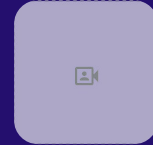




Current Federal Tax Developments

April 22, 2024

Kaplan Financial Education



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This Week We Look At:

IRS again waives penalties for certain RMD distributions for inherited IRAs and retirement plans, but indicates this should be the last time

FinCEN adds more Q&As to BOI FAQ for first time since January

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<https://www.currentfederaltaxdevelopments.com>





IRS Extends RMD Relief for Inherited IRAs to 2024, But Indicates Does Not Expect to Do So Again



Photo by [Evestefix Studio](#) on [Unsplash](#)

- Notice 2024-35, April 16, 2024
 - Issue relates to required minimum distributions from inherited IRAs and defined contribution accounts after the SECURE Act
 - Many assumed the only requirement was to distribute the entire balance by the end of the 10th year following year of death
 - IRS proposed regulations indicate that because “at as rapidly” language was retained in the statute, life expectancy distributions are needed in years 1-9 if decedent was in pay status before he/she died

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<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2024/4/17/irs-extends-certain-relief-from-required-distribution-penalties-for-inherited-ira-and-retirement-accounts-to-cover-2024-but-indicates-the-penalties-are-expected-to-apply-for-2025>
<https://www.irs.gov/pub/irs-drop/n-24-35.pdf>



IRS Extends RMD Relief for Inherited IRAs to 2024, But Indicates Does Not Expect to Do So Again



Photo by [Evestefix Studio](#) on [Unsplash](#)

- Notice 2024-35, April 16, 2024
 - IRS previously announced no penalties would be applied for those not taking distributions in 2021-2023 based on the proposed regulations positions
 - Now the IRS has extended that relief to cover 2024 distributions
 - Plan does not risk a qualification issue for not following IRC §401(a)(9) and
 - No excise tax under IRC §4974 will be asserted against the beneficiary

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<https://www.currentfederaltaxdevelopments.com/blog/2024/4/17/irs-extends-certain-relief-from-required-distribution-penalties-for-inherited-ira-and-retirement-accounts-to-cover-2024-but-indicates-the-penalties-are-expected-to-apply-for-2025>
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IRS Extends RMD Relief for Inherited IRAs to 2024, But Indicates Does Not Expect to Do So Again



Photo by [Evestefix Studio](#) on [Unsplash](#)

- Notice 2024-35, April 16, 2024
 - A key difference from the last two notices:
 - Previously said the penalties would apply *no earlier* than the following tax year
 - This time dropped that language and states the IRS *expects* the penalties to apply to years beginning on or after January 1, 2025

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<https://www.currentfederaltaxdevelopments.com>



<https://www.currentfederaltaxdevelopments.com/blog/2024/4/17/irs-extends-certain-relief-from-required-distribution-penalties-for-inherited-ira-and-retirement-accounts-to-cover-2024-but-indicates-the-penalties-are-expected-to-apply-for-2025>
<https://www.irs.gov/pub/irs-drop/n-24-35.pdf>



FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests



Photo by [Nick Fewings](#) on [Unsplash](#)

- Beneficial Ownership Information Frequently Asked Questions, FinCEN Website, April 18, 2024
 - FAQs updated for the first time since January 12
 - Adds a significant numbers of Q&As for those who will be given access to BOI information
 - Also adds or updates a number of Q&As for those filing
 - HOAs
 - Interests held by trusts
 - Other issues

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



FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests

C. 8. Do the BOI reporting requirements apply to S-Corporations?

Yes. A corporation treated as a pass-through entity under Subchapter S of the Internal Revenue Code (an “S Corporation” or “S-Corp”) that qualifies as a reporting company—i.e., that is created or registered to do business by the filing of a document with a secretary of state or similar office, and does not qualify for any of the exemptions to the reporting requirements—must comply with the reporting requirements. The S-Corp’s pass-through structure for tax purposes does not affect its BOI reporting obligations. In particular, pass-through treatment under Subchapter S does not qualify an S-Corp as a “tax-exempt entity” under FinCEN BOI reporting regulations.

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C. 9. If a domestic corporation or limited liability company is not created by the filing of a document with a secretary of state or similar office, is it a reporting company?

