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## TO INFINITY AND BEYOND: FINCEN ANNOUNCES ACCESS RULE SCHEDULE

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On April 18, 2024, the Financial Crimes Enforcement Network (“FinCEN”) announced its revised implementation schedule for providing access to the beneficial ownership information (“BOI”) reports. The tentative, revised schedule is notable for including a lengthy delay before any financial institutions (“FIs”) will receive this access. In this Legal Update, we discuss the implementation schedule announcement.

### BACKGROUND

Since January 1, 2024, millions of US and foreign reporting companies have been required to file BOI reports with FinCEN. The BOI reporting requirement’s governing law, the Corporate Transparency Act (“CTA”), authorizes FinCEN to share BOI reports with certain government agencies, FIs, and the regulators of FIs, subject to appropriate protocols. In December 2023, FinCEN finalized a rule to implement the sharing provision (the “Access Rule”).

The CTA does not explicitly set forth an implementation period for the Access Rule. However, FinCEN is implicitly expected to provide access to FIs by January 1, 2025, which is the date the CTA requires FinCEN to rescind the information collection requirements of the Customer Due Diligence (“CDD”) rule, as part of a broader harmonization with the BOI reporting requirement.<sup>1</sup> If parts of the CDD rule are rescinded prior to FIs obtaining access to BOI reports, then there might be no standards governing how FIs should conduct beneficial ownership identification and verification programs for legal entity customers.

Putting aside Congress’s expected timing, FinCEN indicated in 2023 that it would take a lengthy, phased approach to providing access to BOI reports. The first stage would be a pilot program for a handful of federal agency users starting in 2024, after required agreements and policies and procedures are completed. The second stage would extend access to Treasury Department offices and certain federal agencies engaged in law enforcement and national security activities that already have sharing arrangements with FinCEN (e.g., FBI, IRS-CI, HSI, DEA, federal banking regulators). Subsequent stages would extend access to additional federal agencies engaged in law enforcement, national security, and intelligence activities, as well as state, local, and tribal law enforcement partners; in connection with foreign government requests; and finally, to FIs and their regulators. Among FIs, access would be further phased, with FIs subject to the CDD rule receiving access before other FIs.

### ACCESS RULE IMPLEMENTATION

FinCEN released answers to frequently asked questions about the Access Rule on April 18, 2024. One of the answers provides a new, extended implementation schedule for the Access Rule. It states, in relevant part, that:

- The first implementation phase, expected to begin in the spring of 2024, will be a pilot program for a handful of federal agency users;
- The second phase, expected in the summer of 2024, will extend access to Treasury offices and other federal agencies engaged in law enforcement and national security activities that already have memoranda of understanding with FinCEN for access to Bank Secrecy Act information;
- The third phase, expected in the fall of 2024, will extend access to additional federal agencies engaged in law enforcement, national security, and intelligence activities, as well as to state, local, and Tribal law enforcement partners;
- The fourth phase, expected in the winter of 2024, will extend access to intermediary federal agencies in connection with foreign government requests; and
- The fifth phase, expected in the spring of 2025, will extend access to FIs subject to customer due diligence requirements under applicable law and their supervisors.

#### TAKEAWAYS

Notably, the revised schedule indicates that FIs will not have access to BOI reports by Congress's January 1, 2025 deadline. It also is hard to see how FinCEN will meet any part of the directive to rescind the information collection requirements of the CDD rule by that date, when it has not even proposed rules to do so. One might question why FinCEN felt compelled to rush the implementation of the BOI reporting requirement by January 1, 2025 when an extended deadline is acceptable for implementing the Access Rule and changes to the CDD rule.

Moreover, the revised schedule omits a discussion of when other FIs will receive access to BOI reports. This is important for entities such as money services businesses, residential mortgage loan originators, and insurance companies, which may wish to use BOI reports to facilitate compliance with their extensive anti-money laundering obligations. While FIs with an obligation under the CDD rule (such as banks) may want to see the revisions to that requirement, other FIs could assess the usefulness of BOI reports without worrying about changes.

The industry should continue to engage with FinCEN on providing clarity on the implementation of the Access Rule, highlighting the need for the agency to act with the same urgency that it expects of reporting companies and FIs.

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<sup>1</sup> Pub. L. 116–283, div. F, title LXIV, § 6403(d), 134 Stat. 4624 (Jan. 1, 2021).

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