

Beneficial Ownership Interests
Discussion Panel

WICPA ANNUAL TAX CONFERENCE
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BOI Panel

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BOI Panel

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What is the CTA?



The Corporate Transparency Act (CTA) was enacted on Jan. 1, 2021, to reduce terrorist financing, money laundering, and other illicit activities by increasing transparency and creating additional reporting requirements for businesses.



The CTA went into effect on Jan. 1, 2024.



As a result of the CTA, millions of small businesses, or Reporting Companies, will be required to disclose information to the U.S. Department of Treasury's Financial Crimes Enforcement Network (FinCEN) about:

- ① The company itself
- ② Its Beneficial Owners
- ③ Its Company Applicants

QUESTION: Any guesses how many Reporting Companies are affected by the CTA and required to report to FinCEN?

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Who is a Beneficial Owner?

- **Beneficial Owners** are individuals who directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise:
 - **Substantial Control.** (i) Exercise substantial control over the entity, or
 - **Ownership Interest.** (ii) Own or control not less than 25% of the ownership interests of the entity.
- **Exceptions.** Individuals who may otherwise be considered a Beneficial Owner are *exempt if they are*:
 - Minors;
 - Creditors;
 - Individuals acting as a nominee, intermediary, custodian, or agent on behalf of another individual;
 - Individuals acting solely as an employee and whose control over or economic benefits from such entity is derived solely from the employment status of the person; or,
 - Individual whose only interest is through a right of inheritance.

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CPAs' Role in Compliance with the CTA

Q1 What role can CPAs play in Corporate Transparency Act (CTA) compliance and in Beneficial Ownership Information (BOI) reporting?

How does this relate to the unauthorized practice of law?

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CPAs' Role in Compliance with the CTA

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- In the most recent FAQs for BOI (www.fincen.gov/boi-faqs), B9 specifically notes that non-lawyer third-parties (e.g., CPAs) can help entities in the filing or preparation of filing for the CTA, if authorized by the entity to do so.
- B.9 also notes that whether this is the unauthorized practice of law is determined by state law and therefore may vary.
- In **Wisconsin**, the authorized practice of law is in part governed by the WI Supreme Court Rules.
- The following slides include *abbreviated* versions of the rules that define **who may practice law** in Wisconsin and some (*but not all*) defined **exceptions** when a license and membership in the WI State Bar is not required for someone to engage in specific activities, regardless of whether these activities constitute the practice of law.

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CPAs' Role in Compliance with the CTA

SCR 23.02 License required to practice law; use of titles.*

(1) RIGHT OF A PERSON TO PRACTICE LAW IN WI. A person who is duly licensed to practice law in this state by the WI Supreme Court and who is an active member of the WI State Bar may practice law in WI. No person may engage in the practice of law in WI, or attempt to do so, or make a representation that he or she is authorized to do so, unless the person is currently licensed to practice law in WI by the WI Supreme Court and is an active member of the WI State Bar.

In other words:

- Licensed by the WI Supreme Court
- Active Member of the WI State Bar

**abbreviated/edited*

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CPAs' Role in Compliance with the CTA

SCR 23.02 License required to practice law; use of titles.*

(2) EXCEPTIONS AND EXCLUSIONS. A license to practice law and active membership in the WI State Bar are NOT required for a person engaged in any of the following activities in WI, regardless of whether these activities constitute the practice of law:

- (a) Practicing law per SCR 10.03(4) by a non-resident counsel or registered **in-house counsel**.
- (c) Appearing in a representative capacity before an **administrative tribunal** or agency if permitted by such tribunal or agency.
Comment: A nonlawyer who is an employee, member, or officer of an entity may represent such entity or any corporate affiliate before an administrative tribunal or agency of the State.
- (d) Serving in a **neutral capacity as a mediator**, arbitrator, conciliator, or facilitator.

*abbreviated/edited

CPAs' Role in Compliance with the CTA

SCR 23.02 License required to practice law; use of titles.*

(2) EXCEPTIONS AND EXCLUSIONS. [continued]

(i) Selection/completion of a legal document, including administrative agency documents...where the document may contain various blanks... and selection/completion requires only **common or transaction-specific knowledge** of the required information and general knowledge of the legal consequences.



