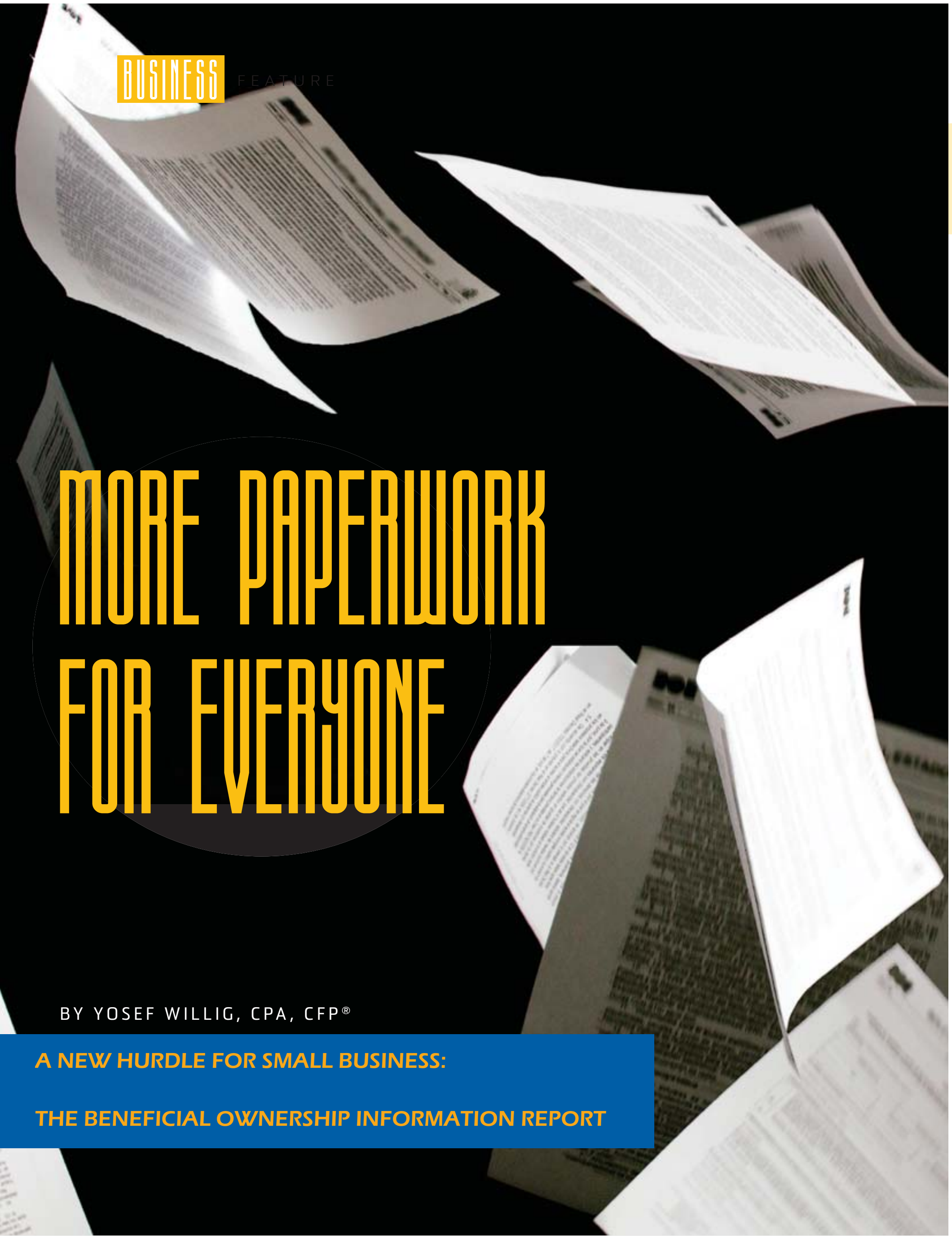
BUSINESS FEATURE



MORE PAPERWORK FOR EVERYONE

BY YOSEF WILLIG, CPA, CFP®

A NEW HURDLE FOR SMALL BUSINESS: THE BENEFICIAL OWNERSHIP INFORMATION REPORT

Millions of new businesses are formed annually in the United States. These formations are made via a patchwork of state offices, and they are inconsistent and unpredictable in both requirement and format. For the most part, the system works. No one is particularly interested, much less distressed, by the paucity of disclosures required of a newly formed business. Very few patrons of small businesses ever concern themselves with understanding whether the business they are frequenting is a limited liability company, a limited partnership or just an unregistered sole proprietorship. It is equally of little consequence to the typical consumer whether their local coffee shop disclosed its ownership structure to the state it was formed in. It therefore comes as something of a surprise to the average small business owner that this information is of significant interest to the federal government.

Why the sudden interest? It has come to light over the last decade or so that although the vast majority of registered small businesses are helpful to society, there are some “bad apples.” Terrorist groups, as well as other organizations involved in money laundering and other illicit monetary schemes, are able to create shell companies in the United States with little to no disclosure requirements. Over the last five years, the federal government has been working on a new legal framework now known as the Corporate Transparency Act. Functionally, this act is tasked with the creation of a new federal database. This database, known as the Beneficial Owner Secure System or BOSS (this is the actual name), will collect the structure and ownership information of all registered small businesses operating in the United States. This is where the new reporting requirement fits in.

Effective January 1, 2024, all small businesses that are already registered and operating in the United States must file a report with the Financial Crimes Enforcement Network (FinCEN). This new report is known as the Beneficial Owner Information Report or BOI. For many businesses this will begin as a one-time filing, with the report due by December 31, 2024. Although the term small business does not appear in the title of the report, large businesses are specifically excluded. For this purpose, a large business is one that has gross receipts of more than $5,000,000 for tax purposes, as well as more than 20 full-time employees in the United States (both criteria must be met for exclusion). A small business is any registered for-profit business (including single member LLCs) that does not meet the large business exception and is not otherwise regulated by the SEC or similar government agency.

