



February 7, 2024

Getting Ready for the Corporate Transparency Act





Agenda

- **US Corporate Transparency Act Overview**

- What is a reporting company?
- Which reporting companies are exempt?
- Who is a beneficial owner?

- **Filing Reports with FinCEN**

- The logical process
- Preserving PII at the individual level.



THOUGHT LEADERSHIP

More than 30 million will be impacted by the new CTA requirements.



Corporate Transparency Act Overview



- **Adopted by Congress in December 2020**
 - Amends the Bank Secrecy Act
 - Codified at 31 U.S.C. 5336
 - Final Rule on Beneficial Ownership Reports issued September 29, 2022; 31 CFR 1010.380.
- **The requirements became effective January 1, 2024.**

Yet, many organizations are not aware of this deadline and/or confident of how to file.
- **The CTA will eliminate corporate anonymity** in the U.S. by requiring non-exempt reporting companies to file a Beneficial Ownership Information (BOI) Report with FinCEN – The U.S. Treasury Financial Crimes Enforcement Network
- ▶ **Most reporting companies will need their trusted professional services companies** to help them understand and navigate the filing and compliance process.



JOINT LEADERSHIP

Need to Work Together - Many Companies Unaware of How this Will Impact Them



How the CTA Works



Every **reporting company** that is not **exempt** must file a **BOI Report** that discloses five specific items of PII for each of its **Beneficial Owners**

- **Entities formed (or registered to do business) on or after January 1, 2024**, must also identify and provide the same five items of PII for the entity's **Company Applicant**.
- **There is no annual renewal**, but the reporting company must *amend* its BOI Report within *30 days after any change in PII* for any of its Beneficial Owners.
- **Failing to file on time may result in a \$500 per day fine**; a willful failure to file (or filing false information) may be a felony.





What is a Reporting Company



The CTA defines “reporting company” as:

a corporation, limited liability company, or other entity that is (i) created by the filing of a document with a secretary of state or any similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in any State or tribal jurisdiction by the filing of a document with a secretary of state or any similar office under the laws of a State or Indian Tribe.

- The Regulations distinguish between “Domestic Reporting Company” and “Foreign Reporting Company.”
- If it is formed by the filing of a document (corporation, LLC, limited partnership) it is a reporting company.
- Legal entities that are not reporting companies: (1) common law general partnerships, and (2) some kinds of trusts.



Which Reporting Companies Are Exempt



The CTA creates 23 separate exemption types:

Securities reporting issuer	Depository institution holding company	Other Exchange Act registered entity	State-licensed insurance producer	Financial market utility	Large operating company
Governmental authority	Money services business	Investment company or investment adviser	Commodity Exchange Act registered entity	Pooled investment vehicle	Subsidiary of certain exempt entities
Bank	Broker or dealer in securities	Venture capital fund adviser	Accounting firm	Tax-exempt entity	Inactive entity
Credit union	Securities exchange or clearing agency	Insurance company	Public utility	Entity assisting a tax-exempt entity	



What is a Company Applicant

Two types:

An **individual** is a **company applicant** if the individual **directly files the document that creates (or registers) the reporting company**

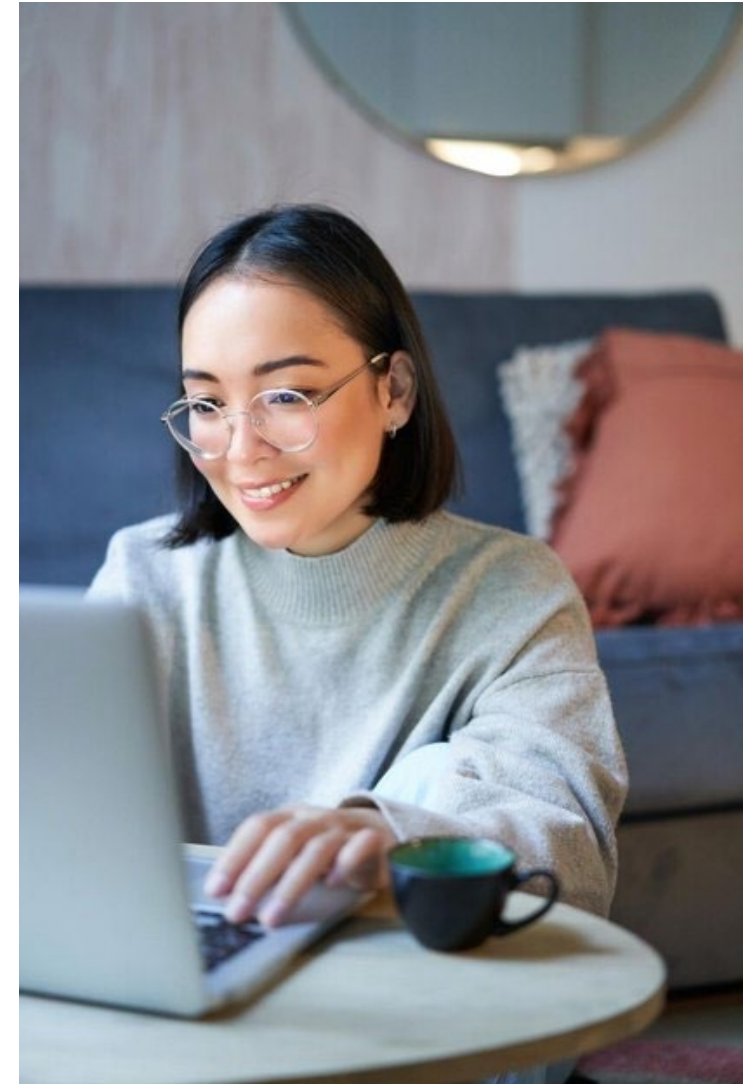
An **individual** is a **company applicant** if the individual **is primarily responsible for directing or controlling such filing** if more than one individual is involved in filing.

