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Understanding the Beneficial Ownership Information Report

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CED Microenterprise Program

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AGENDA

- Introduction
- Primary Goals
- How do you report?
- Penalties
- Specific filing instructions for BOI Report
- Deadlines
- Summary

INTRODUCTION

- The Corporate Transparency Act (CTA) is a bipartisan act passed in 2021 to unmask shell and front corporations.
- Targets the types of corporate structures that “hide” the owners and big decision makers.
- Requires them to reveal their beneficial owners in the hopes of preventing criminals from misusing the U.S. financial system.

WHO ENFORCES THE CTA?

- Financial Crimes Enforcement Network ("FinCEN") is implementing the CTA.
- FinCen is a part of the U.S. Treasury.
- "Sister" agency to the IRS.
- Best known for regulating financial institutions and money service businesses.

CTA'S PRIMARY GOALS

- Combat money laundering, drug + human trafficking, tax fraud, and other criminal activities
- Reveal the "bad actors" behind the "shady" companies
- Minimize the burden on legitimate small businesses by:
  - Putting the "bad actors" out of business, allowing legitimate small businesses to access funding and other resources more easily

HOW DO YOU REPORT?

- Starting January 1, 2024, submit an electronic form through FinCEN's secure filing system website.
  - www.fincen.gov/boi
  - Form is called the "BOI Report", or "BOIR".
- No Fee required.
- No annual reporting – only submit an updated report when there is a change to the business.

PENALTIES ☹

- Penalties can occur for willfully:

  1) Failing to report or update a reporting company's beneficial ownership information, ***and***
  2) Providing false or fraudulent beneficial ownership information

- **Civil**: $500 per day for a continuing violation, up to a maximum of $10,000
- **Criminal**: Up to 2 years in a federal prison

Using FinCEN's E-Filing System to Report

Open the website at https://www.fincen.gov/boi to start e-filing



WHO NEEDS TO REPORT?

Short answer: Reporting Companies

WHAT IS A REPORTING COMPANY?

Domestic Reporting Company

Any legal business entity formed with a filing in any state's secretary of state's office or tribal equivalent

Foreign Reporting Company

Any legal business entity formed abroad and registered to do business in any secretary of state's office or tribal equivalent

WHAT IS A REPORTING COMPANY?

- Reporting companies include: (depending on state law):
  - Corporations, limited liability companies (LLCs), LLPs, some partnerships, some statutory trusts
- Not included:
  - Sole proprietorships, general partnerships

WHAT IS ***NOT*** A REPORTING COMPANY?

THE 23 EXEMPTIONS

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

TAX-EXEMPT ENTITY EXEMPTION

Any entity that is:

- An organization that is described in Sec. 501(c) of the Internal Revenue Code of 1986 and exempt from tax under Sec. 501(a) of the Code
  - 501(c) nonprofit that is exempt paying from taxes
- A political organization, as defined in Sec. 527(e)(1) of the Code, that is exempt from tax under Sec. 527(a) of the Code, ***or***
- A trust described in paragraph (1) or (2) of Sec. 4947(a) of the Code.
  - Paragraph (1) – charitable trust that is not exempt from paying taxes
  - Paragraph (2) – a split-interest trust that is not exempt from paying taxes

LARGE OPERATING COMPANY EXEMPTION

Any entity that:

- More than 20 full time U.S. employees,
  - (Can't aggregate number of employees across subsidiaries)

- A physical operating presence in the U.S
  - (This **can** include home based businesses!), ***AND***

- More than $5 million in gross receipts or sales on the previous year's U.S. tax return.
  - Must aggregate sales by U.S. affiliates/subsidiaries.
  - Must exclude gross receipts/sales from outside the U.S.

INACTIVE ENTITY EXEMPTION

- Very hard to qualify:
  - Formed before January 1, 2020;
  - No engagement in active business;
  - Not owned in any way by a foreign person;
  - No change in ownership in previous 12 months;
  - No transfer of more than $1,000 within the previous 12 months; **AND**
  - No assets or ownership interests in any entity in the U.S. or abroad.

A MOMENT ON TRUSTS

- Trusts are usually formed with a trust agreement, not a filing in a secretary of state's office. Therefore, trusts can't be reporting companies.

- However: a trust may own a legal entity that is a reporting company. In that case, the trustee is a beneficial owner of the reporting company if the trustee meets one of the tests for beneficial ownership.

  - A sole mandatory income beneficiary of a trust is also a beneficial owner under these circumstances.

EXEMPTIONS – FINAL THOUGHTS

- CTA lets FinCEN add exemptions, but FinCEN explicitly rejected a "law firm exemption."
- Initial reports: If your business **is** exempt, don't file.
- But: if a reporting company loses its exemption, then it has 30 days to file the report.
  - Examples:
    - Loses tax-exempt status for more than 180 days
    - Drops below 20 employees, losing the benefit of the Large Operating Company exemption

