

Corporate Transparency Act – Impact - Final Regulations



Get Ready....!!!

The Reason We Are Involved In This Is...

- **The purpose of this presentation is to present the new reporting requirements of the Corporate Transparency Act which are known more popularly as the Beneficial Ownership Reporting Requirements.**
- **While this law does not involve the Internal Revenue Service, state taxation agencies, etc. or traditional parties that we report financial results to, it does involve an area that will cross over into our practice.**



The Reason We Are Involved In This Is... **Continued**

- **Why?**
- **First of all, we are traditionally the ones that our clients turn to for advice and help in meeting requirements that are based on their business finances and ownership.**
- **Secondly, as a profession, we are constantly advocating for our clients and are charged with the responsibility to alert them to compliance issues.**



The Reason We Are Involved In This Is... **Continued**

- **Third, in order to meet the reporting requirements under the Corporate Transparency Act, we are probably the sole professional party that contains the information that is needed to complete a successful filing.**
- **Fourth, the reporting requirements will affect other serious business decisions that have to be made regarding the decision to form an entity versus remaining as a non-LLC, partnership, corporation, etc. that will have substantial liability, management, and tax issues.**

The Reason We Are Involved In This Is...

Continued

- We will discuss later the unintended ramifications that the reporting requirements will have.
- Finally, and as usual, we are the ones that will fill the void since no other party, such as the legal community, have, to date, stepped up to guide the public as to what is to be done, who to consult, etc.



Corporate Transparency Act

- ➡ Originally passed in 2020 to be effective with the issuance of final regulations which was in September.
- ➡ This law requires companies in the US to report to Financial Crimes Enforcement Network (FinCEN):
 1. The beneficial owners of the entity and
 2. The company applicants of the entity.

Corporate Transparency Act

The date that
the Corporate Transparency Act
becomes effective
is January 01, 2024!



Corporate Transparency Act – In General

- The following discussion will review the Act in light of the regulations which have essentially expanded the definitions and compliance requirements.



Purpose

- The explanation of the reason of the law is:
 1. The Act is part of a government effort to pursue corruption, money laundering, terrorist financing, tax fraud, etc.
 2. Identify anonymous shell companies that assist in the above illegal acts.





Purpose – Continued

FinCEN States:

“This rule will enhance U.S. national security by making it more difficult for criminals to exploit opaque legal structures to launder money, traffic humans and drugs, commit serious tax fraud and other crimes that harm the American taxpayer. At the same time, the rule aims to minimize burdens (emphasis added) on small businesses and other reporting companies”.



Purpose – Continued

- **What? “..aims to minimize the burden on small businesses and reporting companies”?**
- **This is standard government jargon to justify placing a new burden on small businesses in America and it is not valid considering what is to be reported and the severe penalties for failing to do so.**

Purpose – Continued

- Do you believe that anyone that is engaged in these horrendous and far reaching crimes is going to file these reports?





Purpose – Continued

- 3. The Act empowers FinCEN to establish a comprehensive data base containing information for most types of smaller business entities.**
- 4. Allegedly this database is focusing on shell companies.**
- 5. The focus on smaller companies is because they are more likely to be shell companies.**

Operation – Continued



6. According to FinCEN, the database will not be publicly assessable as it is solely for the use of law enforcement, national security agencies, intelligence agencies, and federal agencies charged with enforcing anti-money laundering statutes.
7. The Corporate Transparency Act specifically authorizes whom may have access to the data.

Requesters That Have Access to the BOI Data

- Federal agencies engaged in national security, intelligence, and law enforcement activities.
- State, local and Tribal law enforcement agencies with court authorization.
- Department of the Treasury which, naturally, includes the IRS.





Requesters That Have Access to the BOI Data - Continued

- ➡ Financial institutions using beneficial ownership information to conduct legally required customer due diligence, provided the financial institutions have their customer consent to retrieve the information.
- ➡ Federal and state regulators assessing financial institutions for compliance with legally required customer due diligence obligations.

Requesters That Have Access to the BOI Data - Continued

- Foreign law enforcement agencies and certain other foreign authorities who submit qualifying requests for the information through the a US federal agency.





Cost

- **FicCEN estimates that approximately 30 million businesses will come under the compliance provisions of the Act with 32.6 million reports filed in the initial year of 2024.**
- **FinCEN estimates that during the first year the Act is in effect, 25.8 million reports will have to be filed at the cost of 1264 billion.**

Cost – Continued

- Now, get this.. FinCEN states “it is anticipated that it will cost reporting companies with simple management and ownership structures – which FinCEN expects to be the majority of reporting companies – approximately \$85 apiece to prepare and submit an initial BOI. In comparison, the state formation fee for creating a limited liability company can cost between \$40 and \$500 depending on the state”.

