

Trusts & BOI Reports

Considerations for trusts under the CTA.





The CTA, BOI Reports, and Trusts

In 2021, Congress passed the **Corporate Transparency Act (CTA)** on a bipartisan basis. This legislation introduced a **new beneficial ownership information (BOI) reporting requirement** as part of the U.S. government's robust efforts to thwart bad actors from concealing or profiting from their unlawfully obtained assets through shell companies or other opaque ownership structures.

Under the CTA, millions of companies registered to do business in the United States are now required to submit a report containing beneficial ownership information (BOI) to the Financial Crimes Enforcement Network (FinCEN). Since the implementation of this new compliance requirement, FinCEN has continued to update its FAQ section to offer comprehensive clarity on the new compliance requirement, along with its impact.

Recent updates to FinCEN's FAQs section have addressed the topic of trusts in greater detail. At Parasec, we've received numerous client inquiries about this topic. As such, we have compiled a comprehensive set of FAQs on the matter into a single document to better assist our clients.

Is a trust subject to the CTA?

The applicability of the CTA depends on whether the entity qualifies as a "reporting company" or a "beneficial owner." A reporting company is an entity created by filing a document with a secretary of state or a similar office in the United States, or an entity formed under the law of a foreign country that has registered to do business in the United States. A beneficial owner is someone who directly or indirectly exercises "substantial control" over the entity (president, CEO, etc) or owns or controls 25% or more of the entity's ownership interests.

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Is a trust considered a reporting company?

A trust would only be considered a reporting company if it was created by the filing of a document with a secretary of state or similar agency at the time of creation or registration.

What if a trust registers with a court of law to establish the court's jurisdiction over any disputes involving the trust, does that make it a reporting company?

No. This type of registration merely establishes the court's jurisdiction over any disputes involving the trust and does not make the trust a reporting company.

Is a trust considered a beneficial owner?

Because beneficial owners must be individuals, a trust in itself is not considered a beneficial owner. That said, it is important to note that individuals associated with a trust may qualify as beneficial owners of a reporting company in which that trust holds interests. They can do so by exercising substantial control over a reporting company through a trust arrangement or by owning or controlling the ownership interests of a reporting company that are held in a trust.

Who are a reporting company's beneficial owners when individuals own or control the company through a trust?

The CTA defines a beneficial owner as someone who either directly or indirectly owns or controls 25% or more of the ownership interests of the entity, or someone who has significant control over the entity. Because the specifics of trusts can vary greatly, there may be arrangements under which trustees, beneficiaries, grantors, settlors, and other individuals with roles in a particular trust are deemed beneficial owners of a reporting company.

FinCEN clarifies that the following individuals may hold ownership interests in a reporting company through a trust or similar arrangement:

- A trustee or other individual with the authority to dispose of trust assets;
- A beneficiary who is the sole permissible recipient of trust income and principal or who has the right to demand a distribution of or withdraw substantially all of the trust assets;
- A grantor or settlor who has the right to revoke or otherwise withdraw trust assets.

FinCEN also acknowledges that this is not a complete list of all of the conditions under which an individual may qualify as a beneficial ownership due to being associated with a trust.

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How does a reporting company report a corporate trustee as a beneficial owner?

For the purposes of this question, FinCEN defines “corporate trustee” as a legal entity rather than an individual exercising the powers of a trustee in a trust arrangement.

When a reporting company's ownership interests are held through a trust arrangement with a corporate trustee, the reporting company must carefully examine the ownership structure to determine if any of the corporate trustee's individual beneficial owners indirectly own or control at least 25 percent of the reporting company. This is a critical consideration, as these individual beneficial owners would then need to be reported as beneficial owners of the reporting company, even though they do not directly hold the ownership interests.