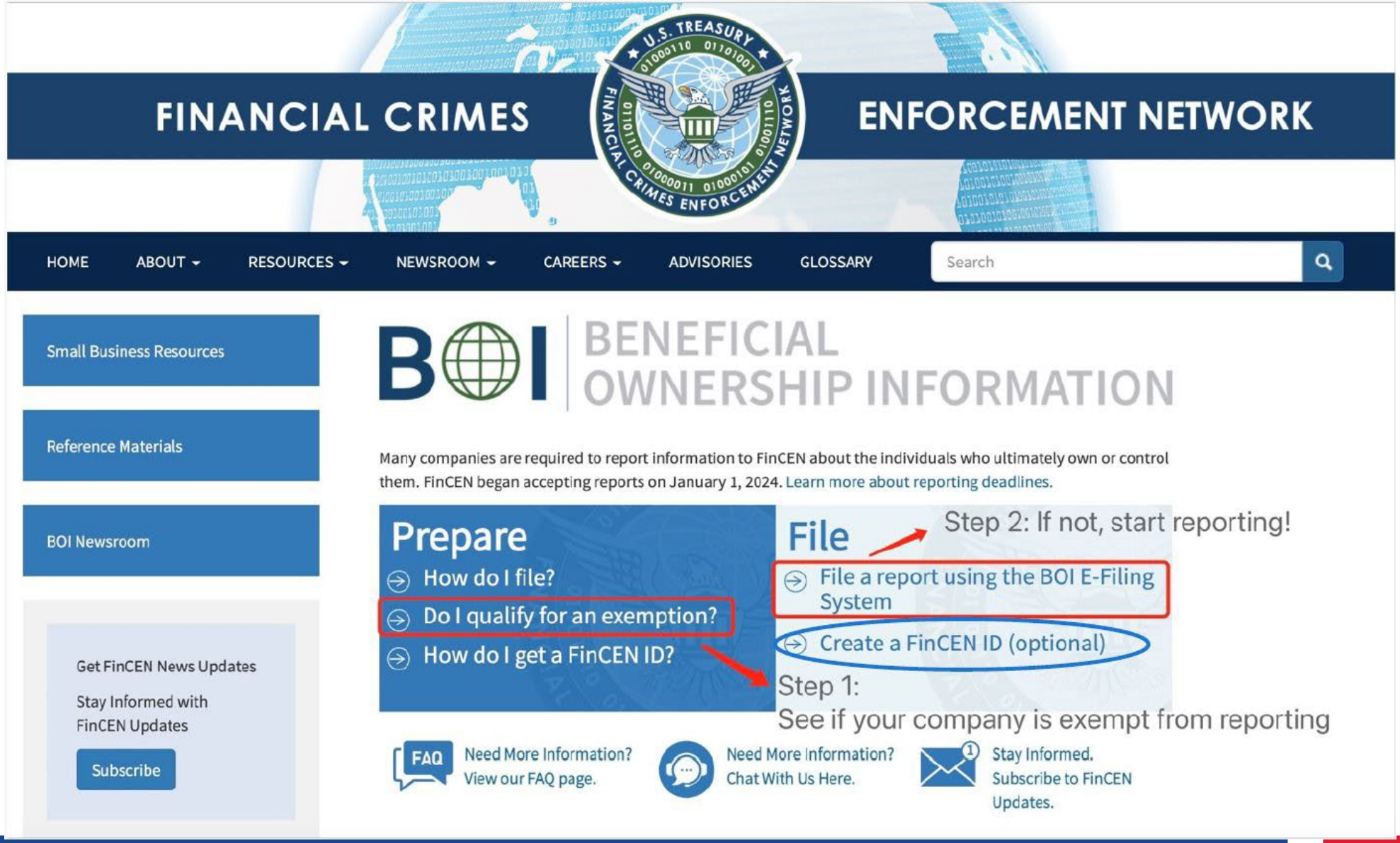
EXEMPTIONS – FINAL THOUGHTS

What if your business closes?

- *Before Jan. 1, 2024:*
  - You do not need to file the report.
- *After Jan. 1, 2024:*
  - You must file the report, **even if** your business closes before the report is due.

Using FinCEN's E-Filing System to Report

Open the website at https://www.fincen.gov/boi to start e-filing



FinCEN ID

What is a FinCEN ID?

- Applicants and beneficial owners may not want to turn over their personal data (i.e., home address or DOB) to a reporting company.
- Option: they may apply for a FinCEN ID
  - Benefit: privacy
    - Provide reportable data directly to FinCEN
    - FinCEN provides a “FinCEN ID,” which the party may use to satisfy their reporting obligations
  - Risk: Shifts the burden of keeping info updated to FinCEN ID holder

FinCEN ID

FinCEN ID's – Draft application form

- 2nd downside: must provide **all** data.
  - FinCEN's draft form doesn't allow the filer to say their own data is "unknown."
  - Contrast with reporting companies' draft reporting form, which allowed RCs to say "unknown" or "unable to identify" about ALL data points for their applicants and beneficial owners.
- 3rd downside: must update changes even if you no longer are a beneficial owner of a reporting company.

FinCEN ID

Reporting companies' use of FinCEN IDs

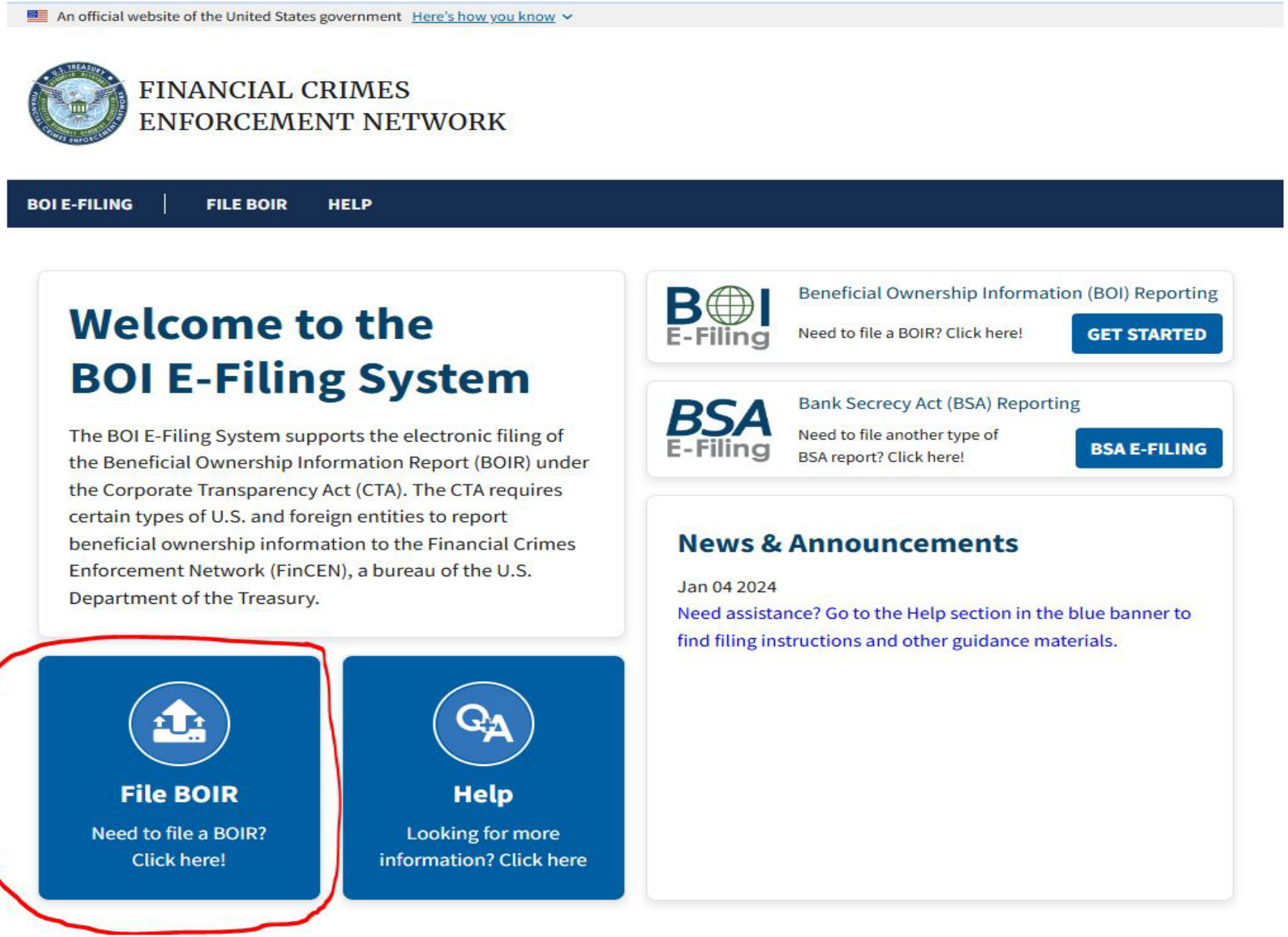
- Reporting companies may use FinCEN IDs to satisfy their own reporting obligations under very limited circumstances.
- Imagine this situation:
  - LLC A owns LLC B.
  - LLC A got a FinCEN ID.
  - LLC A may give its FinCEN ID to LLC B, so that LLC B may report LLC A as its beneficial owner, only if the same people own LLC A and LLC B.

