

Advocacy Update:

9 Things to Know About Beneficial Ownership Information Reporting

By Robert Broome, CAE

Beginning in January 2024, a new anti-money laundering initiative known as beneficial ownership information (BOI) reporting will go into effect. Millions of small businesses across the nation will have to file a complex report to the federal government. Despite the broad reach of the requirement and the substantial penalties for noncompliance, many of the entities subject to the rule are unaware of its existence or impact.

NCACPA aims to build awareness about the BOI reporting requirement among CPAs and the clients and organizations they serve, as well as to advocate for reducing barriers to compliance.

WHERE DID THE BOI REPORTING REQUIREMENT COME FROM?

Congress passed the Corporate Transparency Act (CTA) in 2021 to help law enforcement agencies detect and prevent financial crimes, such as the use of shell companies to launder money for drug traffickers, terrorists, and other criminals.

One of the provisions of the CTA directs a division of the U.S. Treasury Department known as the Financial Crimes Enforcement Network, or FinCEN, to promulgate a rule requiring domestic and foreign business entities to disclose identifying information about who owns and controls them—their “beneficial owners.”

FinCEN issued its final rule to implement the BOI reporting requirement in September 2022. It describes which companies are required to file a report, what information must be included, and when the report is due.

The CTA requires FinCEN to issue two additional rules that are still in development. The first is to establish limits on access to the BOI registry and create safeguards to secure the information. The second is to revise FinCEN’s customer due diligence requirements for financial institutions.

WHAT IS A BENEFICIAL OWNER?

FinCEN defines a beneficial owner as any individual who, directly or indirectly, (1) exercises substantial control over a reporting company, or (2) owns or controls at least 25% of the ownership interests of a reporting company.

The BOI reporting rule sets forth a range of activities that could constitute substantial control of a reporting company. The rule also provides standards and mechanisms for determining whether an individual owns or controls 25 percent of a company’s ownership interests.

WHO IS REQUIRED TO FILE BOI REPORTS?

FinCEN estimates that 32.6 million businesses will be subject to the BOI reporting rule in 2024, and an additional 5 to 6 million new companies in the following year. Most of these companies are small businesses that form the economic backbone of North Carolina and the U.S.

The rule identifies two types of reporting companies—domestic and foreign—that will have to file BOI reports.

A domestic reporting company is defined as a corporation, a limited liability company (LLC), or any other entity created by the filing of a document with a secretary of state or any similar office under the law of a state or tribal jurisdiction.

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 a secretary of state or any similar office.

There are 23 types of entities that the CTA exempts from the BOI reporting requirement, many of which are already disclosing their BOI information to federal and/or state government regulators. The list includes certain types of banks and financial institutions, government authorities, public companies, insurance companies, tax-exempt organizations, and others.

One noteworthy exemption is for “large operating companies,” defined as having more than 20 full-time employees, more than \$5 million in gross receipts or sales, and an operating presence at a physical office within the United States.

Additional information about exempt entities can be found in the Beneficial Ownership Information Reporting Regulations at 31 CFR § 1010.380(c) (2). FinCEN recommends consulting the text of

the regulations, which include specific criteria for the exemptions, before concluding that an entity qualifies for an exemption.

WHEN ARE COMPANIES REQUIRED TO FILE BOI REPORTS?

The BOI reporting rule becomes effective on January 1, 2024. The deadline for a business to file its initial report depends on when it was formed.

- Existing companies (those created or registered before January 1, 2024) will have until January 1, 2025, to file an initial report.
- New entities (those created or registered after January 1, 2024) must file a BOI report within 30 days of their formation.*
- Reporting companies that have changes to previously reported information or discover inaccuracies in previously filed reports must file within 30 days.

NCACPA encourages CPA firms and other businesses to begin preparing immediately to understand their reporting obligations. FinCEN has released no details about how companies will submit their BOI report, except that all filing will be done electronically. As of October 2023, FinCEN was still developing a secure filing system to be available on its website.

**In September, FinCEN filed a notice of proposed rulemaking that would change the filing deadline to 90 days for new companies formed in 2024. This rule has not yet been finalized.*

WHAT INFORMATION ARE COMPANIES REQUIRED TO REPORT?

Each reporting company must report its full legal name and any “doing business as” (d/b/a) or “trading as” (t/a) names, business address, jurisdiction of formation or registration, and IRS Taxpayer Identification Number.