Check out FinCEN's FAQ E.5 (issued January 12, 2024).

It does not matter who is the "organizer".

Firms will have little leeway to manage this process. Firms should make sure their policies for entity formation align with FinCEN's latest guidance.

- The company applicant must always be an **individual**, not a firm or company





What is a Beneficial Owner

A beneficial owner is an *individual* that meets either test:

An individual is a beneficial owner if the individual **exercises substantial control over the reporting company**

An individual is a beneficial owner if the individual **owns or controls 25 percent** or more of the ownership interests of such reporting company.

Note: The definition of “beneficial owner” in the CTA is significantly different from the definition used in the KYC regulation that applies to banks (31 CFR 1010.230). Under the KYC regulation, the number of beneficial owners is capped at four. There is no similar limitation in the CTA, which requires that every beneficial owner be identified.





Calculating Ownership Percentages



The Calculation Rule: Section 1010.380(d)(2)(iii):

(A) Present Time Rule. Calculations made “at the present time, and any options or similar interests of the individual shall be treated as exercised”

(B) Partnership Capital Rule. For reporting companies that issue capital or profit interests (including entities treated as partnerships for federal income tax purposes), the individual's ownership interests are the individual's capital and profit interests in the entity, **calculated as a percentage of the total outstanding capital and profit interests of the entity;**

(C) Corporate Capital Rule. For corporations, the applicable percentage shall be the **greater of:**

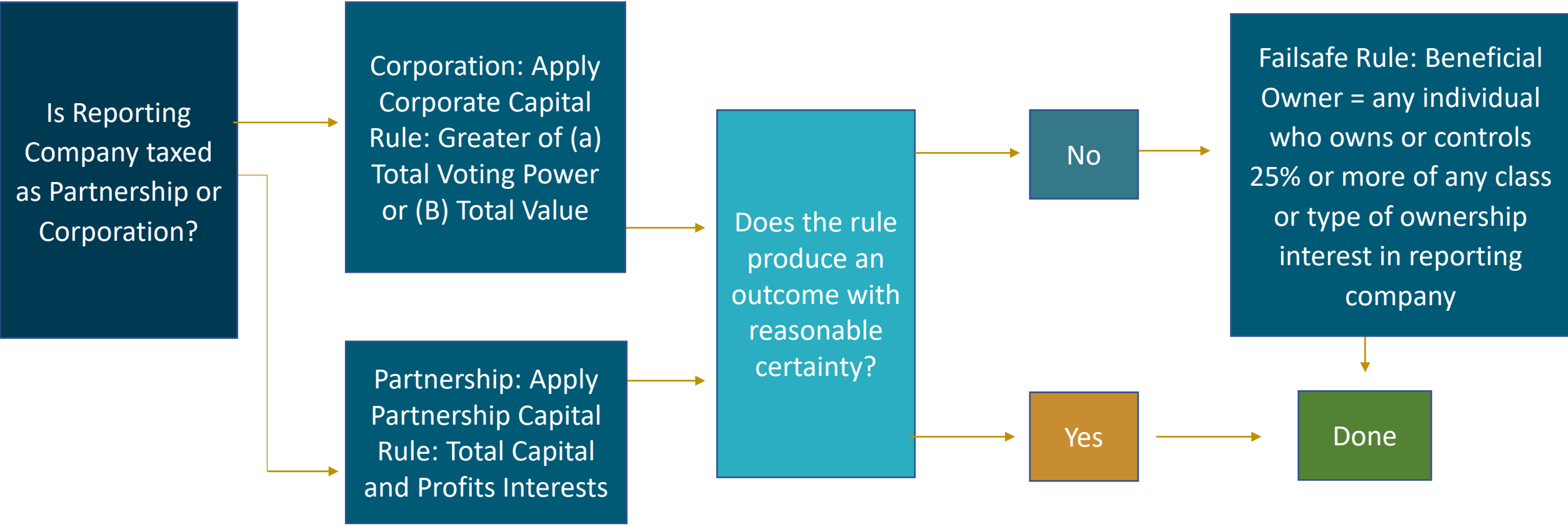
(1) **Voting Power Rule.** the **total combined voting power** of all classes of ownership interests of the individual as a percentage of total outstanding voting power of all classes of ownership interests entitled to vote, **or**

(2) **Total Value Rule:** the **total combined value** of the ownership interests of the individual as a percentage of the total outstanding value of all classes of ownership interests; *and*

(D) Failsafe – 25% of Any Class: If the facts and circumstances do not permit the calculations described in either paragraph (d)(2)(iii)(B) or (C) to be performed with reasonable certainty, any individual who owns or controls **25 percent or more of any class or type of ownership interest** of a reporting company shall be deemed to own or control 25 percent or more of the ownership interests of the reporting company.