(s) Professional activities performed by a **certified public accountant** or by a person working under the direction of a certified public accountant.



- This exception allows CPAs to help with tax returns, financial reports, etc.
- Under this exception, CPAs can *guide clients* on BOI reporting requirements and collect information to complete or submit BOI forms based on client-provided data.
- However, CPAs may need to (and should) consult with a lawyer for any analysis, questions or complex scenarios.

*abbreviated/edited

Possible Fact Patterns

There are several possible common entity ownerships. All of the scenarios on the following slides are Wisconsin based examples.

Unless stated otherwise, assume:

1. All of the entities are Wisconsin formed.
2. No marital property agreements, unless stated otherwise.
3. These entities are not exempt.
4. There are no unusual management arrangements.
5. LLCs are member managed, unless stated otherwise.
6. All entities were formed before January 1, 2024.

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Possible Fact Patterns – Q2

Q2 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband owns 100%.

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Possible Fact Patterns - A2

Q2 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband owns 100%.

A2 *Answer:*

Under Wisconsin marital property law, each spouse is the equitable owner of 50% of the LLC interest, even though the husband has titled ownership.

Both spouses should be reported under the CTA as a beneficial owner.

Possible Fact Patterns - Q3

Q3 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband owns 100%. Here, the husband and wife have a marital property agreement which classifies the LLC interest as individual property of the titled spouse.

Possible Fact Patterns - A3

Q3 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband owns 100%. Here, the husband and wife have a marital property agreement which classifies the LLC interest as individual property of the titled spouse.

A3 *Answer:*

Here, whoever has **legal title** is the 100% owner and the holder of all of the **management control** over the LLC interest, and that person must be reported under the CTA as the beneficial owner.

Possible Fact Patterns - Q4

Q4 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband and wife are each the titled holder of 50% of the LLCs interests.

Possible Fact Patterns – A4

Q4 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband and wife are each the titled holder of 50% of the LLCs interests.

A4 *Answer:*

Here, **both** the husband and wife must be reported under the CTA as beneficial owners.

Possible Fact Patterns - Q5

Q5 *Scenario:*

A husband and wife form a single member LLC which is a disregarded entity. The husband and wife have a revocable trust in their estate plan which owns all of the LLC interests. (The husband and wife are the grantors and initial co-trustees.)

Possible Fact Patterns - A5

Q5 Scenario:

A husband and wife form a single member LLC which is a disregarded entity. The husband and wife have a revocable trust in their estate plan which owns all of the LLC interests. (The husband and wife are the grantors and initial co-trustees.)

A5 Answer:

- When trusts are the holder of an interest in an entity, **each trustee** is [almost] always a beneficial owner under the CTA.
- A **beneficiary** of the trust is a beneficial owner only if the beneficiary is solely entitled to all distributions of principal and income from the trust or can demand a withdrawal or distribution of the trust assets.
- Also, a **grantor** of a trust **who can revoke the trust** or withdraw all of its assets is the **beneficial owner** with respect to the interest held by the trust.
- **Here**, both husband and wife should be reported as beneficial owners under the CTA because they are the trustees and the grantors of the revocable trust.

Possible Fact Patterns - Q6

Q6 Scenario:

A husband and wife along with the wife's sister and brother-in-law form a cabin LLC to own their Door County property.

Each couple holds 50% of the LLC interests, which is split equally between the husband and wife in each couple.

Possible Fact Patterns - A6

Q6 *Scenario:*

A husband and wife along with the wife's sister and brother-in-law form a cabin LLC to own their Door County property. Each couple holds 50% of the LLC interests, which is split equally between the husband and wife in each couple.

A6 *Answer:*

All 4 individuals must be reported as a beneficial owners under the CTA, since each person is a 25% owner.

Possible Fact Patterns - Q7

Q7 *Scenario:*

Now, instead of 2 families, there are 3 families, with 3 married couples, forming the Cabin LLC with each family owning 33.33%.

