

Corporate Transparency Act's Impact on Banking: Ensuring Compliance; Interplay With Know Your Client Due Diligence Rules

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Winston & Strawn partner Carl Fornaris was a panelist on Strafford's "[Corporate Transparency Act's Impact on Banking: Ensuring Compliance; Interplay With Know Your Client Due Diligence Rules](#)" on April 9, 2024.

As of January 1, 2024, [the Corporate Transparency Act \(CTA\)](#) requires millions of companies formed or registered to do business in the United States to report the identities of their beneficial owners and, in the case of new companies, applicants to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN). The CTA adds compliance obligations and complexity to every industry, including banking and other financial services.

Banks, securities broker-dealers, and certain other financial institutions are already required to obtain and keep records of BOI from legal entity customers as part of an institution's compliance with the "know your client" due diligence requirements. Banks and other financial institutions are not required to file BOI reports with FinCEN. However, financial institutions subject to FinCEN's CDD rule will be granted access to BOI reports to facilitate their compliance with the CDD rule and other AML requirements. This means that the vast majority of bank and certain other financial institution customers will need to be CTA-compliant.

FinCEN has provided guidance to banks and other financial institutions on the interplay between the CTA and existing CDD requirements, and it has made it clear that the CTA is not intended to create new regulatory requirements. However, FinCEN's recently adopted BOI access rule broadens the definition of "beneficial owner" and expands the permissible uses of BOI for suspicious activity monitoring and reporting purposes.

The panel discussed the existing Know Your Client due diligence requirements and how they interact with the new BOI reporting requirements under the CTA. They provided tips for advising bank clients on their compliance obligations and exploring whether additional representations, warranties, and covenants should be included in credit agreements and loan documents to address the CTA or money laundering generally.

Topics of the discussion included:

- Overview of the CTA and FinCEN's final BOI reporting rule
 - Reporting companies
 - Exemptions

- Penalties for failure to comply
- Proactive compliance
- CTA's interplay with existing customer due diligence requirements
- FinCEN's final access rule
- Best practices for obtaining customer consent and access to BOI reports
- Key takeaways and practical guidance

Questions that arose included:

- Can banks and other financial institutions share BOI reports with subsidiaries and affiliates or with nonaffiliated institutions?
- How should financial institutions obtain customer consent before seeking access from FinCEN to a BOI report?
- How does the CTA's BOI rule mesh with existing CDD requirements for banks?
- What are the new best practices banks should implement based on FinCEN's new access rule?

For more information and answers to your questions regarding the Corporate Transparency Act, [please visit our task force page](#).

2 Min Read

Speaker

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