Using FinCEN's E-Filing System to Report

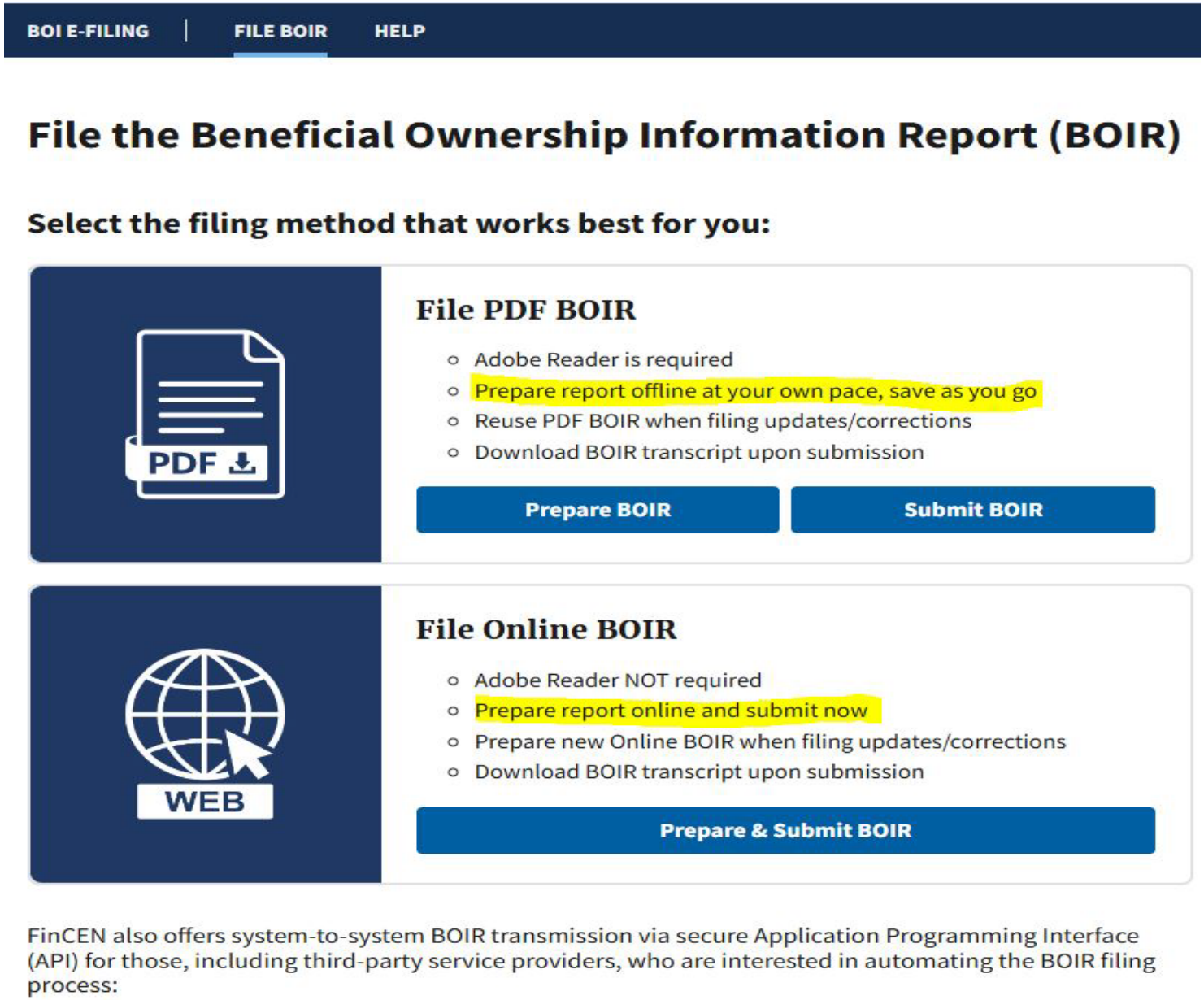
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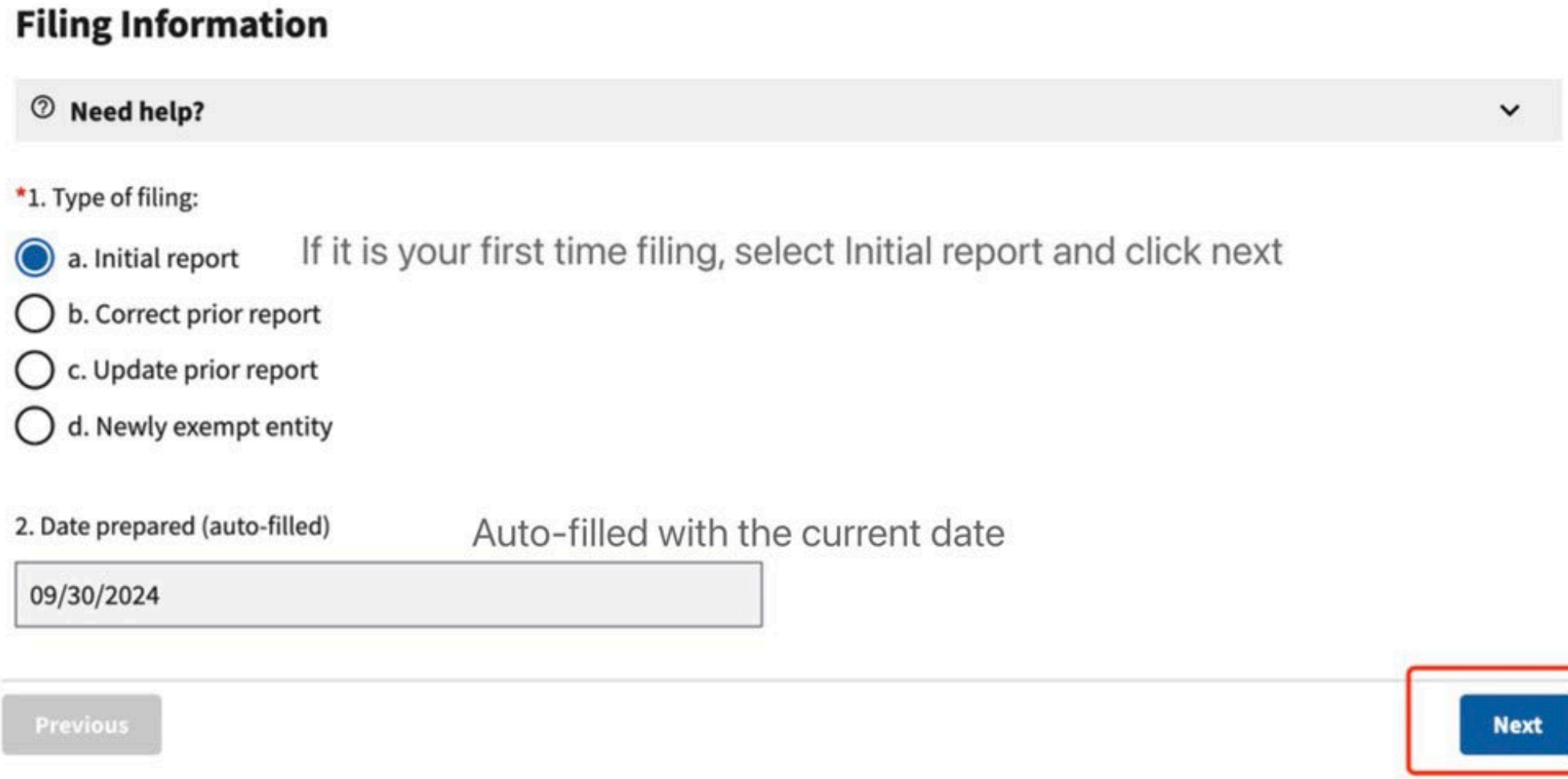
Using FinCEN's E-Filing System to Report