Calculating Rule Decision Tree





Beneficial Owner – Substantial Control

An individual “**exercises substantial control**” over a reporting company if that individual:

- (A) Serves as a senior officer of the reporting company;
- (B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body);
- (C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding:
 - (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company;
 - (2) The reorganization, dissolution, or merger of the reporting company;
 - (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of the reporting company;
 - (4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company;
 - (5) Compensation schemes and incentive programs for senior officers;
 - (6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contracts;
 - (7) 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; or
- (D) Has any other form of substantial control over the reporting company.”

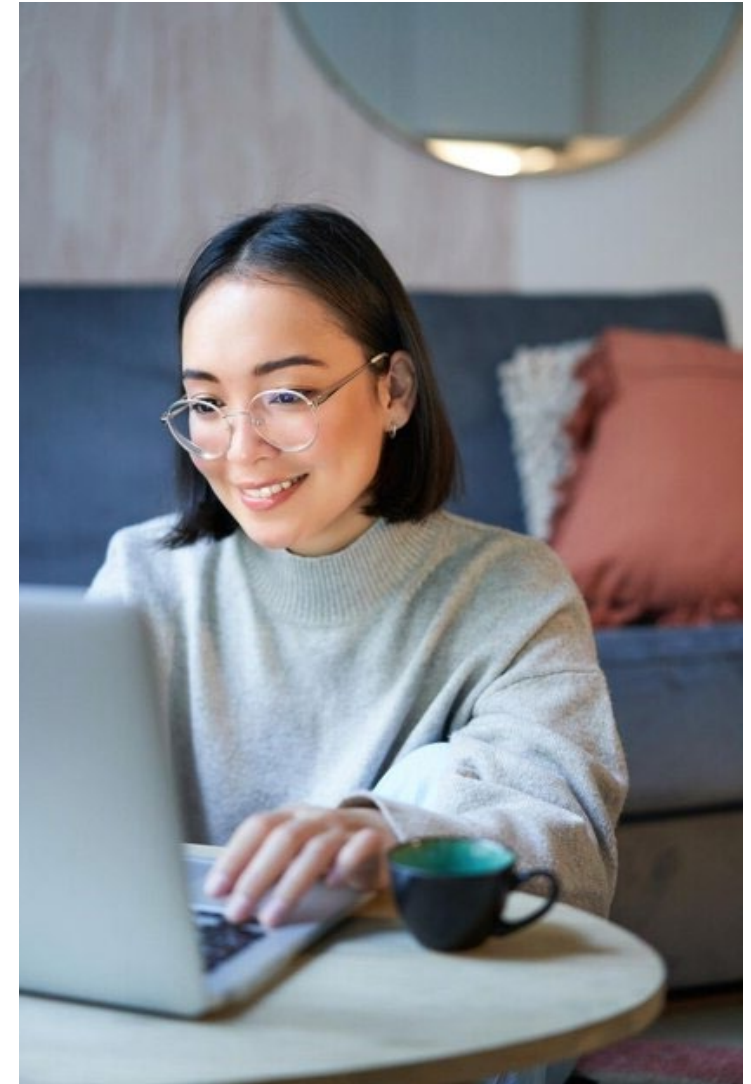




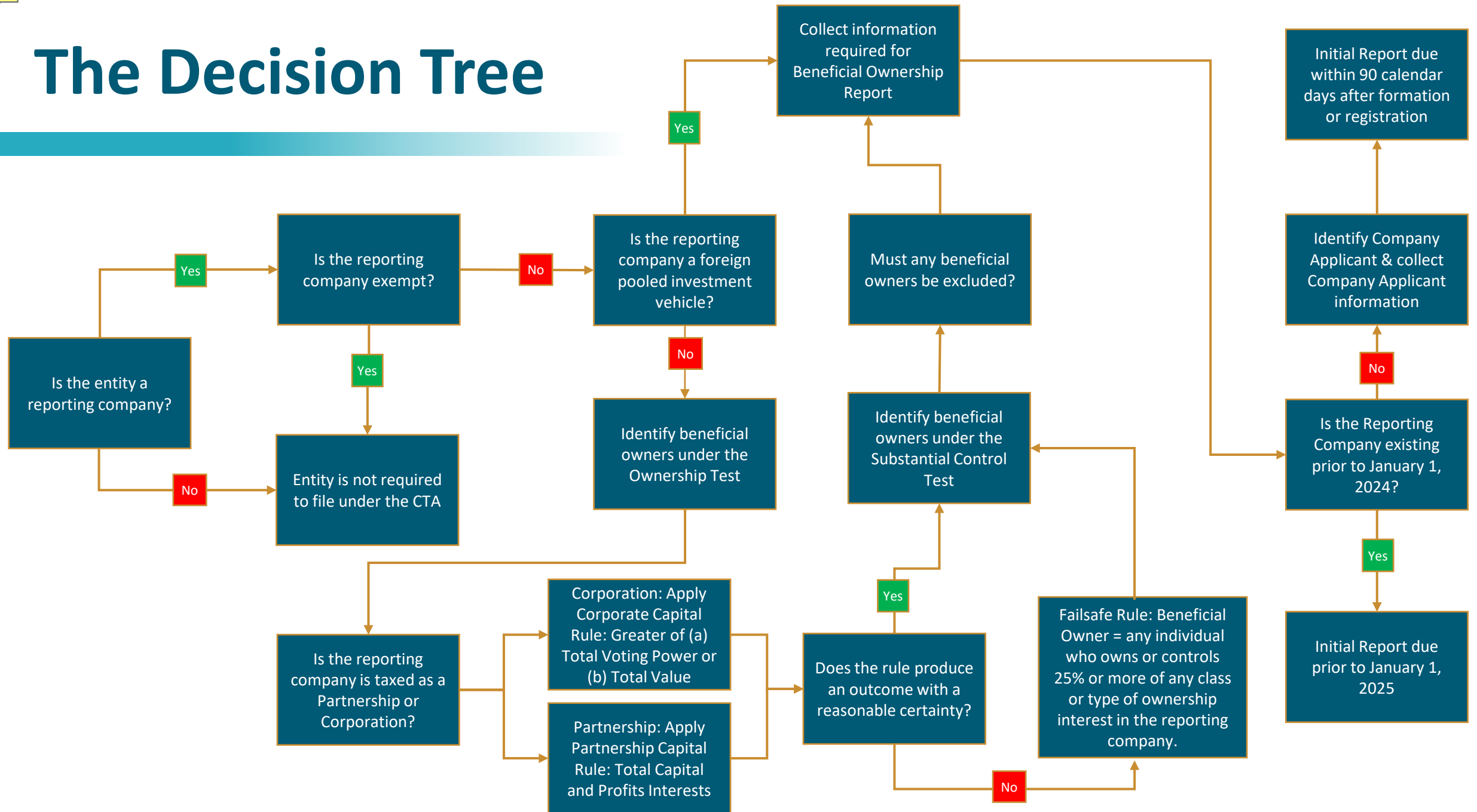
Filing Reports: The Decision Tree

For each entity:

1. Is it a reporting company?
2. Is it exempt?
3. If it is exempt and an FPIV, see special disclosure rule
4. If not exempt:
 - a. Who are beneficial owners by means of ownership percentage
 - i. Is the entity a partnership or a C-corp?
 - ii. Apply Partnership Capital Rule or Corporate Capital Rule
 - iii. Does this produce an outcome with reasonable certainty?
 - iv. If not, apply the Failsafe Rule
 - b. Who are beneficial owners by means of substantial control?
 - a. List all senior officers
 - b. List all board members
 - c. List those with power of appointment
 - d. List those with substantial influence over major decisions
 - e. List any others with any other form of substantial control
5. For entities formed prior to 1/1/2024 – no need to disclose Company Applicant. All others must.



The Decision Tree





Data Required

For the **reporting company**:

- Legal name
- Any trade names or “DBAs”
- Current street address of principal place of business
- Jurisdiction of formation
- Taxpayer Identification Number (EIN)

For each **beneficial owner**:

- Legal name
- Date of birth
- Residential Address
- Unique identifying number
- Image of the document that supplies the unique identifying number

For each **company applicant** (if required):

- Same information as beneficial owner (except that company applicant may use business address if company applicant is in the business of forming entities)



