

# BULLETIN

COLORADO AUTOMOBILE DEALERS ASSOCIATION

## IN THIS ISSUE

STATE OF THE ASSOCIATION  
PIONEERING THE FUTURE  
USED CAR TRENDS & WHAT YOU NEED TO KNOW  
THE CORPORATE TRANSPARENCY ACT

DECEMBER 2023 | VOLUME 24 | ISSUE 9







## CONTACT US

### Colorado Automobile Dealers Association

290 East Speer Blvd., Denver, CO 80203 | 303.831.1722

info@colorado.auto | www.colorado.auto

## OUR STAFF

### Matthew Groves

CEO

matthew.groves@colorado.auto | 303.282.1449

### Beth Weir

Vice President of Finance

beth.weir@colorado.auto | 303.457.5120

### Mark Zeigler

Clear the Air Foundation Director

mark.zeigler@colorado.auto | 303.457.5105

### Khorrie Luther

Associate Vice President of Operations

khorrie.luther@colorado.auto | 303.457.5122

### Dan Allison

Member Services Coordinator

dan.allison@colorado.auto | 303.831.1722

### Devin Saunders

Billow Barrow Fellow for Government Affairs

devin.saunders@colorado.auto

### Caitlin Ming

Director of Member Services

caitlin.ming@colorado.auto

### Margo Finer

Director of External Affairs & Communications

margo.finer@colorado.auto



Colorado Automobile Dealers Association

## About Our Association

### **Representing the franchised new car dealers of Colorado**

The Colorado Automobile Dealers Association (CADA) is the voice of the automotive retail industry throughout the state. As the automobile dealer trade association, CADA advocates issues of importance to the auto industry, Colorado auto dealers and Colorado's driving public.

The Denver Automobile Dealers Association started in 1914 to operate the annual Denver Auto Show which dates to back 1902. Colorado Automobile Dealers Association soon followed and both associations operated together with shared staff and a headquarters building. In 2010, after almost eight decades together, the two associations became one. The history now dates over 108 years of high level automotive and mobility impact.

Today, our dealers range from small family-owned dealerships, to nationally operated, multiple franchise corporations. CADA represents a united front for over 300 new car, truck, motorcycle and RV dealers. From local, state and federal policymakers, to the public and the media, CADA is the voice for Colorado's auto industry.





**Matthew Groves**  
CEO

## State of the Association

Article II, Section 3 of the U.S. Constitution states that the President shall “from time to time give to the Congress information of the state of the Union and recommend to their consideration such measures as he shall judge necessary and expedient.”

Now, trust me, I can hear the eye rolls as another lawyer goes off waxing poetic on our Constitution. But, it is necessary to check in with our constituents/members to ensure we are fulfilling our obligation to keep the faith with dealers. It’s also therapeutic for an association to reflect on what has been accomplished in a year, to define 2023 thematically, and in so defining it, determine the logical extension of that theme to serve as a north star for our 2024 advocacy.

It has been approximately seven and half months since you have collectively entrusted me with the Association. In this short time, we have returned the Denver Auto Show to profitability, cut our organizational spending by hundreds of thousands of dollars, eliminated events that were suffering in attendance and enthusiasm, developed a strategy for our political spending, and retooled our staff to match the enthusiasm and determination that our dealers show us every quarter. At the risk of sounding cliché, the state of the Association is strong.

Before this article begins to sound self-adulating, I should clarify: No amount of John Wooden-esque leadership could have led to a year as good as we have had. I have

three things to be publicly thankful for this holiday season. First and foremost is one of the most cohesive teams I have ever been a part of. Our staff comes from varied backgrounds, but their dedication to our mission and our dealers, side-by-side with their ability to put the Association before their own interests, have helped every one of them grow into new or expanded roles as we operated on a short staff this year. I am intensely proud of the personal growth I have seen after we gambled on a very young team to perform at a very high level with such a short runway.

The second thing I am thankful for is a Board of Directors – especially an Executive Committee – that was willing to engage to a very high degree. We ask a lot of our directors. Each of you knows the commitment of time and treasure it takes to run a successful dealership or dealer group. These individuals managed to break away to provide constant guidance in our first year. In Q1, our Executive Committee met at least weekly. Many directors took panicked calls from me, encountering new challenges for the first time. A dozen took three days to join us in Washington, DC, convincing one of our Representatives to split from their party and vote with NADA on an environmental issue. At every level, this engagement ensured success.