Cost – Continued



- Who are they kidding?? Where did they get this amount?? It is self-serving! This is ridiculous.
- The filing requirements are serious and not to be taken lightly considering the penalties involved and the detailed requirements for each individual determined to be a “beneficial owner”.
- Therefore, they will take time and careful attention by the person who files them.
- Thus, \$85? If I am the one that will be filing I will be charging... and I suggest you do so and point the blame to those who passed this law.

Cost – Continued

- The reaction to my clients to date is..
 - ❑ FinCEN states that in subsequent years, it is estimated that in excess of 5 million initial reports and 11.4 million updated reports will have to be filed at a total cost of over \$363 million.

Comment: Thus, the good, small businesses suffer because of the bad players and.....



Regulations – Time Frames for Filing

The Requirements for Filing Are:

1. Again, this is effective January 1, 2024.
2. Beginning January 01, 2024, NEW (created in 2024) companies have to file their initial beneficial owner reports **WITHIN 30 calendar (not business) days** after receiving notice of their creation or registration to file their initial reports.



Regulations – Time Frames for Filing Continued

- 3. Beginning January 1, 2024, the entities that are required to file and that were created BEFORE January 1, 2024 will have one year until January 1, 2025 to file their initial reports.**
- 4. Reporting companies will have 30 days to report changes to the information in their previously filed reports and must correct inaccurate information in previously filed reports within 30 days of when the reporting company becomes aware or has reason to know of the inaccuracy of information in earlier reports.**

Time Frames for Filing – Continued

- Please remember that the filing deadlines **DO NOT** coincide with tax return filing deadlines.
- Do not wait until the last minute to file these reports as the website could easily jam with the estimated number of reports that have to be filed.



Change in Original Reporting Information

- Examples of changes in the original reporting would include if the beneficial owner moves, changes ownership, or dies, then an updated filing must be made within 30 days as previously cited.
- FinCEN estimates that approximately 9% of all beneficial owners will have a change of address each year, thus, requiring an updated report.

I'm moving!





Who Is Subject To Reporting?

- Both domestic and foreign.
- A domestic reporting company is a corporation, limited liability company (LLC), or any entity created by the filing of a document with the secretary of state or any similar office under the law of a state or Indian tribe.
- A foreign reporting company is a corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with the secretary of state or any similar office.

Who Is Subject To Reporting?– Continued

- Specific entities (subject to specific exclusions based on the ownership requirements) that will have to file are corporations, limited liability partnerships, business trusts, limited partnerships, limited liability limited partnerships, and limited liability companies must file the report.
- The filing requirement includes limited liability companies that have ONE member and are sole proprietorship, schedule E filings, or farm entities.

Who Is Subject To Reporting?– Continued

- FinCEN states that “other types of legal entities, including certain trusts, are excluded from the definitions to the extent that they are not created by filing of a document with the secretary of state or similar office. FinCEN recognizes that in many states the creation of most trusts typically does not involve the filing of such a formation document”.





Reporting Requirements

Entities exempt from the reporting requirements must meet ALL three conditions:

- 1. Employ more than 20 people.**
- 2. Revenue of more than \$5 million.**
- 3. Physical presence in the US.**

Other Exempt Entities:

- 1. Charitable organizations - including religious and non-profit organizations.**

Definitions

- The regulations clarify these areas by:
 1. Defining a full time employee as one who works 30 hours per week or 130 hours per month.
 2. The \$5 million threshold is based on the fact that the filer has filed a federal tax or information return in the prior year showing more than \$5 million in gross receipts or sales (net of returns and allowances and not including foreign sales).





Exemptions

- Contains a list of 23 exemptions which include:
- Most large businesses.
- Publicly traded corporations.
- Businesses that are “heavily” regulated by the federal government.
- Only public accounting firms that are registered under Section 102 of Sarbanes-Oxley Act of 2002 of which there are only 851.

Exemptions – Continued

Regulated Entities (Exempted):

- ☐ Financial, insurance, accounting firms (see strict definition), etc.
- ☐ Banks and credit unions.
- ☐ Entities subject to similar registration and regulations by other federal laws.



Who Is Subject To Reporting? – Continued

- ➡ This means that most, if not, all of you must comply with the Act and file the FinCEN report for your practice.
- ➡ Note: Law firms and attorneys must file.





