

THE SPARK PLUG

Virginia Automotive Association's Twice Monthly Member Update

Corporate Transparency Act

The Corporate Transparency Act (CTA), enacted in 2021, was passed to enhance transparency in entity structures and ownership to combat money laundering, tax fraud, and other illicit activities. It is designed to capture more information about the ownership of specific entities operating in or accessing the U.S. market. Although you are not involved in such activities, many businesses will be required to report information about their ownership to the U.S. Department of the Treasury starting in 2024. The reporting requirements under the CTA will apply to most family businesses, professional practices, LLCs, S-Corps, companies, and partnerships. More than 30 million existing companies will be impacted. Unless your company is already regulated and/or required to report beneficial ownership information, or is a publicly traded company, you are probably subject to the new transparency disclosures.

Below is a compliance manual and FAQs for members subject to this reporting burden.

Small, privately owned businesses, corporations, limited liability companies, limited partnerships, and other entities created by submitting documentation to a state entity such as a secretary of state, are subject to the law. Sole proprietors might not be subject to reporting, if they were not created by submitting documentation to such a state entity. There are exceptions for nonprofit organizations, and for companies with more than 20 employees and more than \$5 million in annual receipts. Businesses subject to this new requirement will need to report information about the individuals who own more than 25% or control the business. The latter category may be much broader. Only state federal investigators will have access to the database. However, with information on tens of millions of companies, security and privacy may be a concern.

Compliance Guide for the Corporate Transparency Act

The following information is intended to assist members with compliance requirements for the federal Corporate Transparency Act (CTA). This material is not legal advice. We attempted to ensure all information was correct as of the date of publication. If you are uncertain of your obligations under the CTA you are encouraged to obtain legal advice and speak with your CPA.

1) Is your business a "Reporting Company" under the CTA?

- Your business is a Reporting Company if it was created as a corporation or limited liability company under the laws of the United States or was created by filing a document with the secretary of state or similar office in your state.
- A sole proprietor might not be a Reporting Company unless it was created by filing a document with the secretary of state or similar office in your state.
- If you are not a Reporting Company, then you do not need to file a report under the CTA.

2) Is your business exempt from reporting?

- Nonprofit organizations are exempt.
- "Large" operating companies are exempt if they have more than 20 full-time (30+ hours/week) employees, a physical office in the United States, and reported and documented more than \$5 million in gross receipts or sales in the United States in the previous year.

3) If your business is a Reporting Company and not exempt, then when was your company created?

- If your business was created before 2024, then you must file a report before Jan. 1, 2025.
- If your business was created in 2024, then you must file a report within 90 days.
- If your business is created after 2024, then then you must file a report within 30 calendar days of formation.

4) Who are your “Beneficial Owners”?

A Beneficial Owner is anyone who:

- Directly or indirectly owns more than 25% of the reporting company, or
- Has substantial control over the reporting company, such as a senior officer, someone with the authority to appoint or remove officers, or important decision-makers. An important decision-maker is someone who directs, determines, or has substantial influence over the company, especially the business, finances or structure of the business.

This is a broad definition and there is no limit to the number of potential Beneficial Owners.

5) Are any Beneficial Owners exempt from being reported?

- An employee may be exempt from being reported as a Beneficial Owner if the employee is not a senior officer (for example, president, chief financial officer, general counsel, chief operating officer), only receives benefits from the company as an employee, and may be discharged by the company.
- An individual whose only interest in the Reporting Company is a future inheritance is exempt from being reported.
- A child is also exempt from reporting.
- A creditor with no other interest in the Reporting Company may also be exempt from being reported.

6) For Reporting Companies formed after 2023, do you have “company applicants”?

A company applicant is anyone who:

- Physically files the documentation to your state to form the entity, or
- Was primarily responsible for directing or controlling the filing.

A Reporting Company may only report up to two company applicants.

7) If you are a “Reporting Company” that isn’t exempt, then you must report the following information:

Information about the company:

- Reporting Company legal name, trade name and “doing business as” names
- Reporting Company physical address
- Jurisdiction where the reporting company was formed
- Reporting Company EIN

Information about each “Beneficial Owner” of the company.

- Beneficial Owner full legal name
- Beneficial Owner date of birth
- Beneficial Owner current residential address
- Beneficial Owner identifying number (from passport or driver’s license)
- Image of Beneficial Owner’s U.S. driver’s license, U.S. passport, or U.S. identification card

Information about each “company applicant” (if any) of the Reporting Company.

- Company applicant full legal name
- Company applicant date of birth
- Company applicant current business address
- Beneficial Owner identifying number (from passport or driver’s license)
- Image of Beneficial Owner’s U.S. driver’s license, U.S. passport, or U.S. identification card

8) Reports must be filed electronically to the Beneficial Owner Secure System (BOSS) on FinCEN.