FinCEN provides two examples of how to make this determination in its FAQs section. They are as follows:

1. If an individual owns 60 percent of the corporate trustee of a trust, and that trust holds 50 percent of a reporting company's ownership interests, then the individual owns or controls 30 percent ($60 \text{ percent} \times 50 \text{ percent} = 30 \text{ percent}$) of the reporting company's ownership interests and is therefore a beneficial owner of the reporting company.
2. By contrast, if the same trust only holds 30 percent of the reporting company's ownership interests, the same individual corporate trustee owner only owns or controls 18 percent ($60 \text{ percent} \times 30 \text{ percent} = 18 \text{ percent}$) of the reporting company, and thus is not a beneficial owner of the reporting company by virtue of ownership or control of ownership interests.

The reporting company may be able to report just the name of the corporate trustee, without disclosing the individual beneficial owners, but only if three specific conditions are met:

- the corporate trustee is an entity that is exempt from the reporting requirements;
- the individual beneficial owner owns or controls at least 25 percent of ownership interests in the reporting company only by virtue of ownership interests in the corporate trustee; and
- the individual beneficial owner does not exercise substantial control over the reporting company.

Even then, the reporting company would still need to consider whether any owners, employees or other individuals connected to the corporate trustee exercise substantial control over the reporting company, as this would also trigger a beneficial ownership reporting requirement. Overall, reporting on beneficial ownership through a corporate trustee requires a careful, multi-faceted analysis to ensure compliance.

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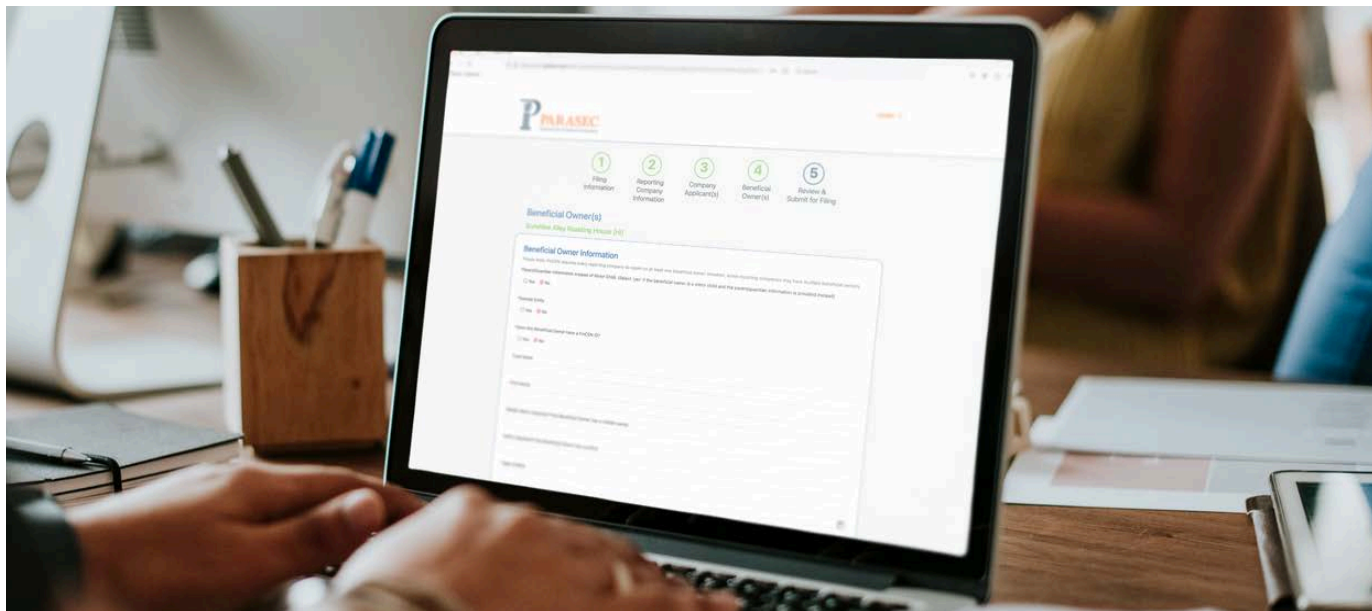


Who qualifies for an exception from the beneficial owner definition?

