

New Diligence Opportunity for Financial Institutions

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On [Jan. 1, 2024](#), the [Corporate Transparency Act](#) (“CTA”) took effect. As a result, all business entities, unless expressly [exempt](#) by the CTA, [must file Reports of Beneficial Ownership Information](#) (“BOI”) with the Financial Crimes Enforcement Network (“FinCEN”), a unit of the U.S. Treasury. Under the CTA, “financial institutions,” i.e., banks and other entities that provide financings and are subject to the “Know Your Customer” and “Customer Due Diligence” regulations of FinCEN pursuant to the Bank Secrecy Act, the USA Patriot Act, and the Anti-Money Laundering Act of 2020, [may access the BOI](#) on reports filed with FinCEN.

[To gain access to the BOI](#), the financial institution **MUST:**

1. Obtain the written consent of the customer, i.e., the borrower, guarantor, or other loan party, in connection with the diligence process required before entering a business relationship with the customer, or as part of the continuing diligence required in an existing relationship. Accordingly, forms used by the financial institution to open or to continue an existing business relationship must include a clear and conspicuous provision in which the customer gives consent. This will probably require a complete review and revision of those forms;
2. Determine that obtaining access to the BOI is reasonably necessary for the financial institution to meet its diligence obligations. That determination should be spelled out in the written request to FinCEN for access; and
3. Acknowledge the scope of confidentiality obligations with respect to the BOI obtained, including the limited use permitted of the information, as well as safeguarding that accessed BOI from misuse.

Financial institutions should be prepared to request access to BOI as a matter of course. In any case where a customer engages in violative activity, and the BOI would have alerted the financial institution to possible risks, that institution could be exposed to sanctions by its principal prudential regulator and/or by other law enforcement agencies.

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