

The Corporate Transparency Act: A New Reporting Requirement Affects Many Agricultural Businesses

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When considering the sources of risk in agriculture, many producers recognize institutional risk as a risk that is growing in impact and importance. Institutional risk pertains to people outside the business causing change that affects the business. It includes government rules, regulations, and policies.

The Corporate Transparency Act (CTA), enacted in 2021, is one example of a recent change that affects many agricultural producers. Under CTA, companies doing business in the United States are required to report their beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. The reporting requirement took effect on January 1, 2024. Companies created or registered in 2024 must report within 90 calendar days after receiving actual or public notice of creation. Companies created or registered prior to January 1, 2024, have until January 1, 2025, to report. Companies created or registered on or after January 1, 2025, have to report BOI to the FinCEN within 30 calendar days of formation.

Companies required to report under the CTA include all companies formed by filing a document with a secretary of state or similar office and all foreign companies doing business in any U.S. state or tribal jurisdiction. The CTA was passed as a part of the U.S. government's efforts to make it harder for bad actors to hide or benefit from their ill-gotten gains through shell companies or other opaque ownership structures. This is an institutional risk example where the actions of a few results in rules for many.

Many agricultural businesses use business entities such as a limited liability company (LLC) or a corporation to own assets and/or operate under in today's agriculture. The CTA obliges these companies to abide by its reporting requirements. Any person who willfully violates the BOI reporting requirements of the CTA may be subject to civil penalties of up to \$500 for each day that the violation continues, adjusted annually for inflation. Currently, the daily fine amount is up to \$591.

A person who willfully violates the BOI reporting requirements may also be subject to criminal penalties of up to two years imprisonment and a fine of up to \$10,000. Potential violations include willfully failing to file a beneficial ownership information report, willfully filing false beneficial ownership information, or willfully failing to correct or update previously reported beneficial ownership information.

The beneficial owners of a business are the individuals who ultimately own or control the company. They include senior officers and important decision-makers as well as anyone who owns or controls at least 25 percent of the company. Any company that meets the definition of a reporting company and is not exempt is required to file its own BOI report in the FinCEN. A parent company may not file a BOI on behalf of its subsidiary companies. Likewise, a reporting company is not required to report information about its parent company or its subsidiaries.

Sole proprietorships, joint ventures, and general partnerships are not required to file a BOI report under the CTA unless they were created in the United States by filing a document with a secretary of state or government agency, making them a registered entity. There are a total of 23 exemptions for entities not required to file a BOI report. The list of exemptions can be found at https://fincen.gov/boi-faqs#C_2.

How to file a beneficial ownership information report

A BOI report is filed electronically through a secure filing system available via FinCEN's BOI E-Filing website (<https://boiefiling.fincen.gov>). There is no fee for submitting your beneficial ownership information report to FinCEN. It is expected that most companies will be able to submit their own BOI report using the guidance provided on the FinCEN website. However, some companies may choose to consult with and/or utilize the services of lawyers or accountants to file their reporting information.

The information required to complete the initial BOI report is basic. It includes the full legal name of the reporting company, any trade name or doing business as (DBA) name, the complete address of the reporting company's principal place of business, the state of formation and its employer identification number. For each beneficial owner, the reported information includes the owner's full legal name, date of birth, residential street address, an "identifying number" from a legal document like a driver's license or passport and an image of that document.

Partly to address privacy concerns and to streamline reporting burdens, individual owners can provide their information to the FinCEN and obtain a unique identifying number called a FinCEN identifier. The FinCEN identifier can then be used by the reporting company to identify individuals on the BOI report instead of entering individual information.

What Does This Mean to You?

Institutional risk includes laws, policies, and other changes in the public environment in which a business operates. In the sense that it involves people outside the business affecting changes that affect the business, managing institutional risk can seem out of your control as a business owner. However, staying informed about current and emerging issues is one of the best ways to manage institutional risk. In some cases, practical actions may be available to influence potential changes such as supporting lobbying efforts or conscientiously contributing in positive ways to local societal interests to foster good relationships with the local community. In many cases, the primary cost of managing institutional risk is time but it can be time well spent. Such is the case with the CTA as described in this newsletter.

If you are required to do so, you will need to report the beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN), a bureau of the U.S. Department of the Treasury. Any person who willfully violates the BOI reporting requirements of the CTA may be subject to civil penalties, the daily fine is currently \$591.

Some people may argue that providing the “government” such personal information has associated risks. Hackers and other nefarious people could possibly gain access to and use private data. Likewise, the government could use the BOI to track the owners.

Those of us at RightRisk believe compliance with this law has less risks than does non-compliance. Much of our personal information is already on the internet. We access financial accounts, make purchases, sell things, etc. The fines associated with non-compliance – up to \$500 per day, adjusted for inflation – have a higher probability of occurrence and higher impact on agricultural businesses.

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