

The Corporate Transparency Act and Agribusiness and Ag Tech Companies

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From family farms and businesses to established agribusinesses to emerging ag tech companies, a new federal law requires business entities to disclose their owners' and control persons' personal information, and for many entities, the time for disclosure is now.

Why this matters for you. From Wall Street to Main Street to your street, the vast majority of private and many nonprofit entities will be swept into Corporate Transparency Act (CTA) compliance. If you own or control a company, you need to pay attention. Not only is initial reporting important, but so is ongoing compliance and coordination with other information and disclosures you are currently making, and similar filings companies make on a regular basis.

For corporations, limited liability companies and limited partnerships operating in the U.S., the following CTA filing deadlines already apply:

- If the reporting company was formed prior to January 1, 2024, it will have until **January 1, 2025**, to submit its initial Beneficial Ownership Information (BOI) report.
- If the reporting company is created **during 2024**, it will have **90 calendar days** from its date of creation to file its initial BOI report.
- If the reporting company is created on/after **January 1, 2025**, it will have **30 calendar days** from its date of creation to file its initial BOI report.

What is this law about? If you have not heard of the CTA, you are not alone. Many business owners, executives and their professional advisors, are taken aback upon learning of the CTA's existence and reach. At its core, the CTA requires reporting of personal direct and indirect beneficial ownership and control information pertaining to businesses operating in the U.S. The personal identifying information (PII) includes name, date of birth, physical home address and your photograph. The financial crimes enforcement arm of the U.S. Department of Treasury (FinCEN) has established a Beneficial Ownership Secure System (BOSS) to receive, store and manage this vast influx of information. FinCEN estimates that over 32 million business entities in existence prior to 2024 and an additional 5 million business entities created in 2024 will be required to report in year one alone. This law aims to prevent money laundering, illicit financial activities, corrupt practices and

terrorist financing, at the expense of many legitimate businesses (and their owners and control persons) being swept up by these expansive new reporting requirements.

Who must report? Since January 1, 2024, PII has been required to be reported for natural persons owning, directly or indirectly, 25% or more of any class or category of economic ownership in a reporting company, or who have or may assert, directly or indirectly, “substantial control” over a reporting company.

What ongoing reporting obligation exists? Once the initial report is filed, the information reported must be updated in the BOSS within 30 days of any subsequent event that makes the previously reported information inaccurate. Attribution of ownership and what constitutes substantial control will vary from business to business and will require analysis and professional advice.

Exempt Entities. Some categories of business entities are exempted from CTA compliance. These generally include regulated business entities, such as publicly traded companies, insurance businesses, banking businesses, 501(c) federally tax-exempt non-profit entities, and governmental and quasi-governmental organizations, among others.

What will compliance look like? Businesses will need to compile, maintain and update their reported PII constantly to meet the CTA’s compliance requirements. Any change to or correction of previously reported information must be done within 30 days of the event, not when the business becomes aware of the event. All newly formed business entities beginning January 1, 2024, will be required to file their initial CTA report within 90 calendar days of formation. Reporting company businesses in existence before January 1, 2024, will have one year to make their original CTA report filing. That is, businesses existing prior to 2024 have until January 1, 2025, to file their initial reports.

What happens if you don’t comply? There are steep fines (\$591 per day up to \$11,820 per incident), and possible jail time (up to two years for willful violators) for those failing to timely and properly comply with the CTA. Further, the IRS recently announced increased enforcement, intending to utilize new data analytics technology to identify audit targets. FinCEN’s BOSS database has been identified by the IRS as a key component of such a data analytics initiative. This information is also available to other federal and state agencies who can use this new database to verify other information and potentially take action against companies. While there is some pending litigation around the CTA, at this time, there has been no delay to the effective dates or limitation on the CTA’s application outside of those litigants.

Who may access the BOSS? Information in the BOSS will be accessible to federal agencies, and law enforcement at the federal, state and local levels. Financial institutions may also have access to a company’s BOSS filing upon their customer’s consent—anticipate CTA disclosures becoming a key component of corporate and regulatory diligence for future transactions. Importantly, this information is not available to the general public and is not accessible through Freedom of Information Act (FOIA) requests.

Conclusion. The compliance requirements under the CTA went live on January 1, 2024, and you have only the remainder of this year to take any action to prepare for your compliance position. Now is the time to discuss the CTA with your legal team for guidance.

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