Who Is Subject To Reporting? – Continued

- One of my concerns is the number of practitioners that will recommend NOT forming limited liability companies (especially sole proprietorships) in order to not have to file the FinCEN report.
- This is a very short sighted position to take because the liability protection benefits of an LLC outweigh the added compliance required of the Corporate Transparency Act.

What Is To Be Reported?

Information To Be Reported Is:

1. Name, date of birth, and address of each beneficial owner(s).
2. An unique identification number from a driver's license, valid US passport, foreign passport or other government identification.



What Is To Be Reported? – Continued

3. The issuing jurisdiction of the acceptable identification document.
 4. The image of the document.
- If an individual provides the above information to FinCEN directly, the individual may obtain a “FinCEN identifier” which can then be provided to FinCEN on a BOI report in lieu of the required information about the individual.

What Is To Be Reported? – Continued


- Companies formed after January 01, 2024 must provide all of the previously cited, required, information for the company applicants.





Who Is A Company Applicant?

FinCEN Defines a Company Applicant As Only
Two Persons Who Are:

1. The individual who directly files the document(s) that creates the entity, or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States.
 2. The individual who is primarily responsible for directing or controlling the filing of the relevant document(s) by another.
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Who Is The Company Applicant? - Continued

- ➡ One who directs or controls others to do so requirement would indicate that the attorney who files the articles of incorporation, limited liability documents, etc. would have to file the report for a new entity.
- ➡ Comment: When an attorney is involved make sure that they file the form and give you and/or your client a copy.

Beneficial Owners

- The Act requires the reporting of beneficial owners.
- Beneficial owners are broadly defined (as one would expect).
- Beneficial owners are defined as any individual(s) :



Beneficial Owners – Continued

1. Who owns or controls at least 25% or more of the ownership interests or
 2. Who either directly or indirectly exercises substantial control over the entity.
- Substantial control is defined very broadly to include:



Substantial Control

- 1. Individuals who have the authority over appointment or removal of any senior officer or a majority of the entity's board of directors.**
- 2. Senior officers of the company.**
- 3. Individuals who have substantial influence over the reporting entity affecting:**

Substantial Control – Continued

1. Major expenditures.
2. Borrowing.
3. Extending credit.
4. Investments.
5. Selling the entity.
6. Dissolving the entity.
7. Reorganizing the entity.





Substantial Control – Continued

- 8. Sale, exchange, or transfer of any assets.
- 9. Identifying business lines, divisions or other ventures.
- 10. Terminating business lines, divisions, or other ventures.
- 11. Entering into or terminating contracts.
- 12. Compensation of senior officers.

Substantial Control – Continued

13. Amending the entity's governing documents or other related documents.

14. Issuance of ownership rights.

➤ **Again, substantial control need not be exercised directly but can be exercised indirectly.**





Substantial Control – Continued

FinCEN states that “in defining the contours of who has substantial control, the rule sets forth a range of activities that could constitute substantial control of a reporting company. The list captures anyone who is able to make important decisions on behalf of the entity. FinCEN’s approach is designed to close loopholes that allow corporate structuring that obscures owners or decisions makers. This is crucial to understanding shell companies.”



Held In Trusts

- **FinCEN further states “among other things, these standards and mechanisms address how a reporting company should handle a situation in which ownership interests are held in trust.”**
- **Thus, where the ownership interest of an entity is a beneficial owner as defined by the percentage threshold, the substantial control determination “kicks in” and, thus, reporting is required.**
- **Example: Trusts.**

Exemptions From Beneficial Owners

- The Corporate Transparency Act creates a list of five types of individuals who are exempt from the definition of beneficial owners.
- An example is the children or spouse of the beneficial owner.



Responsibilities

- The entity is responsible for filing the report.
- The beneficial owner(s) should supply the required information so that the report can be filed.
- Again, if the beneficial owner does not want to provide the information directly, they can obtain what is called a FinCEN identifier and use that instead.





Practitioner's Responsibilities

- As I had discussed earlier, we are essentially in the “middle” on the reporting requirements.
- Again, the reporting requirements do not involve compliance with tax or financial third parties but do involve information unique to the tax entity, ownership, etc.



Practitioner's Responsibilities - Continued

- ➡ This leaves us in the delicate position of not only honoring our commitment to our clients to advise them of compliance issues but how to assist them without being accused of the unauthorized practice of law.
- ➡ Since the BOI requirements are not part of the Internal Revenue Code, it is unclear whether a non-attorney assisting a client in filing a form would constitute an unauthorized practice of law.

