



August 12, 2011

NASS Overview of S. 1483

Note: S. 1483 is a complex bill and may be subject to varying interpretations. The information below is based on NASS's reading of the bill, in consultation with the Treasury Department.

Implementation Deadline

Any state that receives funding from the Department of Homeland Security to prevent terrorism would have to implement the bill no later than the beginning of FY 2014 (October 1, 2013).

Collection of Information

Anytime someone forms a corporation or LLC that is not exempt the, states would have to collect information about the person forming the business, along with information about all beneficial owners. The business would also have to include the beneficial ownership information in an annual filing with the state. And if there are any foreign beneficial owners, the business would have to have a formation agent certify to the state that the agent has verified the owner's identity.

States could allow businesses to provide beneficial ownership information to a licensed formation agent instead of the state, but only if the state has a system in place to license those agents. And the business would have to provide the state with a certification from the licensed formation agent holding the information.

Corporations and LLCs that are considered exempt under the bill (e.g. banks and public corporations) would not have to file beneficial ownership information with the state, but they would still have to provide the state with information about an individual affiliated with the exempt entity (e.g. officer or director). And if that individual is from outside the US, the entity must have a formation agent certify to the state that the agent has verified the foreign individual's identity.

State Maintenance of Beneficial Ownership Information

The bill does would not require states to verify any of the beneficial ownership information that it collects, and it leaves it up to the state whether to make this information public. States would have to release the beneficial ownership information whenever it receives an official request (e.g. summons or subpoena) from a state or federal agency or a congressional committee.

Rulemaking

S.1483 states that the Secretaries of Homeland Security and Treasury, along with the Attorney General, may issue joint guidance or rules clarifying the definitions and procedures in the bill. There are a number of provisions in the bill that could be subject to this process. For example, the bill still lacks a clear, workable definition of "beneficial ownership." Also, states could be required to authenticate or verify (through notarization or other means) the identity of the applicant forming a corporation or LLC. However, the bill contains no timeframe for when rules or guidance would be issued.

Implementation Funding

S. 1483 calls on the Treasury Department and the Department of Justice to make a total of \$30 million available to states from their respective asset forfeiture funds. Of this amount, the Treasury Department may make a total of up to \$20 million available, and the Department of Justice may make a total of up to \$10 million available.

The bill specifies that funds otherwise available to a state may not be withheld for failure to comply with the provisions of the bill.