Finally, I am thankful for luck. You've certainly heard the axiom, "It's better to be lucky than good." On top of everyone toiling to make CADA what it is, we had a lot of things out of our control go right this year. The weather cooperated with us for the Denver Auto Show. The Broadmoor let us out of our Annual Convention contract. Everyone showed up for the golf tournament. And we've welcomed two new add points in 2023. In a year marked by pessimism, with pundits predicting dark days in politics and markets, Colorado enjoyed its stereotypical 300 days of sunshine. While we cannot count on it every year, we will be grateful for 2023.

So, as we wrap, what does this all mean for CADA in 2024? Well, we believe we are on to something. A key goal in the recruitment and retention of a younger, 'next generation' association was to usher in the new orthodoxy of the generation slowly ascending to leadership in industry – save Joe Biden. Openness to new partnerships, putting people over profits, and showing above all using all of our budget and prowess to show value to our members. We want the reputation of being easy to work with. We want to be worthy of trust. Finally, we want to be known as so strong in our fundamentals that we become an authority for anyone seeking guidance in transportation policy or compliance issues.

**Thank you for making us strong in 2023. We hope to deliver more good news in the new year.**

## **Pioneering the Future: Unveiling the Hyundai-Amaزون Pilot Program for Dealers**

In a landmark collaboration announced at the 2023 Los Angeles Auto Show, Hyundai Motor Company and Amazon set the stage for a transformative partnership that extends far beyond the conventional boundaries of automotive retail. This alliance, encompassing online vehicle sales, AWS cloud transformation, and in-vehicle innovations, opens a new chapter for dealers. As we delve into the intricacies of the Hyundai-Amaزون pilot program, it becomes evident that this initiative is not just about change; it's about empowering dealers to navigate and shape the future of automotive retail.

### **Charting a New Course: Amazon's Entry into Auto Sales**

The crux of the pilot program lies in Amazon's foray into the automotive market, enabling dealers to post and sell their vehicle inventory on the global online retail giant's platform. Initially rolling out in five U.S. locations—Seattle, Los Angeles, New York City, Denver, and Atlanta—the pilot invites select dealers to explore the opportunities presented by the intersection of e-commerce and traditional dealership services.



**Devin Saunders**  
Billow Barrow Fellow for  
Government Affairs

### **Dealer Autonomy: Setting the Stage for the Pilot Program**

One of the pivotal aspects of the pilot program is the absence of fees for participating dealers. This risk-free entry allows dealers to navigate the uncharted waters of online sales and gauge the potential impact on their operations. During this phase, dealers retain the autonomy to set prices independently, adhering to Minimum Advertised Price (MAP) guidelines, ensuring that the dealer's expertise and market understanding remain integral to the sales process.





### **Exclusive Access: Amazon Corporate Employees as Pioneer Customers**

The pilot program kicks off with a select audience, exclusively catering to Amazon corporate employees and their families. This phased approach, commencing in January 2024, provides a controlled environment for dealers to refine their strategies and customer interactions. The anticipated general public launch in April 2024 widens the scope, ensuring a gradual and strategic expansion of the program.

### **Streamlined Processes: Navigating the Digital Retail Landscape**

The pilot program introduces streamlined processes aimed at enhancing the customer experience and facilitating smoother transactions. Digital retail tools on the Amazon platform enable customers to discover available vehicles in their area, set preferences, and seamlessly complete transactions online. Notably, the purchase finalization and vehicle pickup remain tethered to the dealership, preserving the vital connection between dealers and their customers.

### **Key Considerations and Ongoing Dialogue: Dealers at the Forefront**

Amidst the excitement, dealers rightly harbor questions about several aspects that are yet to be fully detailed. These include data collection, financing structures, insurance requirements, pricing negotiations, salesperson commissions, return policies, and the absence of an online mechanism for vehicle trade-ins.

The National Automobile Dealers Association (NADA) and the Colorado Automobile Dealers Association (CADA) are actively engaging with Hyundai and Amazon, ensuring that the concerns and interests of dealers are at the forefront of ongoing discussions.