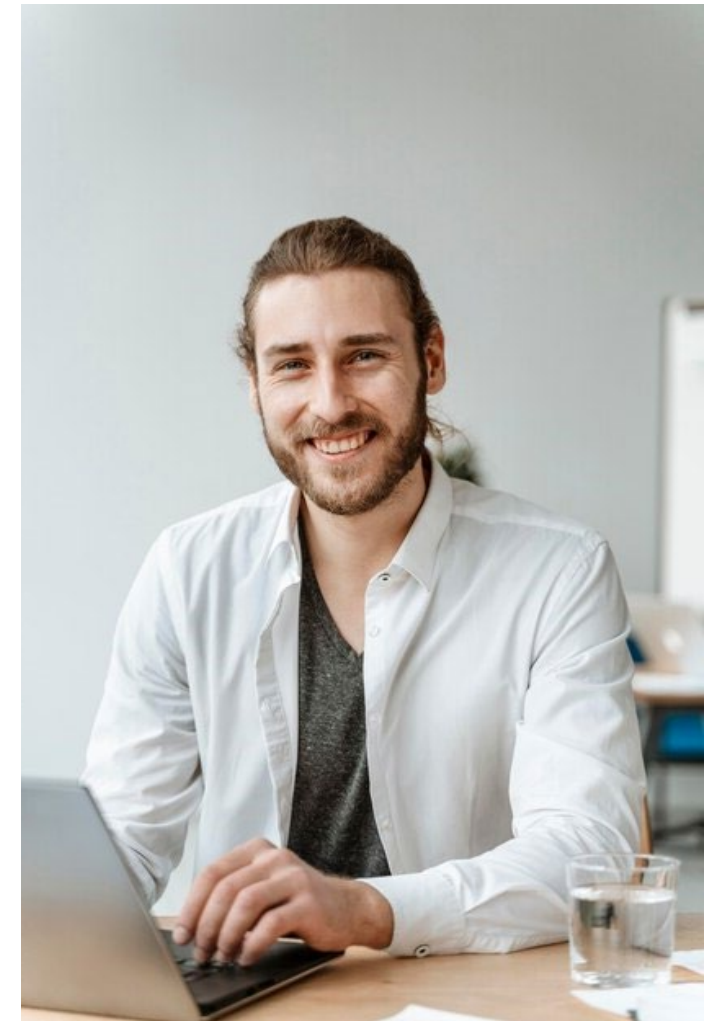


A Standardized Process

For each **reporting company**:

- Collect articles of incorporation / organization
- Collect bylaws / shareholder agreements / operating agreements
- Collect voting trust agreements or other arrangements affecting decision-making
- Collect list of senior officers (CEO, CFO, General Counsel and persons performing those functions)
- Collect list of board members
- Collect list of investors / cap table / including securities types and preferences
- Collect Taxpayer Identification Number (EIN) and company principal place of business

- Communicate with the company and its prospective beneficial owners to collect their required PII
- Adopt a company CTA compliance policy
- Select a **method** for securely storing and collaborating regarding beneficial ownership
- Plan a timeline to complete your analysis and file the initial BOI Report



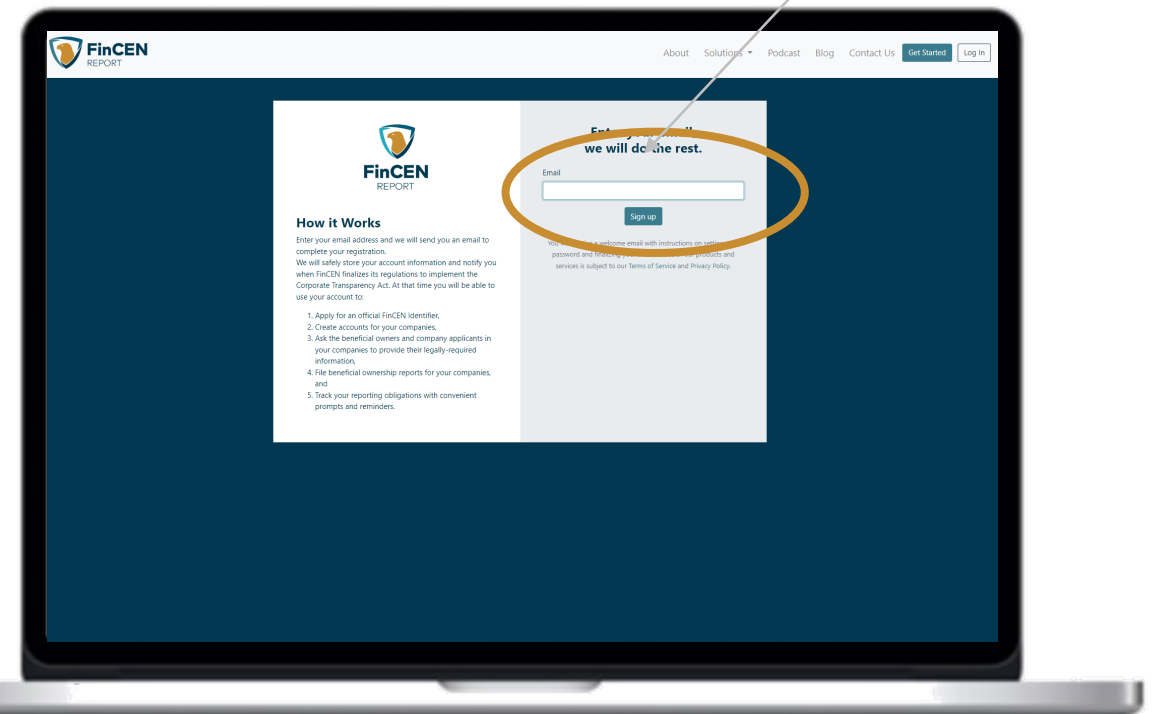
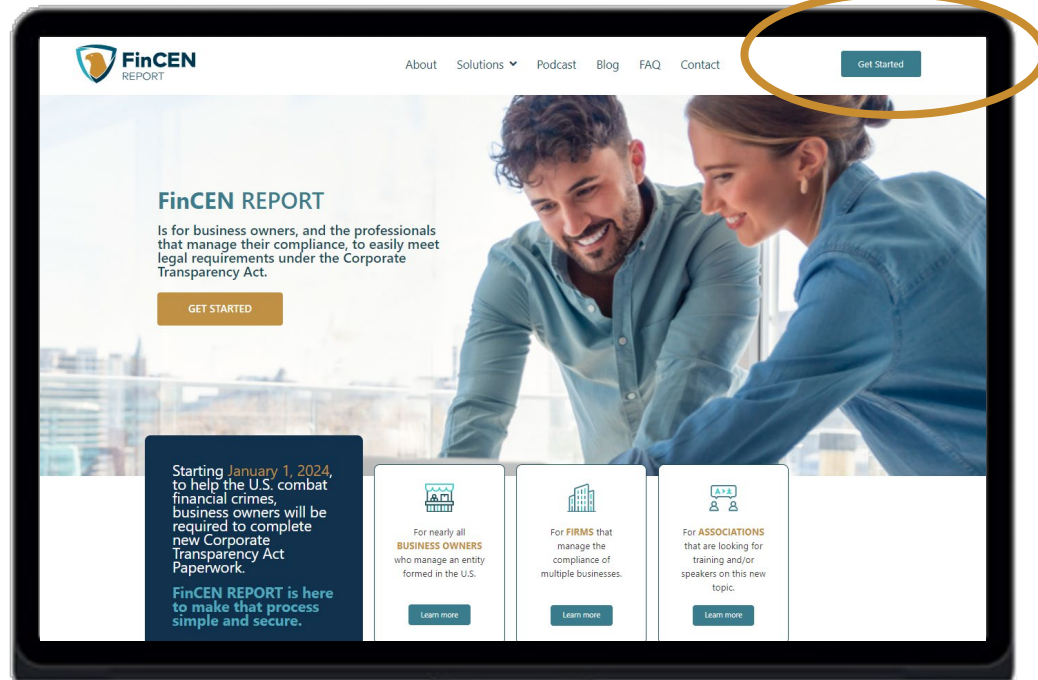
The FinCEN REPORT Solution