Using FinCEN's E-Filing System to Report



Filing Information
Items 1&2

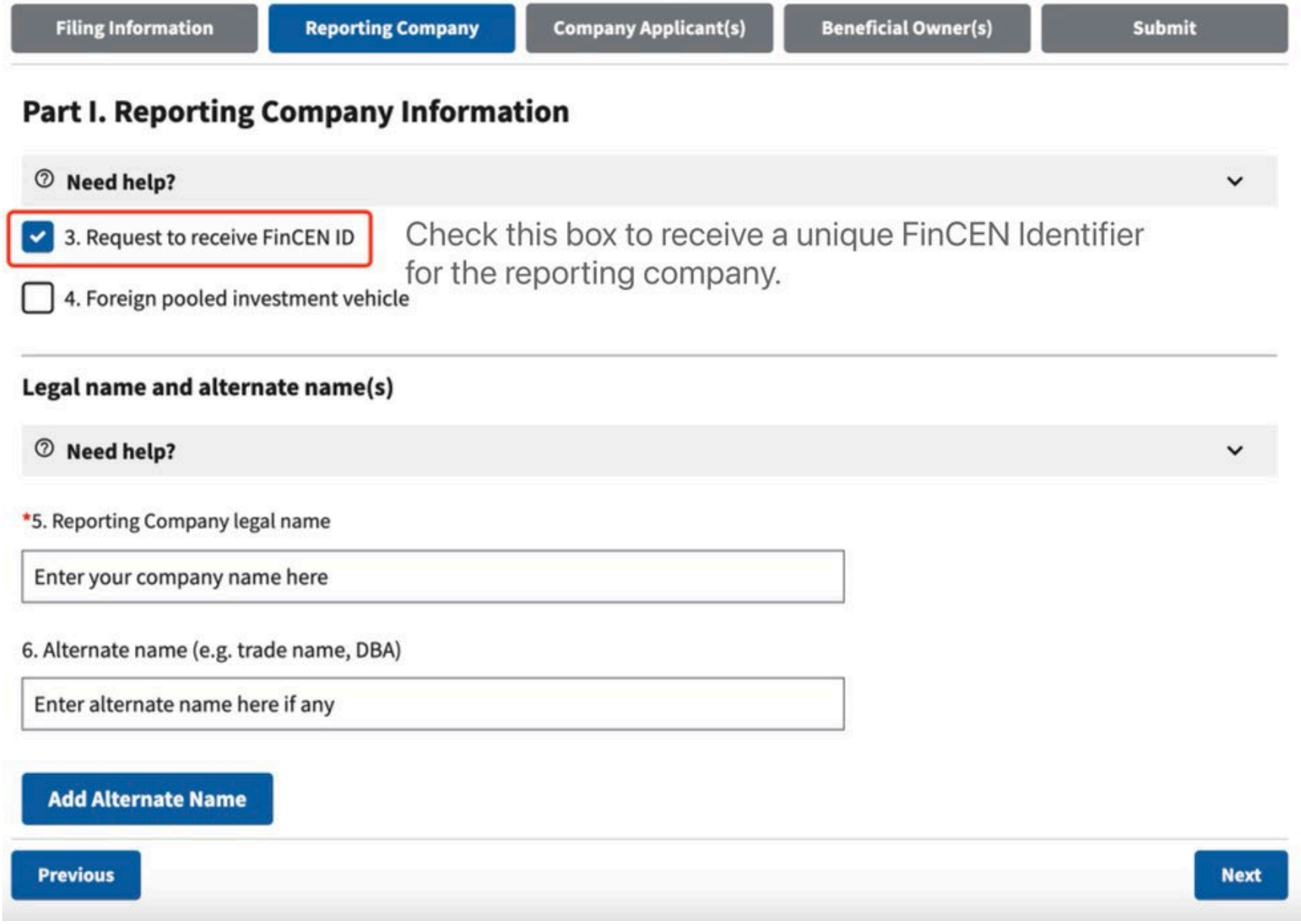


Filing Information
Items 1&2 - Explanations

- **Initial report**: 1st time filing the report
- **Correct prior report**:
  - If you accidentally entered any wrong information in your report, you can fix it by clicking this choice.
- **Update prior report**:
  - This is what you will choose when you must update the report in the future.
- **Newly exempt entity**:
  - Click this if your business becomes exempt



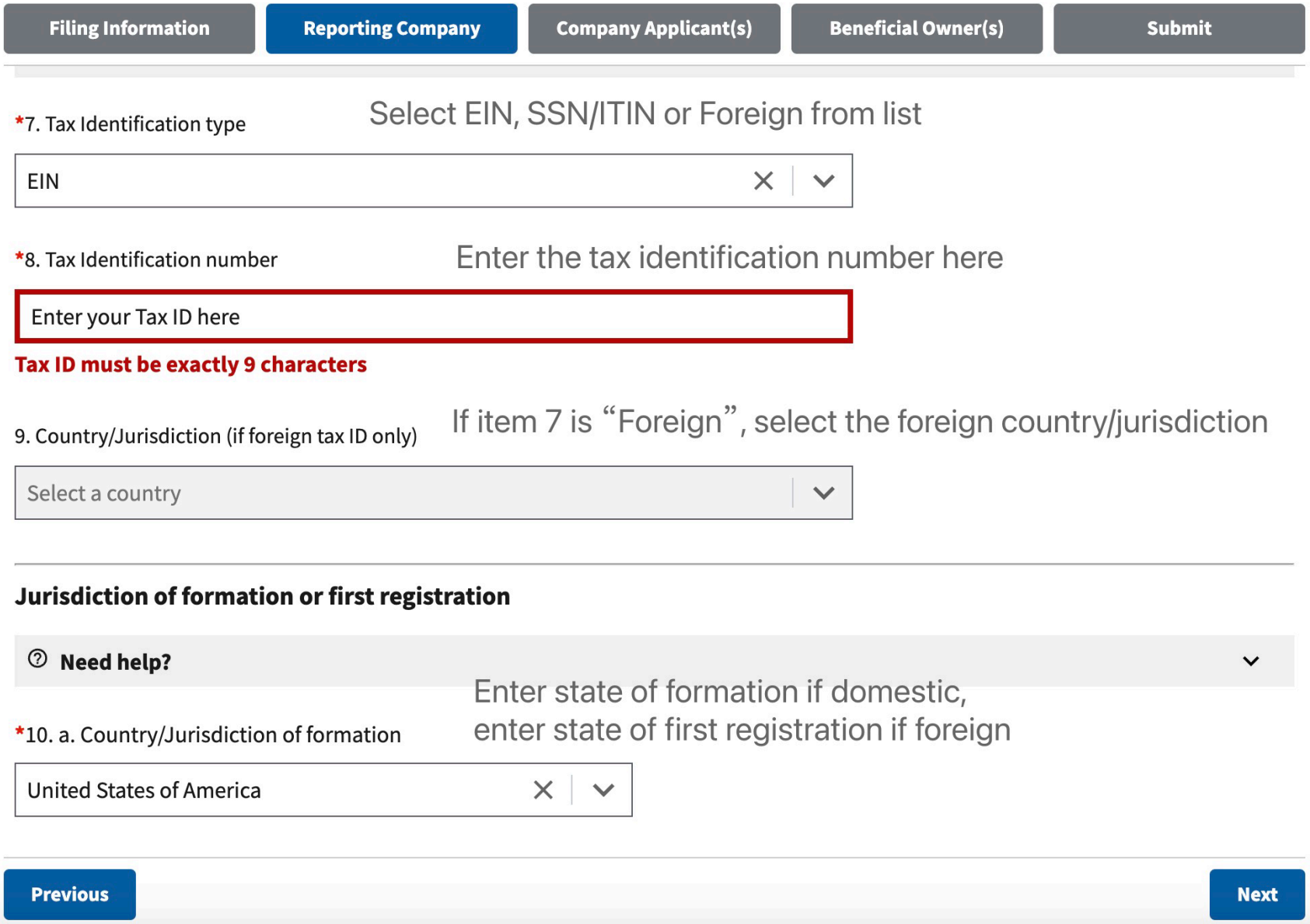
Part I Reporting Company Information Items 3 - 6



REPORTING COMPANY INFORMATION:

- The reporting company bears the burden of all reporting.
- The company must certify that the report is “true, correct and complete.”