### **Collaboration for Success: Resource for Questions**

Change is the only constant, and the Hyundai-Amazon partnership invites dealers to be architects of this change rather than passive spectators. NADA and CADA are committed to working alongside dealers, addressing concerns, and maximizing the benefits of this partnership for both dealers and consumers. Matthew and Devin are and will be readily available to answer questions and provide updates. Together, dealers and industry leaders are not just adapting to change; they are actively shaping the future of automotive retail.





**Carol Spradley**  
Board Chair

## Wrapping up 2023

As January draws closer, I will complete my service as CADA's 2023 Board Chair. Agreeing to serve on the Executive Committee is a four-year commitment, cycling through the Secretary, Treasurer, Vice Chair, and Chair positions. Spending this amount of time overseeing nearly every facet of the Association gives you an appreciation for all that CADA does for dealers. We are all familiar with the legislative advocacy function and the Denver Auto Show, but when the lights turn off in the convention center in April, CADA remains a complex 12-month-a-year business.

2023 was a generational change for the Association. Generally, when long-term leadership departs, it takes an organization a year or two to regroup, reform, and resume operations as they were before the change. Less than one month after our change we held our first successful Auto Show since 2019. By the 4th quarter board meeting, we had restored our team to eight people – welcoming Cailin, Devin, and Margo – and in-sourced many of our contracted functions as a part of a campaign to cut discretionary spending by over \$250,000.

As a 501(c)(6) non-profit organization, it is never CADA's principal goal to make a large profit. The return on investment of legislative advocacy is preventing or softening the blow of legislation that will negatively impact your dealership's balance sheet.

It can be months, even years before the impact of a successful campaign can be felt. And its benefit may appear as a red number on your financials – albeit smaller than would have otherwise appeared. However, last year we were blessed with two revenue increasing bills, in our warranty reimbursement fix and raising the cap on GAP. In spite of the intangible nature of the benefit, CADA was also able to produce a profitable P&L this year. The Board of Directors has approved the investment of the surplus to begin rebuilding the Association's reserve.

In addition, the Board has approved a budget for 2024. With successful execution, the Association could be on the way to normalizing profitability. This is not to say that there are not challenges on the horizon. But, with a united front, we are strongly situated to propel ourselves into the mid-2020s and beyond. We are in good hands with Rob Edwards coming to serve as your CADA Board Chair for 2024. But a chair can only be as effective as the membership is engaged. I encourage you to look for ways to participate in committees or meetings next year to keep our industry strong.





## Used Car Trends and What You Need to Know Now

Online inventory platforms like SmartAuction don't just save time and create efficiencies. They can also help you navigate market uncertainty. To help you maximize our platform's potential, we sat down with Josh Callahan, Senior Director, Remarketing Services at Ally SmartAuction, to talk about the used car landscape, what's next on the horizon, and how online auctions can help you come out ahead.

### The State of the Market

From high interest rates to lingering supply chain issues and a global chip shortage, a wide range of factors have recently exerted pressure on the automotive industry (and will likely continue to do so). What hasn't changed is customers' need for the right vehicles at the right time and price. An online auction platform can help you manage your inventory and stay ahead of the curve. In today's climate, your online auction platform is your best friend, allowing you to do your job faster and on your own time. While in-person auctions will always have their place, virtual auctions allow you to take a broader view of vehicles available nationwide.

With SmartAuction's two live auction windows, you can see a car in the morning, have time to assess key information regarding the vehicle's value, and then place a bid accordingly that feels in line with your profit objectives.

### Maximizing Opportunity

When it comes to pricing decisions, trusting your gut is easier when you're backed by solid research and real-time data. Josh Callahan, Senior Director, Remarketing Services at Ally SmartAuction, calls this the "half art, half science" of auction bidding. SmartAuction contributes to this equation by offering more cars and a longer bidding window so you have time to assess what's out there...and then get exactly the cars you need to drive your dealership goals.

Here are five tips to help make the most of Ally SmartAuction:

- 1. Look daily:** Every day, 30k+ cars are on the platform for your perusal, and approximately 12k vehicles are first-day vehicles. New inventory gets added with every auction window. If you don't see what you want today, there's a good chance you will tomorrow.
- 2. Use the "Saved Search" function:** Make sure your preferences are optimized to your market and to your lot. Then, set your search criteria to help you find what you're looking for with preferences such as vehicle type, year, make, model, vehicle mileage, distance and more.