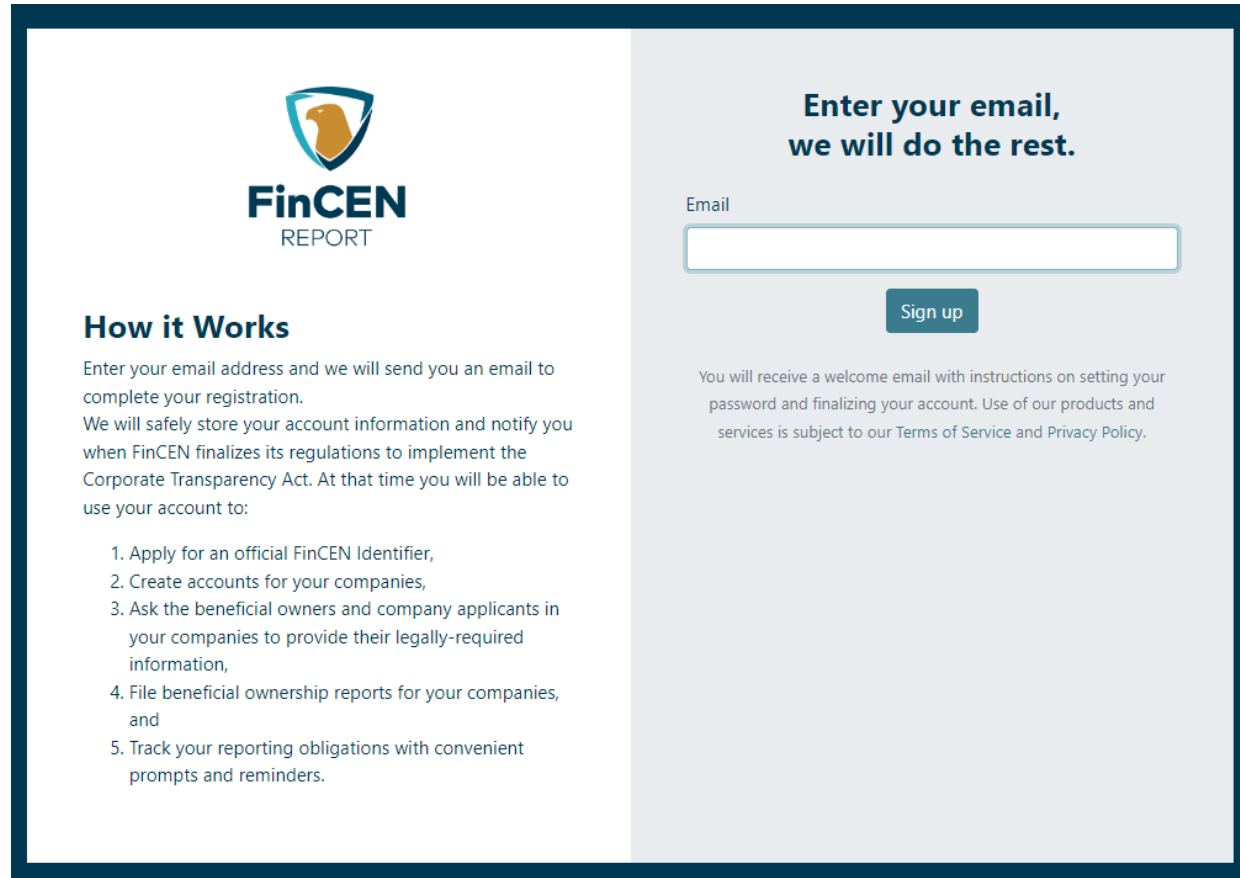
Go to fincenreport.com and click on "Get Started."