Part I Reporting Company Information
Items 7 - 10



Part I Reporting Company Information
Items 11 - 15

Filing Information | **Reporting Company** | Company Applicant(s) | Beneficial Owner(s) | Submit

Domestic Reporting Company

b. State of formation

Missouri

c. Tribal jurisdiction of formation

Select a local/tribal

d. Name of the other Tribe

Current U.S. address

Need help? The street address should be the principal place of business. Otherwise, the primary location where company conducts business.

*11. Address (number, street, and apt. or suite no.)

1 Sample St.

*12. City

Sample City

*13. U.S. or U.S. Territory

United States of America

*14. State

Missouri

*15. ZIP code

63100

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Part II. Company Applicant Information Items 16 - 18

Filing Information | Reporting Company | Company Applicant(s) | Beneficial Owner(s) | Submit

Need help?

Reporting companies that check this box 16 are not required to report any company applicants, proceed to Part III.

16. Existing reporting company *(check if existing reporting company as of January 1, 2024)*

17. *(This item is reserved for future use)*

Part II. Company Applicant Information

Add Company Applicant

Need help?

No more than 2 applicants. Applicants are individuals.

Company Applicant #1

Company applicant FinCEN ID

Need help?

Reporting companies may report the FinCEN ID for a company applicant instead of the information in fields 19 through 33.

18. FinCEN ID

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WHO IS A COMPANY APPLICANT?

- Two ways to become a recording company's "applicant":

  1) Actually makes the filing, **or**

  2) Directs or controls the decision to file the formation document with the secretary of state's or tribal office.
     - Add this person ***only if*** there was more than 1 person involved in filing the company's creation or first registration document

- FinCEN capped the number of applicants at **two**.

- Only individuals can be company applicants, not businesses.

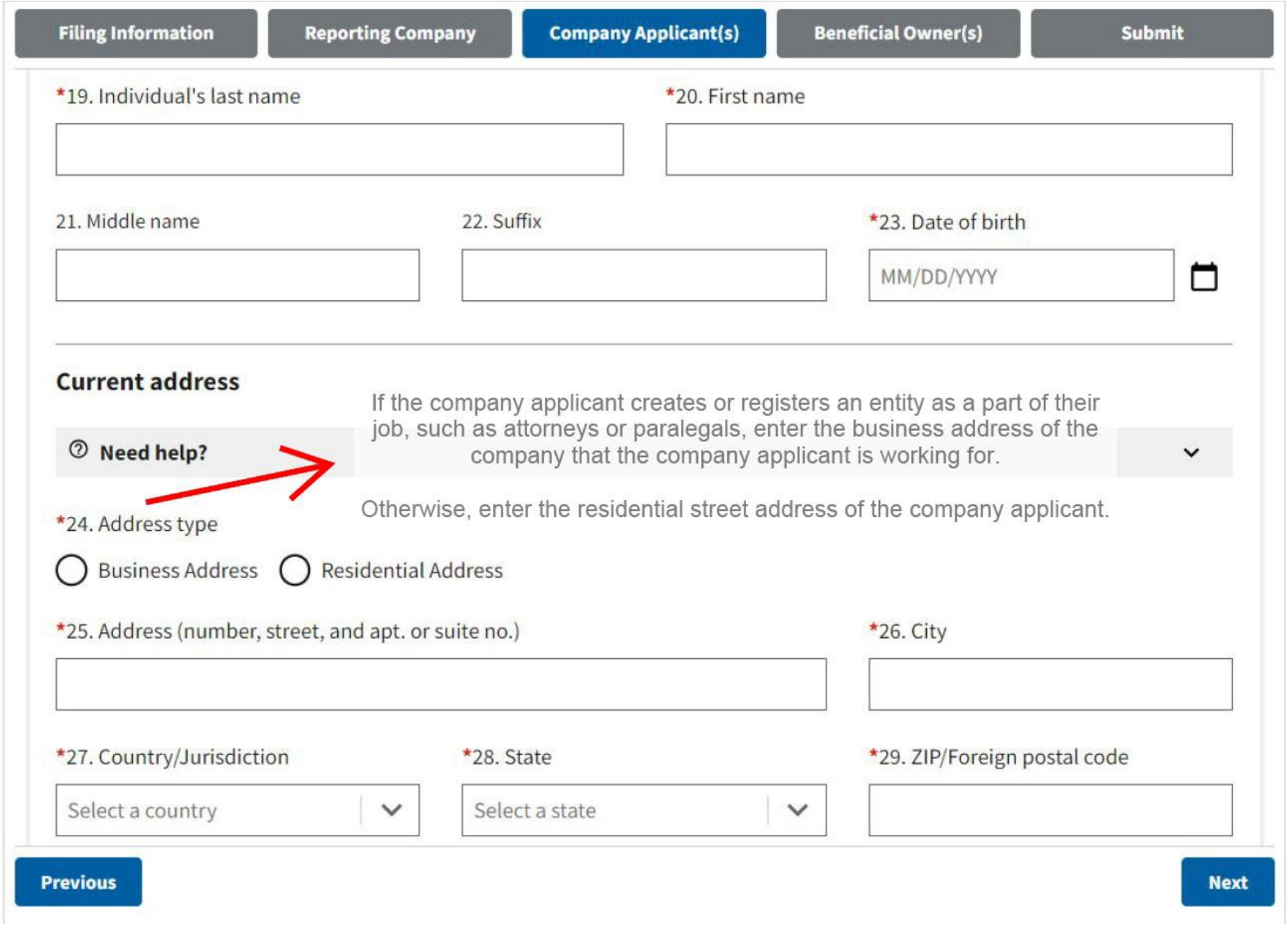
- A reporting company's applicants could be (1) its attorney and (2) their paralegal/secretary.

WHO IS A COMPANY APPLICANT?