The LLC interests of each couple are held jointly as marital property.

Possible Fact Patterns - A7

Q7 *Scenario:*

Now, instead of 2 families, there are 3 families, with 3 married couples, forming the Cabin LLC with each family owning 33.33%. The LLC interests of each couple are held jointly as marital property.

A7 *Answer:*

Joint owners of an interest each have management control over the entire interest, so each spouse has control of a 33% interest in the LLC.

All 6 people must be reported under the CTA as a beneficial owner, even though each of the 6 people individually “own” less than 25% of the LLC interests.

Possible Fact Patterns - Q8

Q8 *Scenario:*

Mary and Susan form an LLC to operate their engineering consulting firm. Mary owns 67% while Susan owns 33%.

Possible Fact Patterns - A8

Q8 *Scenario:*

Mary and Susan form an LLC to operate their engineering consulting firm. Mary owns 67% while Susan owns 33%.

A8 *Answer:*

Both Mary and Susan must be reported under the CTA as beneficial owners, since both have an ownership interest of 25% or more.

Possible Fact Patterns - Q9

Q9 *Scenario:*

Mary and Susan form an LLC to operate their engineering consulting firm. Mary owns 67% while Susan owns 33%.

Here, Mary and Susan's LLC is a manager-managed LLC. Nancy, who is not an owner, is the manager.

Possible Fact Patterns - A9

Q9 Scenario:

Mary and Susan form an LLC to operate their engineering consulting firm. Mary owns 67% while Susan owns 33%. Here, Mary and Susan's LLC is a manager-managed LLC. Nancy, who is not an owner, is the manager.

A9 Answer:

Mary and Susan must be reported under the CTA as beneficial owners by virtue of their ownership of the LLC interests.

Any of the senior officers of an entity must also be reported under the CTA as beneficial owners, *even if they have no ownership interest*. A **SENIOR OFFICER** is any person who acts in the traditional role of president, CEO, CFO, general counsel, or COO, or any person who performs a similar function regardless of title. An **LLC manager** has the kind of authority that qualifies as a senior officer; here, Nancy must also be reported under the CTA as a beneficial owner.

So, **Mary, Susan and Nancy** must be reported as beneficial owners.

Possible Fact Patterns - Q10

Q10 Scenario:

10 friends are going into business together to invest in real estate properties.

They will create separate LLCs for each real estate property with varying ownership percentages based on which person invests in the specific LLC. For example, 22 Badger St, LLC and 98 State Rd, LLC.

The friends also create Management, LLC to control, manage, and oversee the real estate LLCs (e.g., 22 Badger St, LLC). Management, LLC is manager-managed; and the friends have equal ownership and control in Management, LLC.

Possible Fact Patterns – A10

A10 Answer:

- For **22 Badger Street, LLC**: Any person who owns 25% or more of that entity is a beneficial owner under the CTA.
- Although Management LLC would qualify as a “senior officer” (see A.9), entities cannot be reported as beneficial owners; instead, the entity must be “looked through” to the individuals who own or control them.
- Since no person owns 25% or more of Management, LLC, then the individual or individuals who have “substantial control” over Management LLC are the beneficial owners to be reported under the CTA.
- Ultimately, each company must have at **least one individual** that is reported under the CTA as the beneficial owner, which in some cases where no person has 25% or more ownership and control is determined by a majority vote of multiple people, the beneficial owner might be the person or persons who act as the entity’s agent to exercise that control (for example, a designated managing member).

Company Applicants and Deadlines for Initial Reporting

Scenario Considering Company Applicants and Deadlines for Initial Reporting

For entities formed after 2023, the reporting must include the **Company Applicant(s)** – the individual or individuals (up to two) that were involved in the process of filing of the incorporation or organization documents that created, organized or registered the entity. For example, the person that filed the Articles of Organization with Wisconsin’s DFI to create an LLC.

Who is a Company Applicant?

- A “**Company Applicant**” is the individual who directly files the document that creates the reporting company or registers the reporting company to do business in the US, and the individual who is primarily responsible for directing or controlling the CTA filing.
- The CTA filing limits the number of Company Applicants to two names.
- For entities formed before Jan. 1, 2024, no Company Applicant is required.