Enter your name and email address.



The FinCEN REPORT Solution

A screenshot of the FinCEN REPORT sign-up page. The page is divided into two main sections. The left section is white and contains the FinCEN REPORT logo at the top, followed by the heading "How it Works" and a paragraph of text explaining the registration process. Below the text is a numbered list of five steps. The right section is light gray and contains the heading "Enter your email, we will do the rest.", an email input field, a "Sign up" button, and a paragraph of text about the welcome email and terms of service.


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How it Works

Enter your email address and we will send you an email to complete your registration. We will safely store your account information and notify you when FinCEN finalizes its regulations to implement the Corporate Transparency Act. At that time you will be able to use your account to:

1. Apply for an official FinCEN Identifier,
2. Create accounts for your companies,
3. Ask the beneficial owners and company applicants in your companies to provide their legally-required information,
4. File beneficial ownership reports for your companies, and
5. Track your reporting obligations with convenient prompts and reminders.

**Enter your email,
we will do the rest.**

Email

[Sign up](#)

You will receive a welcome email with instructions on setting your password and finalizing your account. Use of our products and services is subject to our Terms of Service and Privacy Policy.

Each individual creates an individual account for their PII.



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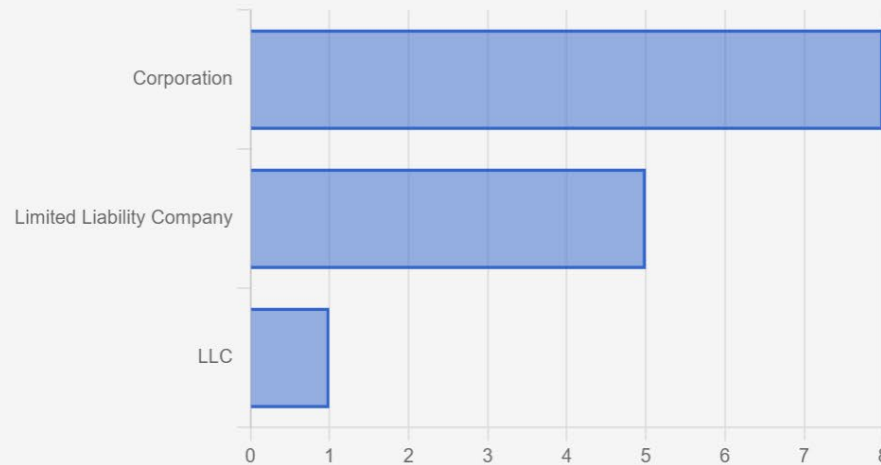
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You have
14
Companies under management.

Alerts

You have no new alerts at this time.





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Dashboard Reports **Companies** Filings Transactions Members FAQ

+ Add Company

Import Companies

Search...

Name

Type

State

Name	Company Type	Organization State	Status	Last Filing Date / Status	Billing Status
Greg 7282	Corporation	AL	Created		Pending Setup
TED Practice	Corporation	GA	Initial BO Invitation Sent		Pending Setup
GF1	Corporation	AL	Created		Pending Setup





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Bobby McGee Trucking, LLC

+ Add New Member

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General Information

Billing Information

Company Members

Pending Invitations

Wizard Reports

General Information

Legal Name	Bobby McGee Trucking, LLC
DBA Name	
Company Type	Limited Liability Company
Organization State	DE
EIN	89-8855452
Formation Date	January 1, 1970
Address 1	122 Trucking Way
Address 2	
Address 3	
City	Atlanta
State / Province	Georgia

Status Information

This company is unable to file due to the following issues

Remind Admins

The U.S. Department of the Treasury is currently not accepting filings, when they enable filings you will be able to continue.

There is a pending invite to jfterp@gmail.com

Member **Tom Q Owner** has the following issues

Remind User

- o Full legal name is required
- o Date of birth is required
- o A completed identifying document is required

Member **Abe Frohman** has the following issues

Remind User

- o Date of birth is required
- o A completed identifying document is required

Member **Bob Adminston** has the following issues

Remind User

- o A completed identifying document is required





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+ Add New Member

Edit Company Information

Wizard

General Information

Billing Information

Company Members

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Member Name	Roles	Actions
Tom Q Owner	Beneficial Owner Senior Officer Admin	Edit
alan surell	Advisor	Edit
Abe Frohman	Beneficial Owner Senior Officer Admin	Edit
Bob Adminston	Beneficial Owner Admin Company Applicant	Edit

Exempt Entities	Roles	Actions
This company has no exempt entities.		





Example 1: Corporation

Startup Co. Inc.

- Larry, Bill and Sally form a Corporation.
- Each receives 1,000 shares of common stock.
- Larry is the CEO, Bill is the CFO and Sally is the Head of Marketing.
- Each of the three are members of the Board.