There are five instances in which an individual who would otherwise be a beneficial owner of a reporting company qualifies for an exception. In those cases, the reporting company does not have to report that individual as a beneficial owner to FinCEN. While FinCEN provides detailed descriptions for each exception in Chapter 2.4 of its “Small Entity Compliance Guide,” below is a rough overview of each of the exceptions:

- A minor child.
- A nominee, intermediary, custodian, or agent – An individual qualifies for this exception if they merely act on behalf of an actual beneficial owner as the beneficial owner’s nominee, intermediary, custodian, or agent.
- An employee – An individual qualifies for the employee exception if they meet all three of the following criteria: they are subject to the will and control of the employer, their substantial control is derived solely from the employment status and they are not a senior officer of the reporting company.
- An inheritor – An individual qualifies for the inheritor exception if the only interest in the reporting company is a future interest through a right of inheritance, such as through a trust providing a future interest in a company.
- A creditor - An individual qualifies for the creditor exception if the individual is entitled to payment from the reporting company to satisfy a loan or debt, so long as this entitlement is the only ownership interest the individual has in the reporting company.

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What has to be reported in a BOI?

For reporting companies created before January 1, 2024, the beneficial ownership information (BOI) report must include information on the reporting company itself as well as the beneficial owners of the entity.

Reporting companies created on or after January 1, 2024 must also include information about the company applicants.

What beneficial owner information needs to be reported to FinCEN?

For each beneficial owner, the following information must be reported on:

- 1) Full legal name;
- 2) Date of birth;
- 3) A complete current address consisting of:
 - o 3a) the individual's residential street address; or
 - o 3b) 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;
- 4) A unique identifying number from an acceptable identification document defined as:
 - o 4a) a non-expired U.S. passport;
 - o 4b) a non-expired identification document issued by a state, local government or Indian tribe;
 - o 4c) a non-expired driver's license issued by a state; or
 - o 4d) if the individual does not possess any of the aforementioned documents, a non-expired foreign passport.
- 5) An image of the document the unique identifying number came from.

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When do you need to file your initial BOI report?

Any domestic or foreign reporting company **created before January 1, 2024** has **until January 1, 2025** to submit its initial BOI report.

Any domestic or foreign reporting company **created on/after January 1, 2024** must file a BOI report **within 90 calendar days** of receiving actual or public notice of the entity's registration or creation.

It's important to note that reporting companies created or registered **on or after January 1, 2025** will have just **30 calendar days** from actual or public notice that the company's creation or registration is effective to file their initial BOI reports with FinCEN.

Moreover, if any information regarding the reporting company or beneficial owners changes, you must file an updated report within 30 days.

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Additional FAQs

Why do companies have to report beneficial ownership information?

In 2021, Congress passed the **Corporate Transparency Act (CTA)** on a bipartisan basis. This law creates a new beneficial ownership information reporting requirement as 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.

Who is responsible for filing with FinCEN?

The reporting company is responsible for ensuring that the BOI report is filed. The reporting company, or someone on behalf of the reporting company, will gather the necessary information from each beneficial owner.

Need to update information?

A beneficial ownership information (BOI) report should be updated whenever there is a change to the required information previously submitted to FinCEN regarding a reporting company or its beneficial owners. Some common changes that would necessitate an updated BOI filing include a change of trustee, a change of beneficial owner (or their address), a minor child reaching the age of majority, the death of a beneficiary, and more. Reporting companies are given **30 days to report any changes** to the information in their previously filed reports.

Need to make a correction?

The Corporate Transparency Act provides a 90-day safe harbor if inaccurate or incomplete information is filed. Reporting companies can **submit a correction (no later than 90 days after the original report)** to prevent civil or criminal liability.

Who can view your BOI filing information?

Beneficial ownership information is **not housed in a publicly accessible registry**. FinCEN will be responsible for storing the information in a secure database. Unless you are with a law enforcement agency, you cannot access this data. That said, financial institutions may gain access to specific information with authorization from the reporting company.

What are the penalties for violations?

The penalties for reporting companies who fail to comply may include:

- civil penalties up to \$500 per day until the violation is corrected;
- and a criminal fine of up to \$10,000
- and/or up to two years in prison.