- 3. Buy your way:** Play the long game and bid, or choose to “Make Offer” or “Buy Now” if you see exactly what you’re looking for. Also, don’t miss out on available rebates, incentives and rewards. The more you purchase through SmartAuction, the better your rewards will be.
- 4. Sell your way:** Use the SmartAuction mobile post app to log new vehicles quickly and get them on the platform ready for sale. Capture accurate condition reports and upload other pertinent information in a matter of minutes. Once your inventory is listed, trust our platform to go to work. Almost 70% of dealer-owned vehicles sell by the first or second auction day.
- 5. Plan ahead:** Don’t let existing inventory sit too long. Our rule of thumb: keep 30–60 days worth of vehicles on your lot at all times, and update them frequently so that customers always have fresh options.

### Looking Toward the Future

The world is only getting more digital. Now’s the time to get up to speed on new ways of doing business, especially as the market continues to evolve. When buying or selling online, it’s critical to trust the platform and the people behind it. Callahan notes, “Ally’s a trusted name — a lot of dealers do business with Ally on a daily basis, whether through SmartAuction or our other business lines in Auto Finance.”

Add to that our dedicated Remarketing team and our SmartAuction Call Center, and you’ve got a powerful tool in your arsenal to manage inventory, roll with the punches, and outpace the competition.

**ally** do it right.



# 'Tis the season for profits

## Insights to end the year strong

Gift-wrapping season is here and so is the opportunity to end the year on a profitable note. The good news is that leveraging technology to increase the efficiency of your operations will boost profitability across your business. Insights from dealers surveyed across the country back this up, illustrating how Dealertrack solutions help dealerships streamline operations and grow revenue — so you can end the year strong and get excited for what comes next!

**77%**

of dealers say they are more efficient using Dealertrack.\*

### Digitization's effect on operations

When you leverage connected technology to streamline operations, your entire staff works more efficiently. Now's the time to digitize your paper trail and set-up integrated solutions so customer and deal data flows seamlessly from leads to contracts to registration and title. The result? Big financial gains.

**4 OUT OF 5**

dealers surveyed said Dealertrack solutions are easy to use.\*

### Technology that simply works

Your staff can spend their time profitably when systems are easy to use and easy to integrate — and your customers benefit, too. It

starts with a DMS built to enable reliable connectivity across all your operations to reduce data re-entry and move customers swiftly through deals. Technology that works exactly the way you expect helps speed up the purchase process and reduce overhead for more profit added to your bottom line.



**67%**

of dealers surveyed believe Dealertrack solutions help make their dealerships more profitable.\*

### Add profit and efficiency

Forward-thinking and innovative technology is vital to maximize profit and growth. Digitizing processes, simplifying workflows, and connecting systems makes selling cars easier so your staff can be more productive, make more deals, and spur more growth.

### End the year strong

Backed by the power of Cox Automotive, Dealertrack's advanced DMS, F&I power tools, and complete set of registration and titling solutions — all with proactive support — connect seamlessly across departments to boost productivity, speed deals and drive profits.

We are proud to be the exclusively-endorsed Reg & Title partner of the Virginia Automobile Dealers Association (VADA).

**Schedule a no-obligation call with Kim Haddaway, regional sales manager for Virginia, to discuss how our solutions and support can help you end the year strong — and get a running start on 2024.**







**Mark Ziegler**  
Director, Clear the Air Foundation



**CLEAR THE AIR**  
FOUNDATION



## Record Vehicle Donations, Scholarships, and Exciting Partnerships!

The Clear the Air Foundation is on track for the third-best year in its history for vehicle donations and the second-best year for recycling revenue. This is due, in large part, to the Vehicle Exchange Colorado (VXC) program which has brought in 221 vehicles as of December 12, 2023. There are currently 83 new car dealerships signed up for this program. This program offers a rebate of \$4,000 to \$6,000 towards the purchase or lease of a new or used EV or PHEV. If you haven't signed up for this program yet, I encourage you to do so as it will help you move your EV and PHEV inventory. Remember, this program has funding for ten years, so it would make sense to take full advantage of it. Here is a [link](#) to the VXC automobile dealer pre-registration form.