Exactly what information is the government looking to collect? First, there is the general information about the business: Legal name, address, tax ID and state of formation (e.g., New York). Then there is information about the creator of the entity (this part of the report is only relevant to entities formed since January 1, 2024), and finally there is the information on the beneficial ownership itself.

What is beneficial ownership? For purposes of this disclosure requirement, a beneficial owner is anyone who falls into one of two categories: one who exercises "substantial control" over the company, and one who owns 25% of the company in any form. The BOI report requires the disclosure of *all* individuals who meet *either* of these categories. "Substantial control" is a new term that was created just for this report and includes anyone with managerial decision-making abilities within a business. This includes but is not limited to the CEO, CFO, COO, general counsel and president of a company, as well as anyone with the power to fill or replace any of these positions. An owner is anyone who owns 25% or more of the company profits, equity or voting power in any form. These individuals must provide a current valid form of ID (driver's license or passport) to be attached to the filing.

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The government anticipates that a robust central database will be created from the reports on existing companies, which will substantially curtail instances of hiding behind opaque corporate structures. Additionally, all newly formed (post January 1, 2024) companies are required to register within 90 days of formation (accelerating to within 30 days on January 1, 2025), which will make it difficult to avoid disclosure. To put some teeth into this legislation, the government imposed a penalty of $500 per day (this figure is adjusted for inflation and currently stands at $591/day) for willful failure to comply, and even a possibility of criminal charges. It is therefore important for all small business owners to examine their current structure and determine what entity or entities will be subjected to this reporting and who the beneficial owners are.

The bottom line is that as a result of abusive activities by a small subset of registered businesses, all small business owners are now faced with more regulation. This may prove costly over time, as aside from the initial report, a business must file an updated report when any of the reported information changes. This includes changes to addresses, beneficial owners or even to identifying documents (e.g., a new driver's license number). Small business owners are often the ones faced with the greatest number of obstacles, and this report is proving to be yet another hurdle to traverse. ●

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