

Insights

FINCEN UPDATES CTA FAQs FOR THE FIRST TIME IN THREE MONTHS

INCLUDES CLARITY ABOUT REPORTING REQUIREMENTS FOR BENEFICIAL OWNERS

Apr 25, 2024

On April 18, 2024, the Financial Crimes Enforcement Network (FinCEN) published an updated set of [Frequently Asked Questions \(FAQs\)](#) pertaining to the Beneficial Ownership Information (BOI) Reporting Rule under the Corporate Transparency Act (CTA). This marks FinCEN's first update to the FAQs since January 2024.

One of the updates to the FAQs further clarifies that a Beneficial Owner will always be a natural person, and that intermediate entities do not need to be reported as Beneficial Owners.

Under the CTA a reporting company is required to identify any *individual* who, directly or indirectly, (a) exercises substantial control over a reporting company, or (b) owns or controls at least 25% of the ownership interests of a reporting company.

The updated FAQs clarify that an "individual" means "natural persons", and explicitly state that trusts^[1], corporations, or legal entities *do not* constitute Beneficial Owners^[2]; however, there are instances in which a reporting company may elect to report information for a trust, corporation, or legal entity instead of a beneficial owner.

There are limited instances where a corporate entity may be reported in lieu of natural persons. When a corporate entity owns or controls 25% or more of the ownership interests of a reporting company, the reporting company *should not* report the corporate entity that acts as an intermediate for the individuals as a Beneficial Owner, unless one of the following two exceptions apply:

1. If a natural person owns or controls ownership interests *exclusively* through ownership interests in the exempt entity or entities, then the exempt entity or entities may be reported in lieu of the natural person.
2. If the reporting company has the same individuals who own or control the ownership interests in the reporting company as a parent entity, the FinCEN ID and name of that parent entity may be reported in lieu of the natural persons.

It remains crucial for reporting entities to examine their corporate structure in order to accurately determine which individuals need to be, or upon the applicability of one of the two exceptions detailed above, which entities may be, disclosed as Beneficial Owners.

[1] The FinCEN BOI FAQs further clarify the BOI requirements for trusts or corporate trustees that own or control a reporting company. See FAQs, D14-D16. Notably, the updated FAQs clarify that a reporting company may identify a corporate trustee as a Beneficial Owner upon satisfaction of the following three criteria: (i) the corporate trustee is an entity exempt from the reporting requirements; (ii) the individual Beneficial Owner owns or controls at least 25% of the reporting company's ownership interests *only* by way of the corporate trustee; **and** (iii) the individual beneficial owner does not exercise substantial control over the reporting company. See FAQs, D16 (emphasis added).

[2] [FinCEN BOI FAQs, D1](#)

RELATED PRACTICE AREAS

- Financial Regulation Compliance & Investigations
- Financial Services Corporate & Regulatory Team

MEET THE TEAM



Caitlin M. Hartsell

San Francisco

caitlin.hartsell@bcplaw.com

[+1 415 675 3424](tel:+14156753424)



Brian K. Feezel

St. Louis

brian.feezel@bcplaw.com

[+1 314 259 2467](tel:+13142592467)



Lauren Beeman

St. Louis

lauren.beeman@bcplaw.com

[+1 314 259 2468](tel:+13142592468)



Yana Britan Tanck

New York

yana.tanck@bclplaw.com

+1 212 541 2080

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.