

FINCEN CURRENTLY ACCEPTING COMMENTS ON PROPOSED CORPORATE TRANSPARENCY ACT RULE

Hodgson Russ Corporate & Securities Alert
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On December 16, 2022, the Financial Crimes Enforcement Network (FinCEN) published its second Notice of Proposed Rulemaking (the Proposed Access Rule) implementing the Corporate Transparency Act (CTA).[1] The CTA will require certain entities to report personal information (referred to as Beneficial Ownership Information or BOI) about their Beneficial Owners to a federal database referred to as the Beneficial Ownership Secure System (BOSS) beginning January 1, 2024. Beneficial Owners are those individuals who either own at least 25% of the ownership interests in a company required to report under the CTA (a Reporting Company) or who exercise substantial control over a Reporting Company. You can read more about who qualifies as a Beneficial Owner and what information must be reported [here](#).

The Proposed Access Rule outlines who will have access to the information reported to the BOSS and how it can be used. The BOSS will not be accessible to the general public.

Under the Proposed Access Rule, the following five types of recipients will have access to information reported to the BOSS for the outlined limited purposes:

1. The **Department of Treasury**, to monitor compliance with the CTA and for tax administration purposes;
2. **Federal national security, intelligence, and law enforcement agencies**, upon submission of a written request to FinCEN certifying that the information sought will be used in furtherance of agency activities and/or investigations;
3. **State and local law enforcement agencies**, upon submission of a written request to FinCEN and court authorization to seek the information in a civil or criminal investigation;
4. **Foreign law enforcement agencies, prosecutors, and judges**, upon submission of a written request to FinCEN by a U.S. federal national security, intelligence, or law enforcement agency certifying that the requested information will be used to investigate or prosecute a crime, or for security or intelligence activities, in a foreign country; and

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5. **Financial institutions (banks and brokerage firms) and regulatory agencies responsible for their oversight**, upon submission of a written request to FinCEN, certifying that the information will be used to comply with or monitor compliance with customer due diligence requirements, along with evidence of consent of the business they are seeking information about.

Additional guidance published by FinCEN indicates that once Federal agencies (whether requesting for themselves or on behalf of a foreign requester) and state and local law enforcement agencies submit a written request for information to FinCEN, they will be able to run searches for Reporting Companies similarly to how many secretary of state databases function. Each agency will then be required to submit justifications for their searches indicating how they relate to national security, intelligence, or law enforcement activities, to FinCEN. Financial institutions and the regulatory agencies responsible for their oversight will receive an electronic transcript with the BOI for each business they submit a request for information on, rather than being able to run open-ended searches in the BOSS.[2]

The Proposed Access Rule will not be finalized until FinCEN has reviewed and responded to public comments on the Rule. Comments may be submitted [here](#) until the public comment period ends on February 14, 2023.

If you have any questions about the Proposed Access Rule or the CTA and its impact on your company, please contact one of our [Corporate & Securities](#) attorneys.

[1] Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed. Reg. 77,404 (proposed Dec. 16, 2022) (to be codified at 21 C.F.R. pt. 1010), available at <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27031.pdf>.

[2] Department of Treasury, Financial Crimes Enforcement Network, Fact Sheet: Beneficial Ownership Information Access and Safeguards Notice of Proposed Rulemaking (NPRM) (Dec. 16, 2022), <https://www.fincen.gov/nprm-fact-sheet>.