We've spent \$48,539 on scholarships this year. A total of 127 scholarships have been awarded since 2015, with a total value of \$442,552. I anticipate breaking through the \$500,000 mark in 2024. Scholarships are funded by vehicle donations or corporate donations. If you have an employee who is a student at an automotive program or is an apprentice, I encourage you to have them apply for the scholarship [here](#). It truly is life-changing.

Another exciting development in 2023 is our partnership between the Clear the Air Foundation and IPOWER Alliance. Diane Dandeneau, CEO, is focused on bringing hail protection with solar power generation and EV charging technology to dealers throughout the state. She is a believer in what we're trying to accomplish by recycling old cars and turning them into scholarships for auto tech students, and as such she has committed to providing the Foundation with a portion of proceeds for every project involving a new car dealership in Colorado. I'm thrilled to announce that the very first project under this agreement will bring in \$17,000 for the Foundation! If your store is considering this type of a project in the future, I encourage you to include IPOWER Alliance in the bidding process. Diane can be reached at [ddandeneau@ipoweralliance.com](mailto:ddandeneau@ipoweralliance.com).

As we approach the end of the year, I would like to mention that donated vehicles come with a bill of sale that you can use to reduce your tax liability. Please take a moment to review your inventory and donate those clunkers [here](#).

Finally, on the next page is a recap of donations from January through November.



# Clear the Air Foundation 2023 Year-To-Date Vehicle Donations

DEALER DONOR	TOTAL	VXC
The Faricy Boys	19	1
Mike Maroone Chevrolet South	1	0
Dellenbach Motors	14	2
Mountain States Toyota	14	1
Alpine Buick GMC South	12	0
Pueblo Dodge Chrysler Jeep Ram	12	1
Schomp Ford	11	0
Schomp Subaru	11	1
Pedersen Toyota	10	9
AutoNation Chrysler Jeep Broadway	9	0
Emich Volkswagen	9	7
Pueblo Toyota	9	0
Tynan's Nissan	9	9
Boulder Nissan	8	8
Emich Chevrolet	8	7
Markley Motors	8	0
Schomp Hyundai	8	6
Stevinson Toyota East	8	0
Johnson Auto Plaza	7	0
O'Meara Buick GMC	7	0
Peak Kia	7	5
Schomp Nissan	7	2
Summit Ford	7	0
Schomp Honda	6	0
Groove Toyota	5	0
Phil Long Ford of Chapel Hill	5	0
Spradley Chevrolet	5	0
The Faricy Boys Ford	5	0

Emich Volkswagen of Boulder	4	3
John Elway Chevrolet	4	0
O'Meara Ford	4	0
Steamboat Motors	4	0
Western Slope Auto	4	0
Arapahoe Hyundai	3	3
AutoNation Dodge Ram Broadway	3	0
Berthod Motors	3	0
Emich Kia	3	3
McDonald Volkswagen	3	3
Mike Maroone Buick GMC	3	0
Morehart Murphy RAC	3	1
Perkins Motors	3	0
Phil Long Ford of Denver	3	0
Phil Long Ford of Motor City	3	0
Phil Long Ford of Raton	3	0
Phil Long Honda of Glenwood Springs	3	0
Schomp BMW	3	3
Christopher's Dodge Ram	2	0
Dave Solon Nissan	2	0
Empire Lakewood Nissan	2	2
Ferarri of Denver	2	0
Fort Collins Chrysler Dodge Jeep Ram	2	0
Fort Collins Kia	2	2
Foundation Hyundai	2	2
Groove Ford	2	0
Groove Mazda	2	0
Hellman Motor Company	2	0



