

## South Bay Estate Planning Council

October 24, 2024 Focus Group

### Beneficial Ownership Interest Report

#### Who is required to file the report?

- \* All entities – corporations, LLCs, LPs, any entity formed by filings with the Secretary of State or equivalent office.
- \* There are 23 exemptions – All exemptions are for larger businesses, non-profits, government, or highly regulated businesses.
- \* An entity with 20 or more employees and \$5,000,000 in gross income is exempt.

#### What information is required?

- \* Personal information (name, address, birth date) + photo ID.

#### Whose information is required?

- \* All “Beneficial Owners.”
- \* All 25% or more owners or those with “Substantial Control.”
- \* Officers and directors.
- \* “Applicants.”

#### Where is the information filed? When is it required?

- \* On FinCEN website. Financial Crimes Enforcement Network, an agency of the U.S. Department of the Treasury.
- \* No paper. No mailing. No encryption.
- \* By January 1, 2025 for all existing non-exempt companies. For new (2024 companies) the “report” is due within 90 days.

#### What are the penalties for failing to file?

- \* Civil and criminal penalties. Up to \$500/day, 2 years in prison, \$10,000.

#### Where did the requirement come from?

- \* Congress passed the 2021 National Defense Authorization Act including the “Corporate Transparency Act” (“CTA”) to address money laundering and fraud.
- \* The CTA passed by Congress included many of the requirements, exemptions, and details and authorized FinCEN to pass regulations.

#### How many companies will need to file?

- \* An estimated 32 million companies will need to file.

#### Is the law unconstitutional?

- \* NSBA vs. Yellen. Court found law unconstitutional. On appeal. No relief for companies other than plaintiff members.

#### Filing concerns.

- \* Security. Privacy. Loss of control over ID.
- \* Wealthy investors may have many investments in reporting companies – many LLCs below the exemption level.
- \* Recommendation and disadvantage of obtaining FinCEN personal ID.
- \* Wrangling uncooperative “beneficial owners” for their information.