

FBAR Filings: Trusts

Each US Trustee of a trust account must file a FBAR (even if the beneficiary of the trust is not a US Person). If the owner of an account gave someone the power of attorney over the account, both the owner and the attorney-in-fact must file a FBAR (if both are US Taxpayers).

If a trust that holds a foreign financial account provides for a Protector, whose powers include directing distributions if the Protector is a US Person, the Protector must file a FBAR.

If several members of the same family have accounts, the FBAR rules apply to each account holder individually. The IRC §318 attribution rules do not apply to filing the FBAR.

Under the grantor trust rules (IRC §679) any US Person who establishes a foreign trust (which holds the foreign financial account), established by a US Person for any US beneficiary, the US Settlor is responsible for filing a FBAR for the trust accounts (even if the US Settlor of the trust is not a beneficiary, has no authority over the trust or any of the trust accounts). Under US tax rules, he is treated as the owner of the trust (for US income tax purposes) because the trust is deemed a grantor trust which makes him responsible to file the FBAR form.

Financial interest may be present even if there is no signatory authority. If a trust holds an account and the US Taxpayer has a present beneficiary interest in more than 50% of the trust assets, receives more than 50% of the trust assets, or receives more than 50% of the current trust income, he must file a FBAR.

If a trust has 2 or more beneficiaries and none of the beneficiaries has more than a 50% interest in the income of principal, then none of them needs to file a FBAR (although each US Trustee who is a US Taxpayer must file the FBAR). Regarding the rules for a discretionary trust, if a US Taxpayer receives distributions of more than 50% of trust income or principal in any given year, it requires filing the FBAR.

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