A form will be available.

9) Once you have submitted a report, you will not need to report again unless or until:

- There is a change in Beneficial Owners
- There is a change in reported information about a Beneficial Owner (such as new address)
- The Reporting Company becomes eligible for an exemption

10) If previously reported information changes or needs correction, then file a complete and updated report within 30 days.

Changes may include a new driver's license with a different identified number or address. If a Reporting Company becomes exempt from reporting, then indicate so by filing an updated report that identifies the company name and check the box for exempt status.

Special notes:

- Some foreign corporations may be required to report.
- Individuals may obtain a FinCEN identifier to ease the reporting burden and increase privacy.

More information:

FinCEN Compliance Manual for small businesses: fincen.gov/boi/small-entity-compliance-guide

FinCEN FAQs: fincen.gov/boi/beneficial-ownership-information-frequently-asked-questions

Corporate Transparency Act: [fincen.gov/sites/default/files/shared/Corporate Transparency Act.pdf](https://fincen.gov/sites/default/files/shared/Corporate%20Transparency%20Act.pdf)

CTA Final Rule: federalregister.gov/documents/2022/09/30/2022-21020/beneficial-ownership-information-reporting-requirements

Amendment for companies formed in calendar year 2024: govinfo.gov/content/pkg/FR-2023-11-30/pdf/2023-26399.pdf

Q: What is the Corporate Transparency Act (CTA)?

A: The CTA was enacted by Congress in 2021 as part of the Anti-Money Laundering Act of 2020.

Q: Who must report under the CTA?

A: All corporations, LLCs, limited partnerships formed by filing documents with the secretary of state in their state must report under the CTA. A business required to report is called a "Reporting Company."

Q: Who is exempt?

A: There are 23 categories of exemptions, most of which apply to the financial industry. Nonprofits and most sole proprietors (unless they were formed by filing a document with the state's secretary of state) are exempt. Most businesses with more than 20 full-time employees and more than \$5 million in receipts are also exempt.

Q: When are reports required?

A: Existing "reporting companies" must report by Jan. 1, 2025; the AOA recommends reporting in 2024, rather than waiting for the last day. New businesses formed in 2024 must report within 90 calendar days of formation. New businesses formed after 2024 must report within 30 days. Once the initial report is filed, companies need not file again unless or until they have correction or certain changes in ownership.

Q: What must be reported?

A: The CTA requires companies to report information about "Beneficial Owners"—people who "own" more than 25% of the business or have "substantial control" of the business.

Q: Do I need to report previous owners?

A: No. Only report owners as of the time you are filing the report.

Q: Where do we report?

A: Reports are made to the Financial Crimes Enforcement Network (FinCEN), part of the Department of the Treasury. The electronic portal is called the BOSS—the Beneficial Owner Secure System.

Q: What is a “Reporting Company”?

A: A Reporting Company is any corporation, limited liability company, limited partnership or similar entity created by filing a document with any U.S. state or territory.

Q: What is a “Beneficial Owner”?

A: A Beneficial Owner is an individual who directly or indirectly owns more than 25% of the reporting company or has substantial control over the reporting company, such as a senior officer, someone with the authority to appoint or remove officers, or important decision-makers. An important decision-maker is someone who directs, determines or has substantial influence over the company, especially the business, finances or structure of the business.

Q: How many Beneficial Owners need to be reported?

A: All of them, with no limit.

Q: Is there a fee to file?

A: No.

Q: How many businesses must file?

A: The Department of the Treasury predicts more than 30 million businesses will need to report in 2024 and 5 million annually after 2024.

Q: Will the reported information be made public?

A: No. The database will be accessible by federal and state entities involved in law enforcement, national security, and intelligence.

Q: Is financial information reported?

A: No.

Q: What is the Financial Crimes Enforcement Network?

A: FinCEN is a bureau within the U.S. Department of the Treasury.

Q: Why did Congress enact this burden on small businesses?

A: Privately held U.S. companies have been used for illegal and criminal activities.

Q: What if I don't report?

A: Willful failure to report or update a report can result in civil penalties up to \$10,000 and criminal penalties up to two years imprisonment.

Q: Should my company report beneficial ownership information now?

A: No. No one needs to report beneficial ownership information to FinCEN until January 1, 2024. FinCEN is currently not accepting any beneficial ownership information reports.

Q: Where can I find the form to report?

A: The form to report beneficial ownership information is not yet available. Once available, information about the form will be posted on FinCEN's [beneficial ownership information webpage](#).

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