A reporting company must also include the following details on each of its beneficial owners and company applicants:

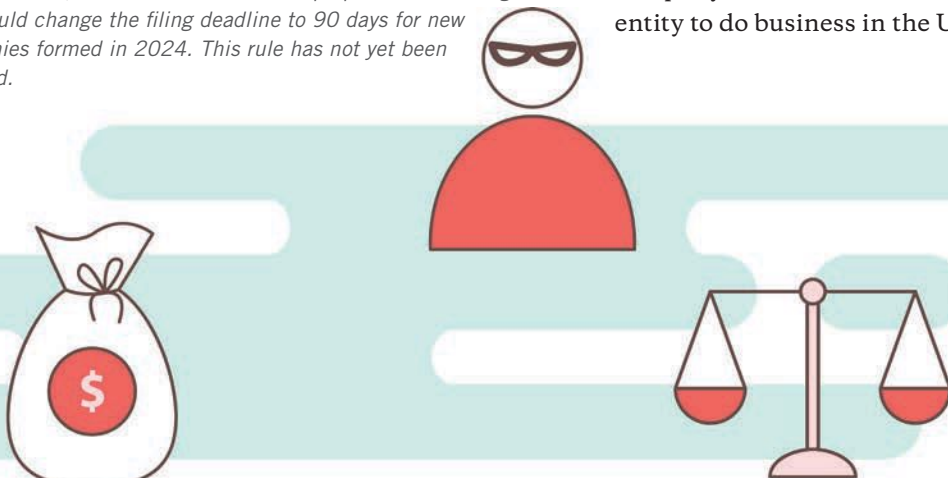
- The individual’s name, birthdate, and address.
- A unique identifying number and issuing jurisdiction from an acceptable identification document (e.g., driver license or passport) and an image of the document.

WHAT IS A COMPANY APPLICANT?

In addition to information about beneficial owners, the BOI reporting rule includes a requirement for new entities to disclose information about their “company applicants.”

There can be up to two individuals who qualify as company applicants:

- The individual who directly files the document that creates or first registers the reporting company (or in the case of a foreign reporting company, the document that first registers the entity to do business in the United States)



- The individual who is primarily responsible for directing or controlling the filing of the relevant document by another.

No reporting company will have more than two company applicants. If only one person was involved in filing the relevant document, then only that person should be reported as a company applicant.

Existing companies (those created or registered before January 1, 2024) do not have to report their company applicants.

WHAT ARE THE PENALTIES FOR REPORTING VIOLATIONS?

Although there is no fee for submitting a BOI report to FinCEN, failure to comply with BOI reporting requirements could be costly. Willful failure to report carries a substantial penalty of up to \$500/day while the violation continues.

Penalties for providing false or fraudulent information are even more severe, with fines of up to \$10,000 and up to two years in prison. These penalties can apply to the reporting companies and their individual beneficial owners and company applicants.

ARE THERE SPECIFIC ISSUES OF CONCERN FOR CPAS?

There has been some debate about whether non-attorney CPAs assisting clients with the preparation and filing of BOI reports could be considered the unauthorized practice of law. NCACPA has contacted the North Carolina State Bar to seek a determination on this issue.

NCACPA is also in discussions with the State Board of CPA Examiners about whether an engagement to assist a client with the preparation and filing of its BOI report is an agreed-upon procedure.

The Association will share more information on these matters as it becomes available through Connect, the NCACPA website, e-newsletters, and social media channels.

WHAT ELSE IS NCACPA DOING ABOUT BOI REPORTING ISSUES?

NCACPA's Advocacy team is engaged on multiple fronts at the federal and state levels about issues involving BOI reporting. In addition to the activities described above, NCACPA is:

- Working with the AICPA and other organizations to build awareness in the business community about BOI reporting requirements.
- Encouraging FinCEN to voluntarily delay the effective date of the BOI reporting rule and put more effort into educating companies about their reporting obligations.
- Supporting H.R. 4035, the Protecting Small Business Information Act of 2023, sponsored by House Financial Services Chairman Patrick McHenry (R-NC-10). The bill would delay the effective date of the BOI reporting rule until FinCEN finalizes two additional rules related to the Corporate Transparency Act.
- Engaging in grassroots lobbying of other members of the state's congressional delegation to encourage them to cosponsor H.R. 4035. Please visit www.ncacpa.org/action-center to send a message to your legislators.

If you have questions about this topic, please contact NCACPA
Director of Advocacy Robert Broome at rbroome@ncacpa.org.
Additional resources are available at www.fincen.gov/boi.