

# Key Concerns for Trusts and Estates Pertaining to the Corporate Transparency Act

November 7, 2024

The Corporate Transparency Act (CTA), passed into law on January 1, 2021 in an effort to crack down on money laundering and other financial crimes, requires certain entities to report their beneficial owners to the federal government's Financial Crimes Enforcement Network (FinCEN). Under the CTA's requirements, an entity classified as a "Reporting Company", such as an LLC, corporation, or similar entity, must report such beneficial ownership information to FinCEN, subject to several exceptions. In addition to understanding the complex and nuanced requirements under the CTA, it is important to understand the unique obligations that the CTA places on trusts and estates. The following is a brief summary of some of the key concerns that the CTA poses for trusts and estates. This discussion, however, is not exhaustive. Please also refer to our recent client alert: [Deadline Approaches: FinCEN's Rules for Beneficial Ownership Reporting under the Corporate Transparency Act](#).

The CTA requires entities to disclose their beneficial owners on a Beneficial Ownership Information (BOI) report. A "beneficial owner" is any individual who, directly or indirectly, (1) exercises substantial control over a Reporting Company or (2) owns or controls at least 25% of the ownership interests of a Reporting Company. There is no maximum number of beneficial owners who must be reported; however, every Reporting Company must identify and report at least one beneficial owner.

- Trusts themselves do not meet the requirements of Reporting Companies (except for statutory trusts that are registered with the Secretary of State) and do not need to file their own individual BOI reports. Trusts may, however, be owners of Reporting Companies, and must therefore disclose their individual beneficial owners. At least one individual must be listed in every instance.
  - In the case of a trust owning or controlling at least 25% of the Reporting Company's ownership interests, each of the following individuals are considered beneficial owners: (1) a trustee or other individual with the

authority to dispose of trust assets; (2) 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; and (3) a grantor or settlor who has the right to revoke or otherwise withdraw trust assets.

- In the case of a grantor trust in which the trust's income is reported on the grantor's personal income tax return, the power to reacquire or swap assets with the trust would classify the grantor as a beneficial owner of the trust.
  - When a trust uses a corporate trustee, the Reporting Company should determine whether any of the corporate trustee's individual beneficial owners indirectly own or control at least 25% of the ownership interests of the Reporting Company through their ownership interests in the corporate trustee.
  - Additionally, individuals such as trust protectors, distribution advisors, investment advisors, and other decision makers may be required to be reported.
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- For estates, upon the death of a beneficial owner, the change in ownership must be reported within 30 days of when the deceased beneficial owner's estate is settled. No update is required while an estate is still open during administration. This means that a Reporting Company must disclose when the beneficiary of an estate receives an ownership interest in the Reporting Company significant enough to classify him or her as a beneficial owner.
    - The Personal Representative/Executor of an estate should thoroughly analyze the decedent's ownership interests in all entities and notify Reporting Companies about changes in beneficial ownership.
  - Minor beneficiaries of trusts are not beneficial owners; instead, the minor's parent or legal guardian must be reported. When the minor reaches the age of majority, he or she must be reported accordingly. Similarly, an individual acting on another's behalf, such as an Attorney-in-Fact acting under a Power of Attorney, is not considered a beneficial owner and need not be disclosed.

If a Reporting Company that files a BOI report later experiences **any change** to the required information about the company or its beneficial owners, the company must file an updated report no later than 30 days after the date of the change. The same 30-day timeline applies to changes in information submitted by an individual in order to obtain a FinCEN identifier.

- Some examples that would warrant an updated BOI report include, but are not limited to, the death of a beneficial owner; a sale or gift of ownership interest to an individual or trust that now meets the 25% threshold requirement; a change in trustee of a trust; and a change to a beneficial owner's or trustee's name or address.

Important deadlines are quickly approaching for existing Reporting Companies to submit their BOI reports. Deadlines for new Reporting Companies may have already passed. The deadlines under the CTA are as follows:

- If a Reporting Company existed or was registered before January 1, 2024, it must file its initial beneficial ownership information report by January 1, 2025.
- If a Reporting Company was created or registered on or after January 1, 2024, and before January 1, 2025, then it must file its initial BOI report within 90 calendar days after receiving actual or public notice that its creation or registration is effective.
- If a Reporting Company was created or registered on or after January 1, 2025, it must file its initial BOI report within 30 calendar days after receiving actual or public notice that its creation or registration is effective.

FinCEN has offered a six-month extension to eligible Reporting Companies to file their BOI reports in the wake of recent hurricanes. To receive the extension under a particular hurricane, the (1) Reporting Company's filing deadline must fall within a specific date range and (2) the Reporting Company must have a principal place of business in an area (a) designated by FEMA as qualifying for individual or public assistance as a result of the particular hurricane and (b) designated by the IRS as eligible for tax filing relief as a result of the particular hurricane.

- For entities to receive the extension due to hardships experienced during Hurricane Beryl, the Reporting Company's reporting deadline must fall between 7/4/24 and 10/2/24.
- For entities to receive the extension due to hardships experienced during Hurricane Debby, the Reporting Company's reporting deadline must fall between 7/31/24 and 10/29/24.
- For entities to receive the extension due to hardships experienced during Hurricane Francine, the Reporting Company's reporting deadline must fall between 9/8/24 and 12/7/24.

- For entities to receive the extension due to hardships experienced during Hurricane Helene, the Reporting Company's reporting deadline must fall between 9/22/24 and 12/21/24.
- For entities to receive the extension due to hardships experienced during Hurricane Milton, the Reporting Company's reporting deadline must fall between 10/4/24 and 1/2/25.

Individuals owning an interest in a Reporting Company should be mindful of some considerations, moving forward.

- An individual must anticipate filing a BOI report when creating a new entity. Before or upon formation, a Reporting Company should retain detailed records of its beneficial owners. Existing Reporting Companies should assemble all necessary information, including ownership and a list of individuals with the power of substantial control. This information can usually be found in the entity's currently updated operating agreement, bylaws, or other governing document. Trusts must be analyzed to determine their beneficial owners. If a particular individual must be listed on numerous BOI reports, either as a beneficial owner or a company applicant, that individual may want to consider obtaining a FinCEN ID for convenience, which can be done at <https://fincenid.fincen.gov/landing>. Once assembled, Reporting Companies should continuously update their beneficial ownership information in internal records to ensure that they file updated BOI reports when necessary.
- An individual seeking to protect anonymity by reducing the number of beneficial owners of a trust listed on a BOI report may make several changes, including (1) altering the rights of beneficiaries and/or adding beneficiaries; (2) altering the rights of certain individuals to dispose of trust assets; and (3) removing the ability to exchange or swap assets with a trust.

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