Beneficial Ownership Information Reporting: Is Your Firm Prepared To Comply By Year-End?

by Roger C. Guilian, JD, CRIS

GREYLING ADVISES ON POTENTIAL PERSONAL AND UNINSURED EXPOSURE TO ENGINEERING FIRM OFFICERS AND DIRECTORS

Year-end can be a frenetic time for design firms. Closing out the books, setting sales and operational goals for the new year, finalizing projections, identifying and forecasting upcoming project opportunities, and a dizzying number of other vital tasks all characterize year-end at architecture and engineering companies.

One critical item that many design firms may not have on their lengthy year-end to-do list is Beneficial Ownership Information (BOI) Reporting. In fact, BOI Reporting may not even be something that firms are aware is required of them by January 1, 2025. So, what is BOI Reporting and how do you know whether your company is required to submit one?

Effective January 1, 2024, certain existing corporations, LLCs, partnerships, and other legal entities that register with any Secretary of State are required by the U.S. Department of the Treasury's Financial Crimes and Enforcement Network (FinCEN) to file a Beneficial Ownership Information Report (BOIR) providing certain information about the entities and their ownership. The deadline for companies formed prior to January 1, 2024 to file the Report is January 1, 2025 and continues annually thereafter. The Reporting requirement was promulgated by FinCEN in a September 30, 2022 federal regulation which can be found at 31 C.F.R. Part 1010.380.

Who Must File a Beneficial Ownership Information Report?

All foreign and domestic corporations, LLCs, partnerships, and other legal entities that are required to register with any Secretary of State constitute "Reporting Companies" under the Rule and must comply with the new BOI requirements, unless they fall within one or more of the Rule's 23 exemptions. The exemption that is most pertinent to architect and engineering firms is "Exemption 21 – Large Operating Company" and potentially "Exemption 22 – Subsidiary of Certain Exempt Entities." In order to qualify under Exemption 21 as a Large Operating Company, the firm must:

- Employ more than twenty (20) full-time employees;
- Employ more than twenty (20) full-time employees in the United States;
- Have an operating presence at a physical location within the United States that the company owns or leases; AND
- Have reported more than $5 million in gross revenue on its previous-year tax returns after backing out foreign-generated revenue (if an affiliated entity, refer to the consolidated return to determine the gross revenue threshold amount).

