

# Final Countdown to the Corporate Transparency Act: FinCEN Finalizes BOI Access Rule and States Take Action

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PRACTICES Tax

The January 1, 2024 implementation date of the Corporate Transparency Act (the “**CTA**”) and its beneficial ownership reporting requirements is now four days away. Just in time, the Treasury Department’s Financial Crimes Enforcement Network (“**FinCEN**”) issued the final rule that governs access to the “beneficial ownership information” (“**BOI**”) that reporting companies will have to disclose to FinCEN under the CTA (the “**Access Rule**”). This rule is one of the last pieces of the regulatory framework that will govern the new disclosure requirements under the CTA. For an overview of the CTA and the related reporting obligations, please see our [prior alert](#).

The CTA classifies BOI as “sensitive information” and limits its access to specified parties for certain purposes. According to FinCEN, the Access Rule aims to ensure that: (i) only authorized recipients have access to BOI; (ii) authorized recipients use that BOI only for purposes permitted by the CTA; and (iii) authorized recipients re-disclose BOI only in ways that balance protection of the security and confidentiality of the BOI with furtherance of the CTA’s objective of making BOI available to a range of users consistent with the CTA’s purposes.

## Who has access to BOI?

There are five groups who will have access to BOI reported under the CTA.

1. U.S. government agencies and law enforcement. The first category of BOI recipients authorized by the CTA includes (i) federal agencies engaged in national security, intelligence, or law enforcement activity — if the requested BOI is for a use in furtherance of such activity and (ii) state, local, and tribal law enforcement agencies if “a court of competent jurisdiction” authorizes the law enforcement agency to seek the information in a criminal or civil investigation.
2. Foreign Requesters. The second category consists of foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities (“**Foreign Requesters**”), *provided* their requests come through an intermediary federal agency, meet certain additional criteria, and are made either (i) under an international treaty, agreement, or convention or (ii) via a request made by law enforcement, judicial, or prosecutorial authorities in a trusted foreign country (when no international treaty, agreement, or convention is available).
3. Financial institutions with customer due diligence compliance obligations. The third authorized recipient category are financial institutions using BOI to facilitate compliance with customer due diligence requirements under applicable law. In order to access the BOI, a financial institution must have the relevant reporting company’s consent.

4. Regulatory agencies. The fourth category is federal functional regulators and other appropriate regulatory agencies tasked with assessing financial institutions for compliance with customer due diligence requirements. These agencies may access only the BOI that financial institutions they supervise received from FinCEN.
5. Department of the Treasury. The fifth and final category of authorized BOI recipients is the Department of Treasury itself — the CTA allows for BOI access in connection with a Treasury officer or employee’s official duties, including for tax administration. FinCEN is working to establish internal policies and procedures governing Treasury officer and employee access to BOI.

## **Can BOI be disclosed to other parties?**

In general, those who gain access to BOI from FinCEN are prohibited from disclosing that information to others. The CTA provides that BOI reported to FinCEN by reporting companies is generally confidential and shall not be disclosed by (i) an officer or employee of the United States, (ii) an officer or employee of any state, local, or tribal agency, or (iii) an officer or employee of any financial institution or regulatory agency receiving BOI.

The Access Rule extends this prohibition in two ways. First, it extends the prohibition to any of the officers or employees described in (i), (ii), and (iii) above regardless of whether they continue to serve in the position through which they were authorized to receive BOI. Second, it extends the prohibition on disclosure to any individual who receives BOI as a contractor or agent of the United States, a state, local, or tribal agency, or as a member of the board of directors, contractor, or agent of a financial institution.

## **Keep an eye on state-specific “Transparency Acts.”**

As companies prepare to comply with the CTA, they should be aware that states are also looking at adopting similar rules. The first state to legislate ownership reporting requirements similar to the CTA is New York. On December 23, 2023, New York’s governor signed into law a bill called the “LLC Transparency Act.” This law will require limited liability companies in the state to disclose to the state their individual beneficial owners. While New York is the first state to enact a state-specific beneficial ownership reporting law, it may be the first of many.

As we approach and enter 2024, if you have questions about the CTA and its impact on your organization, please contact the individuals listed below.