

## FAQs About BOI Reporting by Reporting Companies Versus by Banks

**Q:** Is a bank required to continue its procedures to collect beneficial owner information from its legal entity customers after January 1, 2024, when reporting companies begin to report beneficial ownership information (BOI) directly to FinCEN?

**A:** Yes. Currently there are separate rules under law, (a) FinCEN's Beneficial Ownership Information Reporting Rule for reporting companies and (b) FinCEN's Customer Due Diligence Rule and Beneficial Ownership for Legal Entity Customer Rule which are applicable to banks.

Despite reporting companies filing BOI with FinCEN, banks must still identify and verify the identity of any individual who owns 25% or more of a legal entity, and an individual who controls the legal entity. Banks are also required to continue their risk assessment and ongoing oversight efforts under their customer due diligence policy and procedures.

FinCEN has the authority to combine the BOI rules in the future which WBA expects will occur within the next several years.

**Q:** Is the information reported by a reporting company the same as what a bank collects under its beneficial owner rule?

**A:** No, the rules are not identical. A reporting company is to report information about their beneficial owners and company applicants. A beneficial owner is an individual who owns or controls at least 25% of a company or has substantial control over the company. A company applicant is an individual who directly files or is primarily responsible for the filing of the document that creates or registers the company. A reporting company may also use a FinCEN identifier of an individual or entity.

Under the rules applicable to banks, banks are required to identify and verify the identity of any individual who owns 25% or more of a legal entity, and an individual who controls the legal entity. The information is collected from the legal entity customer and verified via documentation or nondocumentary methods. There is no filing of the collected information with FinCEN and there is not a FinCEN identifier option.

**Q:** Is a bank required to question its business customer whether it has reported BOI to FinCEN? Or is a bank required to somehow verify that BOI was reported to FinCEN?

**A:** No. A bank is not required to question or confirm a reporting company's BOI filing with FinCEN. The reporting responsibility is solely with the reporting company. In addition, the electronic filing system used by FinCEN is not a public system. Banks do not have access to the filing system; therefore, there is no separate method for a bank to verify whether a reporting company filed or what was filed.

**Q:** Is a bank required to first ensure a business customer has reported BOI to FinCEN before establishing a deposit account or loan with the business?

**A:** No. Similar to the FAQ above, a bank is not required to first ensure a business customer has reported BOI to FinCEN before the bank can establish an account or loan with the business. The reporting

responsibility is solely with the reporting company. The electronic filing system used by FinCEN is not a public system. Banks do not have access to the filing system; therefore, there is no separate method for a bank to verify whether a reporting company filed or what was filed.

**Q:** Are all entities required to file with FinCEN?

**A:** No. There are twenty-three specific types of entities that are exempt from the reporting requirements of the rule.

**Q:** Should the bank determine for its business customers whether the customer is exempt from the BOI reporting rule?

**A:** No. Business customers need make their own determinations of whether they are exempt. This is to help prevent a customer from claiming the bank made a wrong determination regarding an exemption. FinCEN's *Small Entity Compliance Guide* has a helpful chapter which includes questions the customer can answer to help them determine whether they are exempt.

**Q:** Is it the bank's responsibility to educate its business customers about the BOI reporting rule?

**A:** No. It is not the bank's responsibility. Certainly, if banks receive questions from business customers about the rule the customer should be referred directly to FinCEN.

**Q:** Where should business customers be referred to for more information about the BOI reporting rule?

**A:** FinCEN has a dedicated webpage for its Beneficial Ownership Information Reporting Rule. The website includes a compliance guide, checklists, and informational videos about the rule. The website is also where reporting companies will file their required data starting in January 2024:

<https://www.fincen.gov/boi>