

# FinCEN Publishes Updated FAQs to Assist in Reporting Compliance

The Financial Crimes Enforcement Network (“FinCEN”) recently published updates to its list of Frequently Asked Questions (“FAQs”) to assist entities in complying with the beneficial ownership reporting requirements of the Corporate Transparency Act (“CTA”).

Principal among these updates was to reflect that the CTA has now gone into effect as of January 1, 2024. The updated FAQs include updates to general questions, and the reporting process and content. The updated FAQs also include new questions and answers about reporting companies, beneficial owners, company applicants, reporting requirements generally, initial reports, reporting company exemptions, FinCEN identifiers, and third-party service providers.

FinCEN expects to publish further guidance in the future. The updated FAQs can be accessed [here](#).

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Several of the updates bear special note:

## **1. FAQ L.6. - Reporting Company Exemptions**

**Does a subsidiary whose ownership interests are partially controlled by an exempt entity qualify for the subsidiary exemption?**

FinCEN stated “No.” If exempt entities control some but not all of the ownership interests of the subsidiary, the subsidiary does not qualify. To qualify, a subsidiary’s ownership interests must be fully, 100 percent owned or controlled by exempt entities.

## **2. FAQ M.2. - FinCEN Identifier**

**How can an entity use a FinCEN identifier?**

A reporting company may report another entity's FinCEN identifier and full legal name in place of personal identifying information about its beneficial owners only when three conditions are met: (1) the other entity obtains a FinCEN identifier and provides it to the reporting company; (2) the economic beneficial owners hold interests in the reporting company through economic ownership interests in the other entity; and (3) the economic and substantial control beneficial owners of the reporting company and the economic and substantial control beneficial owners of the other entity are the exact same individuals.

### **3. FAQ C.7. - Reporting Company Status**

#### **Can a company created or registered in a U.S. territory be considered a reporting company?**

FinCEN clarified that businesses created or registered to do business in U.S. Territories are treated just like those formed in U.S. States for purposes of CTA compliance.

### **4. FAQ D.11. - Beneficial Owner**

#### **What should a reporting company report if its ownership is in dispute?**

FinCEN clarified that if ownership of a reporting company is in dispute, a reporting company should include as beneficial owners: (a) all individuals who exercise substantial control over the company, and (b) all individuals who own or control, *or have a claim to ownership or control*, of at least 25 percent ownership interests in the company. Once litigation of any dispute over ownership or control is resolved, the reporting company must file an updated BOI report within 30 calendar days of resolution of the litigation with respect to any change to prior reported information. This FAQ answer by FinCEN does not address how parties should handle such matters that may be on appeal.

### **5. FAQ D.12. - Beneficial Owner**

#### **Who does a reporting company report as a beneficial owner if an entity owns or controls 25 percent or more of the ownership interests of the reporting company?**

FinCEN clarified that a reporting company should report the individuals who indirectly are beneficial owners through the parent entity. The reporting company should not report the parent entity that acts as an intermediate between the reporting company and the individuals.

FinCEN noted, however, that two special rules create exceptions to the above general rule in very specific circumstances:

(1) a reporting company may report the name(s) of an exempt entity or entities in lieu of an individual beneficial owner who owns or controls beneficial (economic) ownership in the reporting company entirely through ownership interests in an exempt entity or entities; or

(2) if the beneficial owners of the reporting company and the intermediate company are the same individuals, a reporting company may report the FinCEN Identifier and full legal name of an intermediate company in lieu of reporting specific individual beneficial owners of the reporting company.

“Beneficial owners” would include those individuals who meet the 25% ownership prong and those that meet the substantial control prong of the definition.

#### **6. FAQ E.6. - Company Applicant**

**Is a third-party courier or delivery service employee who only delivers documents that create or register a reporting company a company applicant?**

FinCEN stated “No.” A third-party courier or delivery service employee who only delivers documents to a secretary of state or similar office is not a company applicant, provided they meet one condition: the third-party courier, the delivery service employee, and any delivery service that employs them do not play any other role in the creation or registration of the reporting company.