- Companies already formed **before** Jan. 1, 2024:
  - DO NOT provide applicants' info

- Companies formed **on or after** Jan. 1, 2024:
  - DO provide up to 2 applicants' info
  - However: No need to keep applicants' info updated

Part II. Company Applicant Information
Items 19 - 29



Part II. Company Applicant Information
Items 30 - 33

Filing Information | Reporting Company | Company Applicant(s) | Beneficial Owner(s) | Submit

*30. Identifying document type

Select an ID type

*31. Identifying document number

*32. Identifying document issuing jurisdiction

Driver's license, ID, U.S. passport or Foreign passport

a. Country/Jurisdiction

United States of America

b. State

Missouri

c. Local/Tribal

Select a local/tribal

d. Other local/Tribal description

*33. Identifying document image

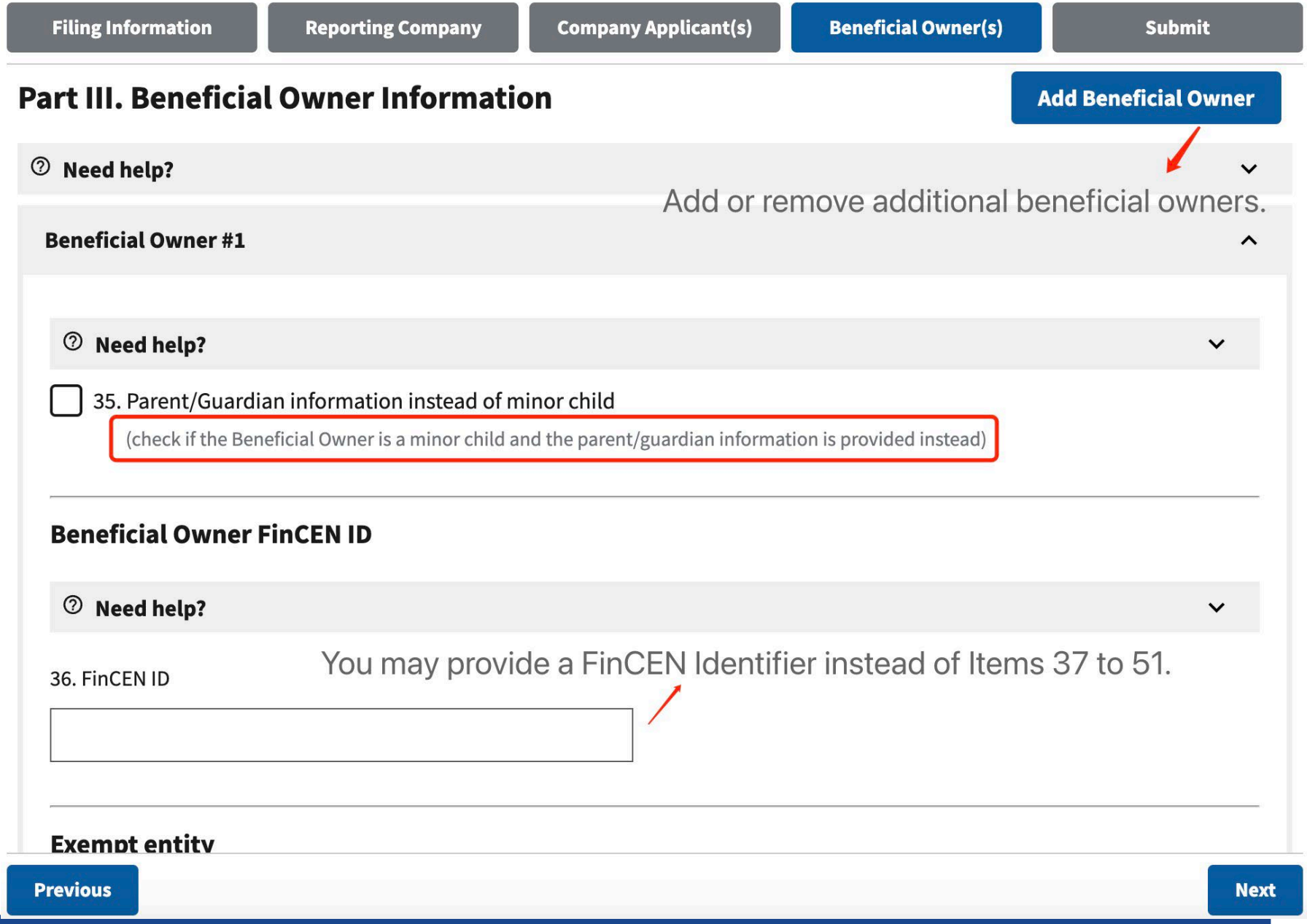
Drag file here or choose from folder

Attach a clear and readable image of Item 30

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Part II. Beneficial Owner(s) Information Items 35 - 36



WHO IS A BENEFICIAL OWNER?

- A person or entity that, directly or indirectly,
  - Exerts "substantial control" over a reporting company **or**
  - Owns or controls at least 25% of the outstanding interests of a reporting company.
- CTA requires reporting companies to report **ALL** individuals/entities who qualify under either definition.
- All reporting companies will have at least 1 beneficial owner.

BENEFICIAL OWNER
#1 – Exert "substantial control"

- Four ways to exert "substantial control":
  1) Serves as a "senior officer";
     - General counsel may qualify
     - But not "treasurer" or "secretary"
  2) Has authority to appoint/remove a majority of the board of directors or any senior officer;
  3) Exerts "substantial influence over *important decisions* " made by the reporting company; **OR**
  4) Has any other form of substantial control over the reporting company (the catch-all).

BENEFICIAL OWNER #1 – "substantial control" – cont'd

- What are "important decisions"? FinCEN's non-exhaustive list of factors:

1) Deciding whether to sell, lease or transfer assets;
2) Reorganization, dissolution or merger;
3) Making major purchases, issuing equity, incurring debt, or approving the budget;
4) Selecting/terminating business lines or geographic focus;
5) Determining executive compensation or incentives;
6) Entering/terminating significant contracts; or
7) Amending formation documents, bylaws, and significant policies/procedures.

BENEFICIAL OWNER #2 – Own or control 25%

- "Ownership" is defined broadly:
  - Stock, equity, convertible and profit interests
  - Joint and indirect ownership count toward the total
  - Options treated as exercised
  - Sole income beneficiary of trust or beneficiary with right to withdraw substantially all trust assets
  - Settlor of trust with right to revoke trust
- If calculation inconclusive - "Vote or Value" approach
  - Holds at least 25% of any class of interests, or
  - Owns at least 25% of value of the ownership interests

WHO IS *NOT* A BENEFICIAL OWNER?