Who are the beneficial owners?





Example 1: Corporation Analysis

Who are the beneficial owners?

First, look at BO status based on ownership:

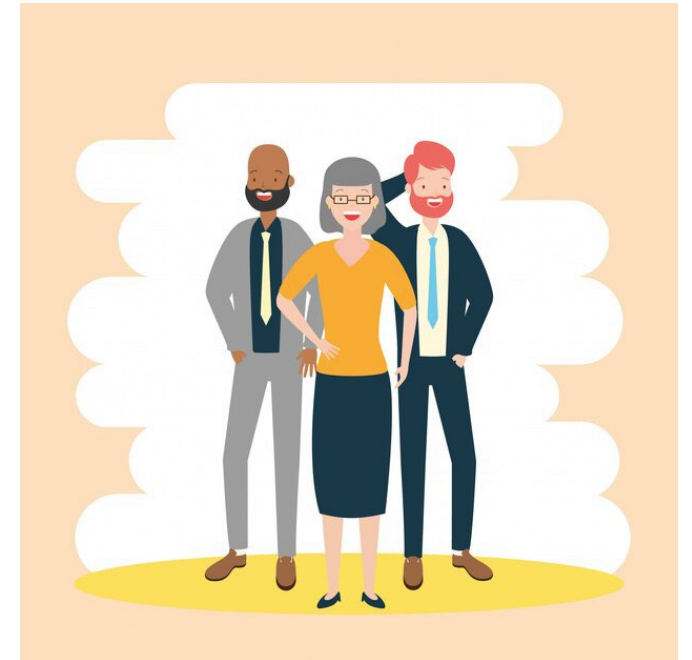
- Each of Larry, Bill and Sally has 33% of the o/s common stock. Applying the Corporate Capital Rule, each is a BO.
- Is this answer reasonably certain? Yes.

Second, look at substantial control:

- Larry is the CEO, therefore a senior officer and also a BO by virtue of substantial control.
- Bill is the CFO, therefore a senior officer and also a BO by virtual of substantial control.
- Sally is head of Marketing. Not a senior officer, therefore a NOT a senior officer by virtue of substantial control.

Also, because each is on the Board, each likely has substantial control.

Final Answer: Larry, Bill and Sally is a BO.





Example 2: Corporation

- Larry, Bill and Sally form a Corporation.
- Larry and Bill each receive 1,000 shares of common stock, but Sally only gets 100 shares.
- Larry is the CEO, Bill is the CFO and Sally is the Head of Marketing. (All three are still Board members.)

Who are the beneficial owners?



Example 2: Corporation Analysis

Who are the beneficial owners?

First, BO status based on ownership:

- 2,100 shares outstanding. Larry and Bill each have more than 47% and are therefore beneficial owners. Sally has less than 5%, therefore NOT a beneficial owner.
- Is this outcome reasonably certain? Yes.

Second, look at substantial control:

- Larry is the CEO, therefore a senior officer and also a BO by virtue of substantial control.
- Bill is the CFO, therefore a senior officer and also a BO by virtual of substantial control.
- Sally is head of Marketing. Not a senior officer, therefore a NOT a senior officer by virtue of substantial control. But, because Sally is still on the Board, she likely still has substantial control.



Final Answer:
Larry, Bill and Sally are beneficial owners.



Example 3: Corporation

- Larry, Bill and Sally form a Corporation.
- Larry, Bill and Sally each receive 1,000 shares of common stock.
- Blackbeard invests \$1 million and receives 1,000 shares of convertible preferred stock. [1:1 conversion; anti-dilution rights; accumulating dividend.]
- Blackbeard has the power to appoint one member to the Board of Directors.



Who are the beneficial owners?

Common Stock

Preferred Stock



Example 3: Corporation Analysis

First, calculate percentage ownership, applying the Corporate Capital Rule.

- Convertible instruments are treated on an as-converted basis. Therefore, Blackbeard is treated as if his 1,000 shares of preferred were converted into 1,000 shares of common.
- On an as-converted basis, each of Larry, Bill, Sally and Blackbeard has 25% of the o/s shares, therefore each is a beneficial owner.
- Is this outcome reasonably certain? Yes.

Next, determine BO status based on substantial control.

- Each of Larry and Bill are senior officers and Board members. Sally is not a senior officer but she is a Board member. Blackbeard has the power to appoint one person to the Board.
- Prudent answer treats all four as BO by virtue of substantial control.



Common Stock

Preferred Stock

Final answer: All four are beneficial owners.



Liability for Non-Compliance

- \$500 per day fine for late filing
- Willful failure to file or willful filing of false information is a felony (up to 2 years imprisonment)
- Responsibility rests with (a) each senior officer of the reporting company, and (b) any person who provides information (or fails to provide accurate information) required to make the BOI Report true

Bottom line: Business owners and senior officers are responsible for accurate and timely reporting.

- Companies should get started now to determine how the CTA applies.
- Companies should adopt a policy of compliance and select a tool to collect relevant information and documents and allow for beneficial owners to share their PII as required for CTA filing.



Thank You



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