O'Meara Volkswagen	2	0
Phil Long Hyundai of Motor City	2	2
Red Rock Nissan	2	2
Schomp Mazda	2	0
Sill-Terhar Motors	2	0
Spradley Kia	2	0
Stevinson Chevrolet	2	2
Subaru of Loveland	2	0
Subaru of Pueblo	2	0
Tynan's Volkswagen	2	2
Valley Mitsubishi	2	2
Audi Denver	1	0
AutoNation Chrysler Jeep Arapahoe	1	0
AutoNation Dodge Ram Arapahoe	1	0
AutoNation Toyota Arapahoe	1	1
Bighorn Toyota	1	0
BMW of Loveland	1	0
Castle Rock Ford	1	0
Durango Motor Company	1	0
Fowler Chevrolet	1	1
Freeway Ford	1	0
Glenwood Springs Subaru	1	1
Grand Junction Chrysler Dodge Jeep Ram	1	0
Greeley Nissan	1	1
Groove Subaru	1	0
Honda of Greeley	1	0
Jaguar Lakewood	1	1
Jaguar Land Rover Flatirons	1	0
Larry H Miller Nissan 104th	1	1
LHM Colorado Jeep	1	1
Mike Shaw Subaru	1	0

Mini of Loveland	1	1
Peak Kia Colorado Springs	1	1
Peak Kia North	1	0
Phil Long Glenwood Springs Subaru	1	0
Phil Long Hyundai of Chapel Hills	1	0
Phil Long Subaru	1	0
Phil Long Valucar	1	0
Polestar Denver	1	1
Schomp Mini	1	0
Stevinson Toyota West	1	0
TruWest	1	0
Turner Automotive	1	0
Valley Nissan	1	1
<b>DEALER TOTAL</b>	<b>392</b>	<b>102</b>

<b>OTHER</b>		
Tesla Aurora	63	63
Fort Carson	59	0
Tesla Loveland	16	16
Private Donation	14	0
Tesla Colorado Springs	10	10
Pikes Peak State College	9	0
SRT	3	3
Boulder Hybrids	2	2
School of Mines	2	0
Warren Tech	1	0
<b>OTHER TOTAL</b>	<b>179</b>	<b>94</b>

<b>GRAND TOTAL JAN - NOV '23</b>	<b>571</b>	<b>196</b>
----------------------------------	------------	------------



# Is Your Business Ready to Comply With the Corporate Transparency Act?

On September 29, 2022, as part of the Anti-Money Laundering Act of 2020, the U.S. Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN") issued a final rule (the "Final Rule") for implementation of reporting requirements of the Corporate Transparency Act (the "CTA"). The implications of the CTA and its reporting requirements are far-reaching and affect entities, investors, managers, officers, directors, owners and even advisors to businesses of all shapes and sizes. In this article, we discuss: (i) the CTA and the Beneficial Ownership Information ("BOI") reporting requirements promulgated thereunder; (ii) who the CTA and BOI reporting requirements apply to; (iii) what information must be disclosed and when; (iv) penalties for non-compliance with the CTA and BOI reporting requirements; and (v) how business owners, officers and companies can prepare to comply with the CTA. On January 1, 2024, will your company be prepared?

## What is the CTA? What is Beneficial Ownership Information?

The CTA and BOI reporting requirements provide U.S. government departments and agencies, law enforcement, tax authorities and financial institutions ("Governmental Actors") with a valuable tool, a database of BOI, to assist enforcement efforts and prevention of financial crimes, such as money laundering or evasion of U.S. sanctions, through the use of "shell" companies.

What information will comprise Beneficial Ownership Information? The Final Rule requires a Reporting Company (defined below) to report on its own behalf: (i) information regarding the company itself; (ii) information for each beneficial owner; and (iii) information for company applicants. The information required to be disclosed for each of these subclasses is addressed later in this article. Once the CTA and BOI become effective, Reporting Companies will need to provide the applicable BOI to FinCEN in their initial report, and additionally within

thirty (30) days following any change in any of the BOI submitted to FinCEN or the Reporting Company becomes aware of inaccuracies in a previously submitted report. In order to enforce compliance and create an up-to-date comprehensive tool for Governmental Actors, the CTA imposes severe penalties for a failure to supplement/amend BOI, within any applicable thirty (30) day period.

## Do the CTA BOI Reporting Requirements Apply to My Business?

The determination as to whether the CTA BOI reporting requirements apply to you is dependent on whether your company is defined as a Reporting Company, which involves an analysis of the Final Rule. The Final Rule provides that the term Reporting Company is inclusive of both "domestic reporting compan[ies]" and "foreign reporting compan[ies]." Pursuant to the Final Rule, a "domestic reporting company" is defined as a "corporation, limited liability company (LLC), or any entity created by the filing of a document with the secretary of state or any similar office under the law of a state or Indian Tribe." Alternatively, a "foreign reporting company" is defined as a "corporation, LLC, or other entity formed under the law of a foreign country that is registered to do business in any state or tribal jurisdiction by the filing of a document with a secretary of state or similar office" (domestic reporting companies and foreign reporting companies hereinafter referred to individually as a "Reporting Company").