Practitioner's Responsibilities - Continued

- Every state has different definitions as to what constitutes the unauthorized practice of law.
- To date, no states have given any guidance regarding this issue.
- As mentioned earlier, the legal community, in general, has failed to step up to provide leadership on this issue, so, coupled with the above lack of state guidance, we are in a dilemma.





Practitioner's Responsibilities - Suggestions

- ➡ After speaking with knowledgeable attorneys and doing additional research, I have concluded that ADVISING a client of the BOI requirements and the need to file the report are not the practice of law.
- ➡ To the extent that if we make the decision to assist the client in filing the reports or filing it for them, we need to clarify that we are not practicing law.



Practitioner's Responsibilities - Suggestions

- ➡ In order to obtain this clarification, it is necessary to reach out to legal counsel and to your state's accountancy board as to whether this is permissible.
- ➡ Also, consider whether or not the filing of these reports on behalf of the client is a protected service under our insurance malpractice coverage and then reach out to them to verify if it is indeed covered.

Practitioner Responsibilities - Continued

- The delegation of who is to file the report should be memorialized in the engagement letter.
- Furthermore, as a practitioner, you should consider an addition to your yearly tax workbook/information brochure that alerts the client to these requirements for 2024.
- In the engagement letter or your annual tax packet, you should contain a sample statement to the effect:



2024

Sample Statement for Client Notification

“As a result of the enactment of the Corporate Transparency Act which is effective January 1, 2024, you may be required to file a beneficial ownership information report that must list the name, date of birth, address, and a unique identifying number such as a driver’s license, passport, etc. with an image of such document. The filing of this report is required when any entity that is a limited liability company, limited partnership, general partnership, S corporation, C corporation, or business trust has one or more owners who own at least 25% of the entity or control of it...

Sample Statement for Client Notification – - Continued

...or has any individual who exercises either directly or indirectly a very broad definition of control that would exist, as an example, in businesses whose ownership is in trust. This form must be filed electronically through the Financial Crimes Enforcement Network. Failure to file this form, when you are required to do so, may result in very severe financial or criminal penalties. **[If you would like us to file this form for you, there will be a charge of \$_____.]** If you choose to file this form yourself or have someone else file this form, please indicate here in writing that this is what you are going to do”.

Requirements and Considerations

- If you do agree to assist the client in filing the BOI reports, please note the section in the letter that is highlighted in red.
- If you do agree to file the BOI reports and the client chooses to have you file the form for them, make sure you give them a written list of the information that you will need to file the report and a deadline.
- A final consideration is do you have the staffing to file these reports if you are permitted to do so?

Requirements and Considerations

- All of us are now in the position with these reporting requirements to determine who in our client data base is subject to these requirements and, therefore, consider making a list of them.
- But, in the end, who does the client have to turn to in this issue?



Penalties

Penalties for Failure to File Report

- Both civil and criminal.
- \$500 per day.
- Criminal fines up to \$10,000 and/or imprisonment.
- Again, the practitioner needs to communicate these requirements to the client and obtain a clear understanding (in some form of written communication) of who is going to file the report.

Penalties and Responsibilities – Continued

- Once again, the preparation and filing of this document should result in an increase in your preparation charges and be itemized as such.
- It is a serious requirement.
- As part of our due diligence and the professional and, often, personal care that we exercise with our clients, be sure that the client is made aware of this law.

Current Status

- FinCEN is currently “constructing” the reporting system which will be identified as the Beneficial Ownership Secure System with the purpose of collecting and storing these beneficial ownership reports.
- The system is not yet available and no reports will be accepted BEFORE January 1, 2024.





Current Status - Continued

- FinCEN has stated that the data base is NOT accessible to the public.
- FinCEN has state that the data is not considered public records.
- Furthermore, the data base is not subject to the Freedom of Information Act or requests by the public under that law.



Resources

- ➡ For AICPA members, the AICPA website has the following resources:
 1. Beneficial Ownership Information (BOI) FAQ Expanded.
 2. Beneficial Ownership Information (BOI) FAQ Highlights.
 3. Beneficial Ownership Information.
 4. Beneficial Ownership Information (BOI) Report – Summary of Data F.

Almost Finally...

- If the client does not like this law (and many, many will not), place the blame where it belongs with their Senators and local Congress person!
- But, stop taking the heat and blame for their actions!
- My thoughts are.....



And Finally....

Do you think of great questions the minute a class is over?
On the way home?
In the middle of the night?

No problem! Use my email to send me any questions!

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