

# Beneficial Ownership

by **NICK RIDER, CPA**

Practitioners now have a new potential adversary regarding FINCEN (Financial Crimes Enforcement Network) reporting in the form of the new BOI (Beneficial Ownership Information) reporting requirements. The BOI reporting is required beginning on January 1, 2024, for certain companies, thanks to the CTA (Corporate Transparency Act) enacted in 2020. The BOI targets money laundering, terrorist financing, tax evasion and other illicit activities.

Once final regulations were published, it's clear that any person involved in forming and/or managing entities required to file the BOI must be prepared to meet these new filing requirements. The new requirements allow a full year (until January 1, 2025) to file for all existing companies as of December 31, 2023. However, for any new entity created after January 1, 2024, the BOI should be filed with FINCEN within 30 days of formation. There are also requirements for filing information related to certain changes in ownership, which can create an ongoing compliance obligation.

Generally, the BOI reports are required for companies (including some trusts) registered in a state (typically through the Secretary of State or a similar office). These companies include domestic corporations, LLCs and limited partnerships. Foreign entities may also have the same filing requirement if the foreign entity has registered with the state to do business there. Exemptions are provided to large operating companies that meet certain criteria and companies already subject to extensive regulation, such as publicly traded companies, banks, and other financial institutions. For the large company exemption, a large company must operate in the U.S., have 20 or more full-time employees and earn more than \$5 million in sales.

Information required to be reported as part of the BOI relates to information about its beneficial owners. Beneficial owners are defined in the final regulations as any individual who, directly or indirectly, exercises substantial control over the entity or owns 25 percent or more of the company. Substantial control includes acting as a senior officer, having substantial influence over important company matters, and having authority over the removal or appointment of senior officers or a dominant majority of the board of directors. The information that must be provided for each beneficial owner includes full legal name, date of birth, address and identifying number such as passport or driver's license. In addition to this information for beneficial owners, newly formed companies will also need to provide this same information for the "company applicant," defined as the person that either files the formation documents or registers the company with the state or country of organization or is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document.



These new reporting requirements will present a difficult conversation for practitioners and firms alike. While an argument can be made that the beneficial ownership information should be formed by the company or the attorney forming the entity at the time of filing, many practitioners are heavily involved in this practice for the benefit of their clients. Not only do the reporting requirements significantly burden clients and advisors, but it also requires the advisors to include their information if falling under the "company applicant" designation. It's imperative that practitioners discuss with their firm leadership and clients to determine what role they need to or want to have in this new filing requirement.

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