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What are the deadlines for initial reporting?

Companies Formed **Before** Jan. 1, 2024

- For initial reports, required info must be reported to FinCEN between **Jan. 1, 2024 - Jan. 1, 2025**.
 - However, reporting information about Company Applicants is not required.

Companies Formed **Between** Jan. 1, 2024 – Dec. 31, 2024

- For initial reports, required info must be reported within **90 days** of the acceptance of the company’s state registration filing.

Companies Formed **After** Dec. 31, 2024

- For initial reports, required info must be reported within **30 days** of the acceptance of the company’s state registration filing.

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Possible Fact Patterns – Q11

Q11

Companies Formed **Before** Jan. 1, 2024

- Formed Jan. 1, 2022 → when is the initial report due? Company Applicant required in report?

Companies Formed **Between** Jan. 1, 2024 – Dec. 31, 2024

- Formed Jan. 1, 2024 → when is the initial report due? Company Applicant required in report?
- Formed Nov. 1, 2024 → when is the initial report due? Company Applicant required in report?

Companies Formed **After** Dec. 31, 2024

- Formed Jan 1, 2025 → when is the initial report due? Company Applicant required in report?

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Possible Fact Patterns – A11

A11

Companies Formed **Before** Jan. 1, 2024

- Formed Jan. 1, 2022 → *Initial report?* Dec. 31, 2024. *Company Applicant?* No.

Companies Formed **Between** Jan. 1, 2024 – Dec. 31, 2024

- Formed Jan. 1, 2024 → *Initial report?* Mar. 31, 2024. *Company Applicant?* Yes.
- Formed Nov. 1, 2024 → *Initial report?* Jan. 30, 2025. *Company Applicant?* Yes.

Companies Formed **After** Dec. 31, 2024

- Formed Jan 1, 2025 → *Initial report?* Jan. 31, 2025. *Company Applicant?* Yes.

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How often is reporting required?



- **Initial Report.** The CTA creates an initial reporting requirement and an ongoing obligation for Reporting Companies to update their reports after changes occur.
 - After the initial report, no annual or quarterly reports are required.
- **Ongoing Obligation to Update Reports.** Reporting Companies must file an amendment or update within 30 days after any change to their reported information.
 - Even seemingly minor changes require reporting a change – such as an address change for a Beneficial Owner.

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Examples

- New Beneficial Owner? → File updated Report within 30 days of such change
- New Company address? → File updated Report within 30 days of such change
- Different address for existing Beneficial Owner? → File updated Report within 30 days of such change

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Possible Fact Patterns – Q12

Q12 *Scenario:*

There is a manager-managed, LLC with 3 equal members who hold title to the LLC's interests in their individual capacity.

The LLC has hired a Kate as a Manager to run the company, and Kate is not a member.

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Possible Fact Patterns – A12

Q12 *Scenario:*

There is a manager-managed, LLC with 3 equal members who hold title to the LLC's interests in their individual capacity. The LLC has hired a Kate as a Manager to run the company, and Kate is not a member.

A12 *Answer:*

All 3 members and the **Manager** (i.e., Kate) must be reported as beneficial owners under the CTA.

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Possible Fact Patterns - Q13

Q13 Scenario:

There is a manager-managed, LLC with 3 equal members who hold title to the LLC's interests in their individual capacity. Now, all 3 of the equal members are married (to non-members) and do not have marital property agreements.

The LLC has hired a Kate as a Manager to run the company, and Kate is not a member (and not married to a member).

Possible Fact Patterns - A13

Q13 Scenario:

There is a manager-managed, LLC with 3 equal members who hold title to the LLC's interests in their individual capacity. Now, all 3 of the equal members are married (to non-members) and do not have marital property agreements. The LLC has hired a Kate as a Manager to run the company, and Kate is not a member (and not married to a member).

A13 Answer:

This is the same as A12. **All 3 members** and the **Manager** (i.e., Kate) must be reported as beneficial owners under the CTA.