The catch-all language, “filing of a document with a secretary of state or any similar office,” in both definitions is meant to capture other entity types such as most limited partnerships, limited liability partnerships, limited liability limited partnerships, and business trusts, thus triggering a BOI reporting requirement for these entity types, as well. However, to the extent such entities do not require a filing with a secretary of state or similar office, they would not meet the definition of a Reporting Company. Pursuant to the Final Rule, there are twenty-three (23) express exemptions from the definition of Reporting Company, including those for banks, large operating companies, companies with more than 20 U.S.-based full-time employees, and more. Almost all of the exemptions are related to industries, businesses or entity types that are already regulated by another arm of the Federal Government.

### **What Information Needs to Be Disclosed and When?**

BOI reports for a Reporting Company will be filed via a government-controlled, secure online filing system, similar to systems currently utilized by the IRS and FINRA. The BOI reports will require: (i) disclosure of certain information regarding the Reporting Company itself; (ii) disclosure of certain information for each “beneficial owner” of the Reporting Company; and (iii) in the case of a Reporting Company formed or registered after January 1, 2024, disclosure of certain information for each of a Reporting Company’s “company applicants.” The information required to be submitted in the initial filing of a Reporting Company includes: (a) The full legal name of the Reporting Company; (b) any trade name or DBA of the Reporting Company; (c) a complete current address consisting of: (1) in the case of a Reporting Company with a principal place of business in the United States, the street address of such principal place of business; (2) in all other cases, the street address of the primary location in the United States where the Reporting Company conducts business; (d) the jurisdiction of formation of the Reporting Company; (e) for a foreign Reporting Company, the State or Tribal jurisdiction where such company first registers; and (f) the IRS Taxpayer Identification Number (TIN), (including an Employer Identification Number (EIN)) of the Reporting Company. The initial report of the Reporting Company also must include the information for all “company applicants” and “beneficial owners.”

How is the determination of “beneficial owner” status made? Pursuant to the Final Rules, “any individual who, directly or indirectly, either (1) exercises substantial control over a Reporting Company, or (2) owns or controls at least twenty-five (25) percent of the ownership interests of a Reporting Company, is a “beneficial owner.” The troubling part of this definition lies in the language “substantial control.” The language in the Final Rules was intentionally bolstered to ensure information is captured and reported by individuals who direct the actions of a Reporting Company but do not own a twenty-five percent (25%) ownership interest, thereby capturing the leadership and control rank and file of the Reporting Company. Under the Final Rules:

An individual exercises substantial control over a reporting company if the individual: (A) Serves as a senior officer of the reporting company; (B) Has authority over the appointment or removal of any senior officer or a majority of the board of directors (or similar body); (C) Directs, determines, or has substantial influence over important decisions made by the reporting company, including decisions regarding: (1) The nature, scope, and attributes of the business of the reporting company, including the sale, lease, mortgage, or other transfer of any principal assets of the reporting company; (2) The reorganization, dissolution, or merger of the reporting company; (3) Major expenditures or investments, issuances of any equity, incurrence of any significant debt, or approval of the operating budget of a reporting company; (4) The selection or termination of business lines or ventures, or geographic focus, of the reporting company; (5) Compensation schemes and incentive programs for senior officers; (6) The entry into or termination, or the fulfillment or non-fulfillment, of significant contract; (7) Amendments of any substantial governance documents of the reporting company, including the articles of incorporation or similar formation documents, bylaws, and significant policies or procedures; or (D) Has any other form of substantial control over the reporting company.<sup>1</sup>

1 31 CFR § 1010.380(d)(1)(i).

The broad stroke language of the criteria above, captures many individuals in a company, creating a burdensome ongoing task for companies who are not covered by a reporting exemption.