What if a reporting company later becomes exempt?

If a reporting company that filed a BOI report later becomes exempt, the company should then **file an updated report indicating its newly exempt status**.

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How can Parasec assist you?

Parasec has developed a user-friendly BOI report filing platform to help ensure that we collect all the necessary data required to complete your order and meet filing requirements. Read on for more on the benefits of enlisting our help and utilizing our system.

FinCEN API Participant: As a FinCEN-authorized API participant, our system connects directly to FinCEN through a secure system-to-system gateway. This direct connection enables quick and secure data transmission to FinCEN.

BOI Report Dashboard: Easily access, edit, share, update, amend, and generate new BOI reports using our user-friendly online dashboard..

Save As You Go: Save your BOI report progress in our system and return later to resume filling out the form as you collect the required data.

Filing Confirmation: Once we have successfully filed your BOI report with FinCEN, we'll provide you with a confirmation of submittal.

Data Security: We utilize industry standards such as SHA-2 to ensure security, and redact sensitive information in our CRM and online in our BOI software.

Avoid Penalties: Completing this compliance requirement can help companies avoid severe criminal and civil penalties, including fines and imprisonment.

Professional Support: Our customer support team is available during regular business hours. You will always speak to a professional, polite, and knowledgeable person who cares about your business.

Reference Materials: To ensure a smooth filing process, we recommend utilizing our **BOI Filing Prep Checklist** to compile all the required documents. Find it on Page 10 of this document.

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BOI Filing Prep Checklist

Reporting Company Required Information:

- Full legal name (of reporting company)
- Any trade or “doing business as” names
- A complete current address consisting of:
 - the reporting company’s principal place of business in the United States; or
 - in all other cases, the street address of the primary location in the United States where the reporting company conducts business
- The state, tribal, or foreign jurisdiction of formation
- For a foreign reporting company, the state or tribal jurisdiction where such company first registers
- The IRS Taxpayer Identification Number (TIN), or for foreign reporting companies that have not been issued a TIN, a foreign tax identification number and the name of the relevant jurisdiction

Beneficial Owner Required Information (for each individual):

- Full legal name
- Date of birth
- Current address consisting of:
 - the individual’s residential street address; or
 - 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
- Unique identifying number from an acceptable identification document defined as:
 - a non-expired U.S. passport
 - a non-expired identification document issued by a state, local government or Indian tribe
 - a non-expired driver’s license issued by a state
 - if the individual does not possess any of the aforementioned documents, a non-expired foreign passport
- Image of document the unique identifying number came from

Company Applicant Required Information* (for each individual - limited to two):

- Full legal name
- Date of birth
- Current address consisting of:
 - the individual’s residential street address; or
 - 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;
- Unique identifying number from an acceptable identification document defined as:
 - a non-expired U.S. passport
 - a non-expired identification document issued by a state, local government or Indian tribe
 - a non-expired driver’s license issued by a state
 - if the individual does not possess any of the aforementioned documents, a non-expired foreign passport
- Image of document the unique identifying number came from

**Please note: Reporting companies created prior to January 1, 2024 do not need to provide information regarding the company applicant(s).*

About Parasec

At Parasec, our goal has always been to deliver exceptional customer service and high-quality work to our clients. Since 1977, our clients have relied on our expertise, speed, and extensive industry knowledge, turning to us for all their document filing and retrieval needs. As the only 100% employee-owned company in the industry, our team is personally invested in the success of our clients. When you trust us with your documents and information, you can rest assured they're being handled by highly-trained experts who genuinely care about developing trusting relationships and getting the job done right.

Over the years, we've made listening to our clients a top priority. Based on their feedback, we've tailored our ever-growing suite of services to make life easier for our customers. In 1987, we began offering commercial registered agent services in all 50 states and the District of Columbia, providing reliable, professional representation to corporations, LLCs, and other businesses nationwide and internationally.

With offices in California, Delaware, Nevada, and Texas, as well as an extensive national network, our clients have come to expect exemplary service. We're always striving to exceed their expectations.



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**For inquiries,
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National Entity Formation & Compliance

