FinCEN provides additional examples involving situations in which multiple parties, including corporate service providers and filing agents, play a role in the preparation and filing of company documentation.

Example 1: An attorney who completes a company creation document using information provided by a client, and then sends the document to a corporate service provider or filing agent for filing with a secretary of state.

1) The attorney is the company applicant who is primarily responsible for directing or controlling the filing because they prepared the creation document and directed the corporate service provider to file it.

2) The individual at the corporate service provider is the company applicant who directly filed the document with the secretary of state.

Example 2: An attorney instructs a paralegal to complete the preparation of the creation document, before directing a corporate service provider or filing agent to file the document. In this case, the outcome remains the same as in Example 1: The attorney and the individual at the corporate service provider who files the document are company applicants.

FinCEN notes that in this three-party example, the paralegal is not a company applicant because the attorney played a greater role than the paralegal in making substantive decisions about the filing of the document.

Example 3: A client who initiated a company creation directly asks a corporate service provider or filing agent to file the document to create the company. In this case, the client is primarily responsible for directing or

controlling the filing, and the client should be reported as a company applicant, along with the individual at the corporate service provider who files the document.

Note that FinCEN concludes the client is an applicant in this scenario even though the document may have been prepared by the attorney at the client's instruction. For the purposes of determining who is a company applicant, FinCEN notes that it is not relevant who signs the creation or registration document, for example, as an incorporator.

To determine who is primarily responsible for directing or controlling the filing of a formation or registration document, reporting companies should consider who is responsible for making decisions about the content, method, and timing of the filing. Considering who decides how the filing is managed, what content the filing includes, and when and where the filing occurs may all help identify the appropriate company applicant(s).

In addition to providing the above examples involving corporate service providers and filing agents, FinCEN also added guidance relating to two other common methods of filing corporate documents: (1) mailings and (2) automated online filing solutions. In most cases, neither delivery personnel nor automated online formation services qualify as company applicants, as illustrated by the following examples.

Example 4: An attorney at a law firm is involved in the preparation of incorporation documents. The attorney directs a paralegal to file the documents. The paralegal requests a third-party delivery service to deliver the incorporation documents to the secretary of state's office. In this case, the paralegal is the company applicant who directly files the documents, and the attorney is the company applicant primarily responsible for directing or controlling the filing of the documents.

Example 5: An attorney at a law firm is involved in the preparation of incorporation documents. The attorney instructs an employee in the firm's mailroom to physically deliver the document that creates a reporting company. In this case, both individuals are company applicants.

Example 6: An individual prepares and self-files documents to create a reporting company using an automated incorporation service. In this case, this reporting company reports only that individual as a company applicant and does not report the automated incorporation service provider.

Examples 4 and 5 draw out an important nuance: while third-party couriers are not identifiable as company applicants, couriers employed by a business formation service, law firm, or other entity involved in the creation or registration of reporting companies may qualify as company applicants as a result of their greater connection (via their employer) to the creation or registration of such companies.

FinCEN regularly updates its [FAQs on Beneficial Ownership Information](#). For additional information on the FinCEN BOI reporting framework please see: <https://fincen.gov/boi>.

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