What criteria dictates whether an individual or organization is considered a “company applicant?” Pursuant to the Final Rules, a Reporting Company formed or registered after January 1, 2024, must report certain information for each “company applicant.” The Final Rules clarified the identity of “company applicants,” explaining a company applicant is the individual who directly files the

document that first registers the Reporting Company as well as the individual who is primarily responsible for directing or controlling such filing if more than one individual is involved in the filing of the document. This would implicate both the person who gave the instruction to form the company, as well as the person who actually inputted the information, even if they only serve a clerical role.

The Final Rules require that a Reporting Company must submit the following information to FinCEN for each “beneficial owner” and “company applicant (as applicable):

(A) The full legal name of the individual; (B) The date of birth of the individual; (C) A complete current address consisting of: (1) In the case of a company applicant who forms or registers an entity in the course of such company applicant’s business, the street address of such business; or (2) In any other case, the individual’s residential street address; (D) A unique identifying number and the issuing jurisdiction from one of the following documents: (1) A non-expired passport issued to the individual by the United States government; (2) A non-expired identification document issued to the individual by a State, local

government, or Indian Tribe for the purpose of identifying the individual; (3) A non-expired driver’s license issued to the individual by a State; or (4) A non-expired passport issued by a foreign government to the individual, if the individual does not possess any of the documents described [above]; and (E) An image of the document from which the unique identifying number [above] was obtained.<sup>2</sup>

With all of the information that needs to be disclosed, the question of when does a Reporting Company need to submit, remains. The effective date of the Final Rules is January 1, 2024 (the “**Effective Date**”). As such, a Reporting Company in existence prior to the Effective Date will have until January 1, 2025 to file their initial report, while a Reporting Company created on or after the Effective Date must file their initial report within thirty (30) calendar day of whichever is earlier in time: (i) the date on which it receives actual notice that its creation has become effective; or (ii) the date on which a secretary of state or similar office first provides public notice that the Reporting Company has been created. As mentioned above, pursuant to the Final Rules, a Reporting Company must file an amendment within thirty (30) days after any change occurs to “required information previously submitted to FinCEN concerning a Reporting Company or its beneficial owners.” The Final Rules deviated from the initial proposed rules, which required updating of information for “company applicants,” to no longer require amendments to reflect changes for a “company applicant.”

## Penalties for Non-Compliance

Due the urgent need for Governmental Actors to receive this information to assist in compiling information for creation and upkeep of their comprehensive database, the CTA provides for steep penalties for non-compliance. Currently, the failure to timely provide complete and/or updated information, or willfully providing false or fraudulent BOI can result in civil penalties of \$500.00 a day up to \$10,000.00 and criminal penalties up to two (2) years in prison.

## How Can Business Owners and Officers Be Proactive?

Business owners and officers of a Reporting Company should utilize this time to get in front of the BOI reporting requirements and determine how they are going to manage their reporting requirements. Some things to consider, include: (1) Appointing an individual in your organization or hiring legal counsel to assist in identifying beneficial owners, compilation of BOI information, submission of initial reports, and ongoing CTA compliance; (2) Amending governing documents (bylaws, operating agreements, etc.) to include provisions regarding the CTA and member/ shareholder's responsibility to timely provide updated information, when a change to their BOI occurs; (3) Rollout various additional protections for the company in case of instances of non-compliance; and (4) Inquire into databases and other ways to track your members/ shareholders and other "beneficial owners" BOI.

To learn more about how to prepare your business for January 1, 2024, please reach out to one of Fairfield and Woods, P.C.'s corporate attorneys.

2 31 CFR § 1010.380(b)(1)(ii).

**By: Gil B. Selinger and Matt C. Cooper**







**The State of Colorado's Vehicle Exchange Colorado (VXC) program continues to accept automobile dealer registrations on a rolling basis.**

---

The VXC program helps income-qualified Coloradans recycle and replace their old or high-emitting vehicles with electric vehicles (EVs) by providing approved applicants with a discount on the upfront cost of an EV purchased or leased at an authorized automobile dealer.

Please [visit the VXC website](#) to learn more about the program (see the "Participating Automobile Dealers" section). If you are interested in preregistering your automobile dealer for this program, you may do so at this link. Following completion of your preregistration, a VXC program representative will contact you regarding next steps.



**COLORADO**  
Energy Office