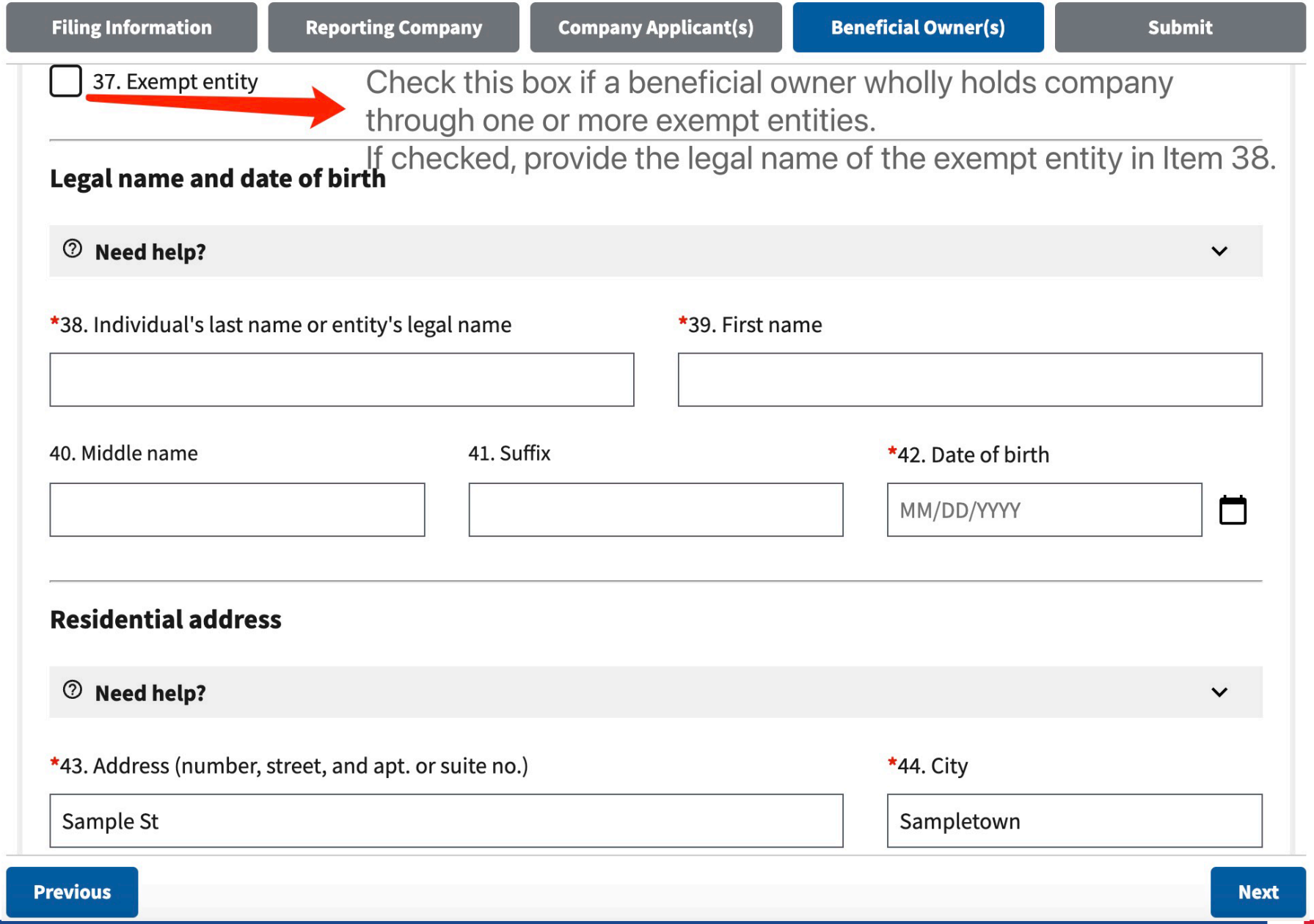
5 Exceptions

1) Minor children
   - Report parent/guardian's info instead, identifying the parent/guardian as such
   - To determine when child reaches age of majority: use law of the state where the *entity's formation filing took place*, not state where child lives.
2) An individual acting on behalf of a beneficial owner
   - Many attorneys acting on behalf of a client will fall here

WHO IS *NOT* A BENEFICIAL OWNER?

3) A non-senior officer employee who exerts substantial control over the company solely from their employment status
   - aka: “Employees acting as employees”
   - Senior officers are explicitly ineligible for this exception
4) An individual who has a future interest in the company through a right of inheritance
   - Future/contingent interests do not create ownership
5) Creditors for a quantified sum of money
   - But: creditors who exert substantial control may lose the benefit of this exception

Part II. Beneficial Owner(s) Information Items 37 - 44



BENEFICIAL OWNER
Question 37

- Most BOI filers would leave this question unchecked.
- Check the box on Question 37 **only if**:
  - The beneficial owner of the reporting company **gets all of their ownership interest** in the reporting company **through an exempt entity**.
  - Example:
    - Ms. Executive is a business owner. She owns a large operating company, Comp A. Comp A owns a small business, BB LLC. This means that Ms. Executive also owns BB LLC and is a beneficial owner of BB LLC. If someone were to file a BOI report for BB LLC, they would click the box on Question 37 and enter Comp A 's information instead of Ms. Executive's information.

Part II. Beneficial Owner(s) Information Items 45 - 50

Filing Information | Reporting Company | Company Applicant(s) | Beneficial Owner(s) | Submit

*45. Country/Jurisdiction: United States of America

*46. State: Missouri

*47. ZIP/Foreign postal code:

Form of identification and issuing jurisdiction

Need help? Non-expired driver's license, ID or a U.S. passport preferred. If unavaiable, a foreign passport.

*48. Identifying document type: Select an ID type

*49. Identifying document number:

*50. Identifying document issuing jurisdiction

a. Country/Jurisdiction: United States of America

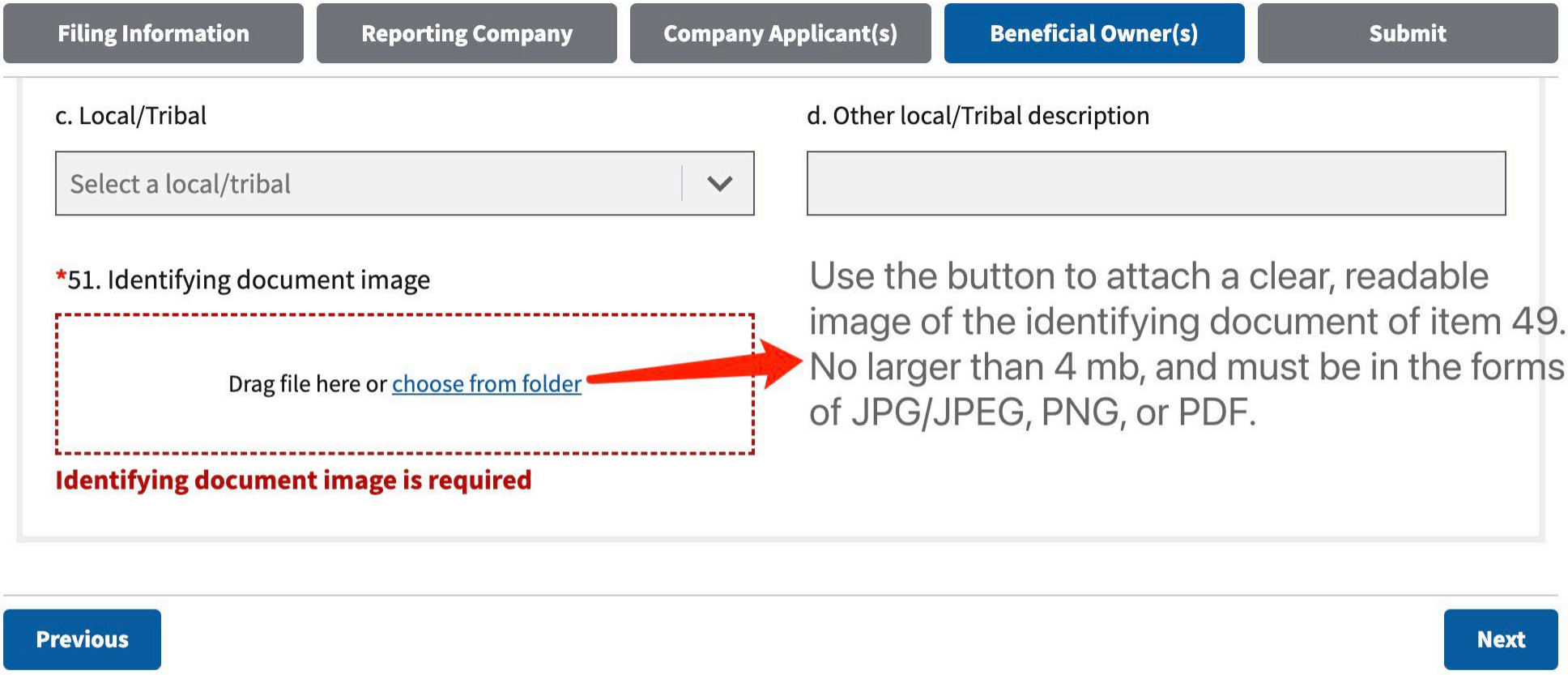
b. State: Missouri

c. Local/Tribal: Select a local/tribal

d. Other local/Tribal description:

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Part II. Beneficial Owner(s) Information
Item 51



Submit the Report

Filing Information | Reporting Company | Company Applicant(s) | Beneficial Owner(s) | Submit

Complete all fields below before submitting. Directly after submission, a processing page will be displayed, followed by a page confirming the status of your report. This confirmation page will also give you an opportunity to download a transcript of your report.

*Email — Enter your information as you are submitting the report to FinCEN

sample@sample.cn

*Confirm Email

sample@sample.cn

*First Name

John

*Last Name

Sample

***I certify that I am authorized to file this BOIR on behalf of the reporting company. I further certify, on behalf of the reporting company, that the information contained in this BOIR is true, correct, and complete.**

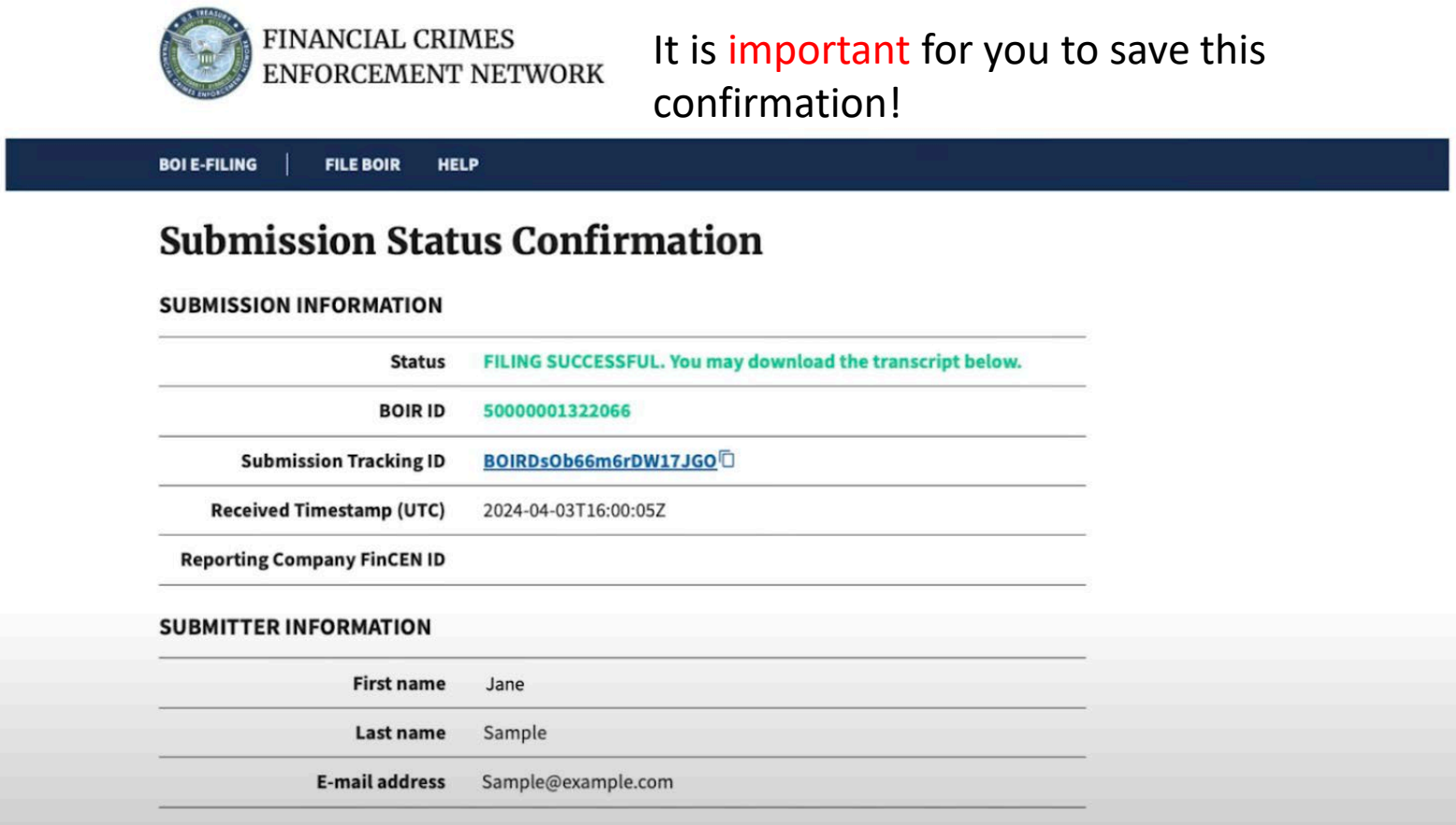
☐ I agree → Now click here to certify and ready to submit!

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Complete the BOI Filing



It may take a few minutes to submit...



It is important for you to save this confirmation!

Prohibited Words and Phrases

Avoid following words:

- ✓ a. AKA
- ✓ b. DBA
- ✓ c. NMN
- ✓ d. NONE
- ✓ e. NOT APPLICABLE
- ✓ f. OTHER
- ✓ g. SAME
- ✓ h. SAME AS ABOVE
- ✓ i. SEE ABOVE
- ✓ j. T/A
- ✓ k. UNKNOWN
- ✓ l. VARIOUS
- ✓ m. XX

WHEN TO REPORT

The CTA goes into effect on January 1, 2024

FinCen will begin accepting reports on
January 1, 2024

DEADLINES!

Company created/registered:

Before January 1, 2024

You have until **January 1, 2025**, to file your initial beneficial ownership report.

Between January 1, 2024 – January 1, 2025

You have **90 days** after creation/registration to file your initial beneficial ownership report.

After January 1, 2025

You only have **30 days** after creation/registration to file your initial beneficial ownership report.

WHEN ARE UPDATED REPORTS DUE?

- All updates due within 30 days of a change
  - Change to identity of beneficial owners
    - Ex.: BO dies; clock starts when estate is settled
    - Exs: New limited partner added, change share ownership
- Change to BO's reportable data (name, address, ID#)
- Gain/loss of an exemption from the definition of an RC
  - Ex.: Entity loses tax-exempt status
- Loss of an exception from the definition of a BO
  - Ex.: Minor beneficial owner attains majority under the law of the state where the RC is registered

SUMMARY

WHEN IN DOUBT, FILL IT OUT!

The Corporate Transparency Act is not designed to burden small business owners like yourselves; however, strict adherence is required as a matter of national security. If you have any questions, please reach out to LSEM and we will connect you with the proper resources.

Legal Services of Eastern Missouri™

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