No. While FinCEN's BOI reporting regulations define a domestic reporting company as including a corporation or limited liability company, the inclusion of those entities is based on an understanding that domestic corporations and LLCs are generally created by the filing of a document with a secretary of state or similar office. In an unusual circumstance where a domestic corporation or limited liability company is created, but **not** by the filing of a document with a secretary of state or similar office, such an entity is **not** a reporting company.

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C. 10. Are homeowners associations reporting companies?

It depends. Homeowners associations (HOAs) can take different corporate forms. As with any entity, if an HOA was not created by the filing of a document with a secretary of state or similar office, then it is not a domestic reporting company. An incorporated HOA or other HOA that was created by such a filing also may qualify for an exemption from the reporting requirements. For example, HOAs designated as 501(c)(4) social welfare organizations may qualify for the tax-exempt entity exemption. An incorporated HOA that is not designated as a 501(c)(4) organization, however, may fall within the reporting company definition and therefore be required to report BOI to FinCEN.

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D. 13. Who is the beneficial owner of a homeowners association?

A homeowners association (HOA) that meets the reporting company definition and does not qualify for any exemptions must report its beneficial owner(s). A beneficial owner is any individual who, directly or indirectly, exercises substantial control over a reporting company, or owns or controls at least 25 percent of the ownership interests of a reporting company.

There may be instances in which no individuals own or control at least 25 percent of the ownership interests of an HOA that is a reporting company. However, FinCEN expects that at least one individual exercises substantial control over each reporting company. Individuals who meet one of the following criteria are considered to exercise substantial control over the HOA:

- the individual is a senior officer;
- the individual has authority to appoint or remove certain officers or a majority of directors of the HOA;
- the individual is an important decision-maker; or
- the individual has any other form of substantial control over the HOA.

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FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests

D. 14. Can beneficial owners own or control reporting companies through trusts?

Yes, beneficial owners can own or control a reporting company through trusts. They can do so by either exercising substantial control over a reporting company through a trust arrangement or by owning or controlling the ownership interests of a reporting company that are held in a trust.

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



FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests

D. 15. Who are a reporting company's beneficial owners when individuals own or control the company through a trust?

A beneficial owner is any individual who either: (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25 percent of a reporting company's ownership interests. Exercising substantial control or owning or controlling ownership interests may be direct or indirect, including through any contract, arrangement, understanding, relationship, or otherwise.

Trust arrangements vary. Particular facts and circumstances determine whether specific trustees, beneficiaries, grantors, settlors, and other individuals with roles in a particular trust are beneficial owners of a reporting company whose ownership interests are held through that trust.

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For instance, the trustee of a trust may be a beneficial owner of a reporting company either by exercising substantial control over the reporting company, or by owning or controlling at least 25 percent of the ownership interests in that company through a trust or similar arrangement. Certain beneficiaries and grantors or settlors may also own or control ownership interests in a reporting company through a trust. The following conditions indicate that an individual owns or controls ownership interests in a reporting company through a trust:

- a trustee (or any other individual) has the authority to dispose of trust assets;
- a beneficiary is the sole permissible recipient of income and principal from the trust, or has the right to demand a distribution of or withdraw substantially all of the assets from the trust; or
- a grantor or settlor has the right to revoke the trust or otherwise withdraw the assets of the trust.

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This may not be an exhaustive list of the conditions under which an individual owns or controls ownership interests in a reporting company through a trust. Because facts and circumstances vary, there may be other arrangements under which individuals associated with a trust may be beneficial owners of any reporting company in which that trust holds interests.

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FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests

D. 16. How does a reporting company report a corporate trustee as a beneficial owner?

For purposes of this question, “corporate trustee” means a legal entity rather than an individual exercising the powers of a trustee in a trust arrangement.

If a reporting company’s ownership interests are owned or controlled through a trust arrangement with a corporate trustee, the reporting company should determine whether any of the corporate trustee’s individual beneficial owners indirectly own or control at least 25 percent of the ownership interests of the reporting company through their ownership interests in the corporate trustee.

- For example, if an individual owns 60 percent of the corporate trustee of a trust, and that trust holds 50 percent of a reporting company’s ownership interests, then the individual owns or controls 30 percent ($60 \text{ percent} \times 50 \text{ percent} = 30 \text{ percent}$) of the reporting company’s ownership interests and is therefore a beneficial owner of the reporting company.
- By contrast, if the same trust only holds 30 percent of the reporting company’s ownership interests, the same individual corporate trustee owner only owns or controls 18 percent ($60 \text{ percent} \times 30 \text{ percent} = 18 \text{ percent}$) of the reporting company, and thus is not a beneficial owner of the reporting company by virtue of ownership or control of ownership interests.