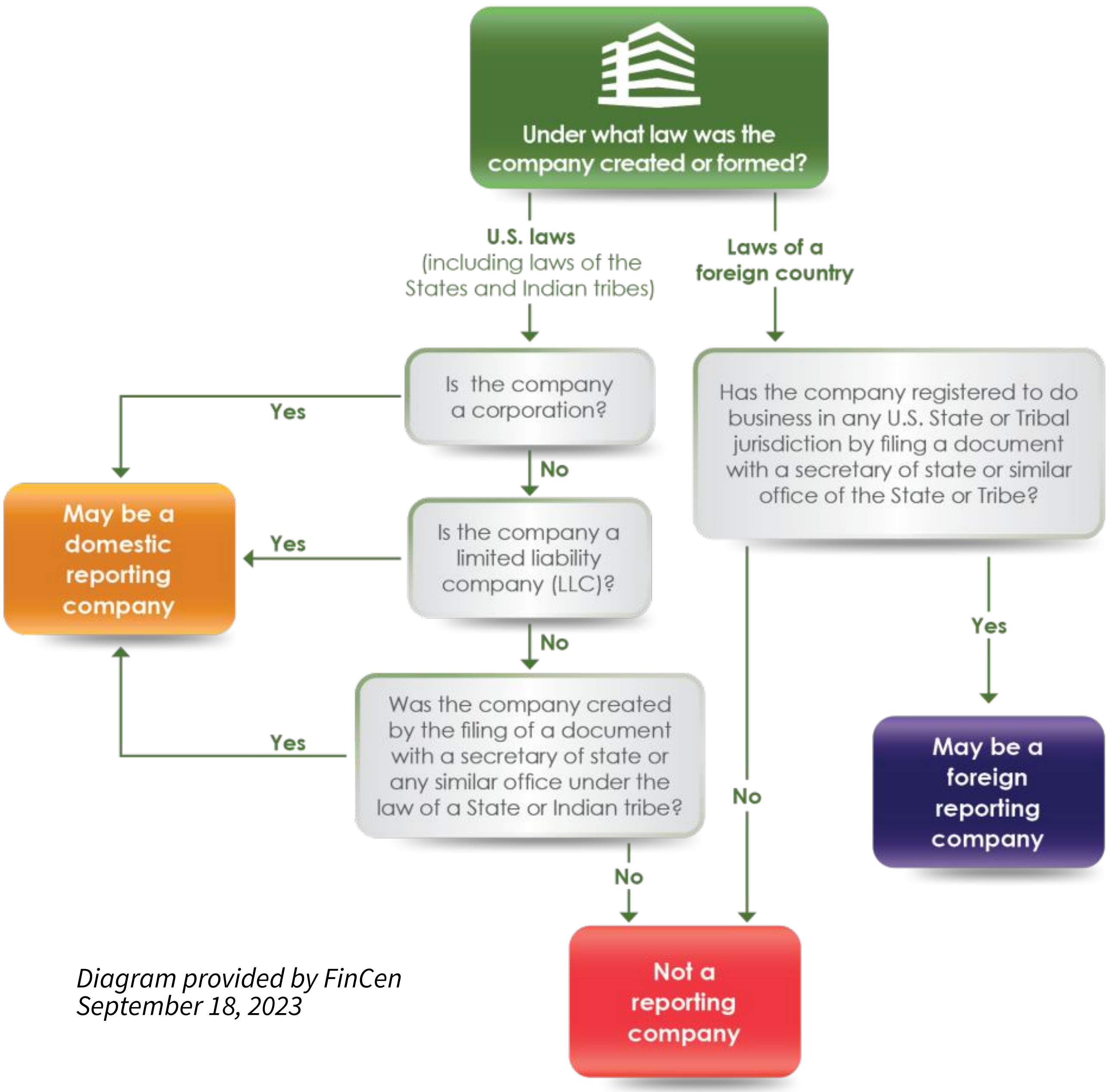

Diagram provided by FinCen
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In order to qualify under Exemption 22 as a Subsidiary of an Exempt Entity the subsidiary's ownership interest must be controlled or wholly owned, directly or indirectly, by one or more Exempt Entities, including Large Operating Companies.

The Reporting Rule applies to pass-through S-Corporations in addition to C-Corporations and all other legal entities that constitute Reporting Companies.

If your firm does not constitute a Large Operating Company or otherwise qualify for an exemption, it must submit a BOI Report by January 1, 2025.

Which Types of Design Firm Entities Should Be Most Aware of this Requirement?

While all Reporting Companies must be aware of and ready to comply with the BOI requirement, design firms must pay particular attention to any Special Purpose Entities, Professional Corporations, and other companies they may have had to form in order to comply with various states' ownership, licensing, and practice laws (SPEs). Most SPEs have few if any full-time employees and may be owned or controlled by a small number of individuals as opposed to the company. While a Large Operating Company that is excepted from the Reporting Requirements under Exemption 21 may not have to file, if that company had to create one or more SPEs that have fewer than 20 full-time employees and are not wholly owned or controlled by the company (i.e., the SPE's ownership legally rests with a small number of licensed engineers in a particular jurisdiction to comply with ownership and practice requirements), then *the SPEs themselves must comply with the Reporting Requirements.*

Who is a Beneficial Owner?

Under the Reporting Rule, a Beneficial Owner is anyone who exercises substantial control over a Reporting Company or owns or controls at least 25% of the ownership interests in that company. Reporting Companies can have more than one Beneficial Owner. Beneficial Owners are individuals. Trusts, corporations, LLCs, and other entities do not constitute Beneficial Owners. While there are five (5) exceptions to Beneficial Ownership in the Reporting Rule, only the "employee" exception will likely be relevant to Reporting Companies that have some type of employee-ownership structure (e.g., ESOPs).

What Information Must be Supplied in the Beneficial Ownership Information Report?

Firms that qualify as Reporting Companies must report to FinCEN the following information about the entity and its ownership:

Reporting Company

- Full legal name and all trade names ("DBA")
- U.S. principal place of business address
- State, tribal, or foreign jurisdiction of formation
- IRS Tax Identification Number (TIN) including Employer Identification Number (EIN)

Beneficial Owner

- Full legal name
- Date of birth
- Complete current address
- An image of one of the following valid, non-expired identifying documents which must include unique identifying number and issuing jurisdiction:
  - U.S. Passport
  - State Driver License
  - Identification document issued by a state, local government, or tribe
  - If the Beneficial Owner does not have any of these documents, then a foreign passport

How Does My Company File a Beneficial Ownership Information Report?

Reporting Companies that are not exempt from Reporting Requirements are required to file their BOIR electronically through FinCEN's secure online e-filing system located at https://www.boiefiling.fincen.gov (select "File BOIR"). Firms can also find answers to FAQs and other reference materials about the Reporting Requirements on the FinCEN website.

What Happens if My Company Doesn't File a BOI Report?

Failure to comply with FinCEN's BOIR Requirements carries the potential for both civil and criminal penalties. Civil penalties for willful violation of the Reporting Requirements are $500 per day adjusted for inflation; criminal penalties of up to two (2) years in prison and a fine of up to $10,000 can also attach to willful violation. Civil and criminal penalties apply to both individuals and corporate entities.

Why Did FinCEN Do This and Where Does This Come From?

FinCEN's BOI Reporting requirements were promulgated in an ongoing effort to combat money laundering and other financial crimes that are customarily carried out by smaller entities. Hence, the Large Operating Company exemption.

Is Anyone Doing Anything About This?

Yes. The American Council of Engineering Companies (ACEC) and other business and industry voices have been working with congress to delay the January 1, 2025 Reporting deadline. The conventional wisdom is that, while the Reporting Requirements were well-intentioned by FinCEN, the law of unintended consequences has applied itself to the situation and resulted in vast and unnecessary overreach for entities like design firms. At the time of this publication, however, efforts to gain congressional support for a delay have not been successful. Greyling will monitor the situation and provide an update to this Insights client alert should the Reporting Requirement deadline be extended or delayed.

For now, design firms that are not exempt from the Reporting Requirements have yet one more task on their year-end to-do list.

Questions about this article can be directed to the author, Roger C. Guilian, J.D., CRIS, at roger.guilian@greyling.com. Firms are encouraged to consult their own attorneys with specific questions about potential application of the Reporting Requirements.

Let's Talk

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ROGER GUILIAN, JD, CRIS
SENIOR VICE PRESIDENT
Greyling Insurance Brokerage, a division of EPIC
roger.guilian@greyling.com
Direct (770) 670-5331 | Mobile (251) 604-6477