The members do not have marital property agreements, so the ownership is marital property. However, each of the untitled spouse's equitable interest doesn't meet the 25% threshold.

Therefore, **only the 3 titled members (+ the Manager)** are beneficial owners for the purpose of the CTA.

Possible Fact Patterns - Q14

Q14 *Scenario:*

A manager managed LLC has 4 equal members who hold title to their interests.

One of the members is married without a marital property agreement.

One of the unmarried members is the Manager.

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Possible Fact Patterns - A14

Q14 *Scenario:*

A manager managed LLC has 4 equal members who hold title to their interests.

One of the members is married without a marital property agreement.

One of the unmarried members is the Manager.

A14 *Answer:*

All **4 members** must be reported as beneficial owners under the CTA.

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Possible Fact Patterns - Q15

Q15 Scenario:

There is a Wisconsin corporation with 2 Officers (who have positions that qualify as 'senior officers' under the CTA – see A.9), 2 Directors, and 5 equal shareholders. The Directors and Officers are not shareholders.

Put another way...

Wisconsin Corporation:

- 2 Officers ('senior officers') who are not shareholders
- 2 Directors who are not shareholders
- 5 equal Shareholders

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Possible Fact Patterns - A15

A15 Scenario/Answer:

- 2 Officers ('senior officers') who are not shareholders → YES beneficial owners under the CTA
- 2 Directors who are not shareholders → YES beneficial owners under the CTA
- 5 equal Shareholders → NO, not beneficial owners under the CTA

Individuals with the power to direct, determine or have **substantial influence** over the reporting company's, including its business, finances or structure, **are beneficial owners** for purposes of the CTA, *even if they have no ownership interest*.

Directors do not necessarily have the power to "control" the corporation individually, since the Board acts by majority vote. Thus, being a director, by itself, does not make an individual a beneficial owner under the CTA.

If, however, the Board has only one or two Directors, each Director in those circumstances does have control, since the sole Director on a one-person board **can unilaterally control**, and since each Director's vote on a two-person Board is a controlling vote.

Therefore, **here**, the **two Directors** should also be reported as beneficial owners under the CTA.

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Possible Fact Patterns - Q16

Q16 Scenario:

There is a Wisconsin corporation with 2 Officers (who qualify as 'senior officers' under the CTA), 3 Directors on the Board, and 5 Shareholders. Their ownership interests and positions are as follows:

- Alex: 40% owner, Officer, and Director
- Becca: 15% owner, Officer
- Charlie: 15% owner, Director
- Dana: 15% owner, Director
- Eddie: 15% owner

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Possible Fact Patterns - A16

A16 Scenario/Answer:

- Alex: 40% owner, Officer, and Director → **YES**, beneficial owner under the CTA
- Becca: 15% owner, Officer → **YES**, beneficial owner under the CTA
- Charlie: 15% owner, Director → **NO**, not a beneficial owner under the CTA
- Dana: 15% owner, Director → **NO**, not a beneficial owner under the CTA
- Eddie: 15% owner → **NO**, not a beneficial owner under the CTA

On a three-person board, no Director has a controlling vote, so none of the Directors are beneficial owners by virtue of being a Director.

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Possible Fact Patterns - Q17

Q17 Scenario:

ABC, LLC is owned and managed as follows:

- *Ownership* – Three Owners
 - Fred: 20%
 - Gerry: 20%
 - Hill Family, LLC*: 60%
- *Management*:
 - Manager Mike, not an owner

***Hill Family, LLC:**

- Jack Hill: 50%
- Jill Hill: 50%

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Possible Fact Patterns - A17

Q17 Scenario:

ABC, LLC is owned and managed as follows:

- *Ownership*:
 - Fred: 20%
 - Gerry: 20%
 - Hill Family, LLC: 60%
 - Jack and Jill each own 50% of Hill Family, LLC
- *Management*:
 - Mike, not an owner

A17 Answer:

Jack and Jill are each beneficial owners of **ABC, LLC** because they each indirectly own a 30% interest in ABC, LLC by virtue of their ownership in Hill Family, LLC Mike is a beneficial owner of ABC, LLC as a manager.

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