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The reporting company may, but is not required to, report the name of the corporate trustee in lieu of information about an individual beneficial owner only if all of the following three conditions are met:

- the corporate trustee is an entity that is exempt from the reporting requirements;
- the individual beneficial owner owns or controls at least 25 percent of ownership interests in the reporting company only by virtue of ownership interests in the corporate trustee; and
- the individual beneficial owner does not exercise substantial control over the reporting company.

In addition to considering whether the beneficial owners of a corporate trustee own or control the ownership interests of a reporting company whose ownership interests are held in trust, it may be necessary to consider whether any owners of, or individuals employed or engaged by, the corporate trustee exercise substantial control over a reporting company. The factors for determining substantial control by an individual connected with a corporate trustee are the same as for any beneficial owner.

Please see Chapter 2.1 of FinCEN's Small Entity Compliance Guide, "What is substantial control?" for additional information on how to determine whether an individual has substantial control over a reporting company.

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



FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests

F. 12. What address should a reporting company report if it lacks a principal place of business in the United States?

If a reporting company does not have a principal place of business in the United States, then the company must report to FinCEN as its address the primary location in the United States where it conducts business.

If a reporting company has no principal place of business in the United States and conducts business at more than one location within the United States, then the reporting company may report as its primary location the address of any of those locations where the reporting company receives important correspondence.

If a reporting company has no principal place of business in the United States and does not conduct business functions at any location in the United States, then its primary location is the address in the United States of the person that the reporting company, under State or other applicable law, has designated to accept service of legal process on its behalf. In some jurisdictions, this person is referred to as the reporting company's registered agent, or the address is referred to as the registered office. Such a reporting company should report this address to FinCEN as its address.

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



FinCEN Adds More Q&As to BOI FAQ, Including Ones for HOAs and Trusts Owning Interests

G. 6. A company that was created or registered before January 1, 2024, and was exempt from the BOI reporting requirements loses its exempt status between January 1, 2024, and January 1, 2025. How long does the reporting company have to file its initial BOI report?

Normally, a company that loses its exempt status must file a BOI report with FinCEN within 30 calendar days after the date that it no longer meets the criteria for any exemption. A reporting company created or registered to do business before January 1, 2024, however, has until January 1, 2025, to file its initial BOI report.

FinCEN has determined that previously exempt entities that existed before 2024 and lose their exempt status in 2024 will receive the benefit of whichever of these two timeframes is longer: (1) the remaining days left in the one-year filing period for existing companies; or (2) the 30-calendar-day period for companies that lose their exempt status.

Thus, for example, if an existing reporting company ceases to be exempt on February 1, 2024, the company will have until January 1, 2025, to file its initial BOI report. If the company ceases to be exempt on December 15, 2024, the company will have until January 14, 2025, to file its initial BOI report.

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K. 2. What penalties do individuals face for violating BOI reporting requirements?

As specified in the Corporate Transparency Act, a person who willfully violates the BOI reporting requirements may be subject to civil penalties of up to \$500 for each day that the violation continues. However, this civil penalty amount is adjusted annually for inflation. As of the time of publication of this FAQ, this amount is \$591.

A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

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L. 7. If the size of a reporting company fluctuates above and below one of the thresholds for the large operating company exemption, does the reporting company need to file a BOI report?

Yes. The company will need to file a BOI report if it otherwise meets the definition of a reporting company and does not meet the criteria for the large operating company exemption (or any other exemption). If the company files a BOI report and then becomes exempt as a large operating company, the company should file a “newly exempt entity” BOI report with FinCEN noting that the company is now exempt. If at a later date the company no longer meets the criteria for the large operating company exemption or any other exemption, the reporting company should file an updated BOI report with FinCEN. Updated reports should be submitted to FinCEN within 30 calendar days of the occurrence of the change.

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To qualify for the large operating company exemption, an entity must have more than 20 full-time employees in the United States, must have filed a Federal income tax or information return in the United States in the previous year demonstrating more than \$5,000,000 in gross receipts or sales, and must have an operating presence at a physical office in the United States.

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