NASS
National Association of Secretaries of State

January 2020

States Call on Congress, the White House to Pursue Federal Collection of Company Ownership Info to Meet National & Global Security Interests, Fight Financial Crimes

The **National Association of Secretaries of State (NASS)**, representing the public officials who oversee state business registries, is calling for strategies to assist federal law enforcement in fighting corporate crimes that do not place unnecessary burdens on state registrars or compliant businesses. Since 2010, Secretaries of State have taken the stance that U.S. tax and financial authorities are well-positioned to share the company ownership information that is already being collected at the federal level in order to safeguard and defend against terrorist financing and financial crimes. Meaningful progress has been made by pursuing this approach, including:

- Today, company ownership information[1] is disclosed in federal tax filings and collected from new businesses applying for a Federal Tax ID Number (EIN) via **IRS Form SS-4**, including updates to responsible party info when changes occur. In March of 2019, the IRS announced that the definition of responsible party is now the person who ultimately owns or controls the entity or who exercises ultimate effective control over the entity. The person identified as the responsible party should have a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the person, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets. Individuals named as responsible party must have either a Social Security number (SSN) or an individual taxpayer identification number (ITIN).
- The U.S. Treasury Department's **Final Rule to Treat Certain Domestic Entities Disregarded as Separate from Their Owners as Corporations** requires single member, foreign owned LLCs to file an SS4. This rule ensures that these entities, many of whom do not have to file tax returns (no business in the U.S.) or secure an Employer Identification Number (EIN) (no bank account or employees in the U.S.) now have to file an SS4 to get an EIN and thus file their responsible party info with the IRS.
- The Department of Treasury collects ownership information from U.S. legal entities with overseas bank accounts via so-called **"FBAR" (Report of Foreign Bank and Financial Accounts) reports**, and overseas banks must report owner information for their U.S. account holders. They also require foreign-owned entities to disclose a U.S. taxpayer ID number or foreign identification.
- The **U.S. Treasury Customer Due Diligence (CDD) rule** goes one step further, requiring banks and other financial institutions to collect and verify company ownership information for all customers, thereby ensuring that banking information is readily available for investigations related to fraud, money laundering, tax evasion and corruption.

States Oppose Federal Legislation

TITLE Act

NASS opposes the TITLE Act (S. 1889) and its mandated state approach to collecting beneficial ownership information. While Secretaries of State are supportive of efforts to bring corporate criminals to justice, the fifty-state incorporation process is not an appropriate, effective or efficient vehicle for fighting international financial crimes or tracking terrorists. Concerns include:

[1] An individual who has a level of control over, or entitlement to, the funds or assets in the entity that enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.

- **FALSE CHOICES: The U.S. already has existing processes for collecting and sharing ownership information on business entities via federal tax and banking authorities.** Workable proposals that give law enforcement broader access to existing federal information provide uniform, centralized collection methods and streamlined oversight.
- **WON'T STOP CRIMINALS: The bill is unlikely to be an effective tool in fighting international crime.** It is doubtful that entities involved in terrorism, corruption or international money laundering will bother to file annual reports or keep their paperwork up-to-date with accurate information.
- **UNWORKABLE PLAN: The bill is trying to utilize the fifty-state incorporation filing process for something it was never intended to do.** State business entity formation processes, which are ministerial in nature, are not an effective means of identifying criminals who are misusing the process. Plus, law enforcement would have to follow 50-plus separate collection channels to get to the information they need. State business registries aren't tied to centralized oversight and regulatory structures, as they are in other parts of the world. While entity information filed with the Secretary's office is public information, we know privacy protections for business owners are highly valued in the U.S. Beneficial ownership information filed with the state would be public information.
- **UNREASONABLE BURDENS: Compliance with the bill will require a significant and costly expansion of state government oversight and bureaucracy.** States will have to face the costly challenge of developing administrative procedures for collecting, processing and storing ownership publicly-held information by multiple entities.

Corporate Transparency Act

- The Corporate Transparency Act of 2019 (HR 2513) passed the House of Representatives in October of 2019. There has been no activity on the Senate version of the bill (S. 1978)
- CTA requires businesses to file their beneficial ownership information with Treasury's Financial Crimes Enforcement Network or FinCEN. States are required to notify businesses of the new federal filing requirement.
- Because the bill does not call on the states to collect beneficial ownership information, NASS has not taken a position on this bill.