February 2016

NASS Briefing: Calling on Congress to Support Existing Federal Approaches to the Collection of Beneficial Ownership Information at No Additional Cost to Taxpayers

BACKGROUND

NASS has taken a position in opposition to the Incorporation Transparency and Law Enforcement Assistance Act (ITLEAA) (see NASS July 2015 resolution). While Secretaries of State support the goal of assisting law enforcement, the 50-state corporate formation process is not an appropriate, effective or efficient vehicle for tracking beneficial ownership information.

Representatives Carolyn Maloney (D-NY) and Peter King (R-NY), along with Senator Sheldon Whitehouse (D-RI) re-introduced ITLEAA legislation in February 2016 (bills H.R.4450 and S.2489, respectively). Senate co-sponsors: Dianne Feinstein (D-CA). Committee assignments: House Financial Services Committee and the Senate Judiciary Committee. *(A detailed bill summary is available here on the NASS website .)*

OTHER MAJOR ORGANIZATIONS OPPOSING ITLEAA

American Bar Association (ABA) | National Conference of State Legislatures (NCSL) |U.S. Chamber of Commerce

AN EXISTING SOLUTION

In order to fight corruption and other financial crimes, NASS urges federal leaders to focus on tracking corporate entity ownership information that is available through federal tax filings and customer due diligence (CDD) requirements for U.S. financial institutions at NO ADDITIONAL COST to taxpayers.

- **IRS Form SS-4:** IRS Form SS-4 requires ownership disclosures when applying for an Employer Identification Number (EIN). Since January 2014, IRS has required updates to responsible party information when changes occur.

- **"FBAR" (Report of Foreign Bank and Financial Accounts**: The U.S. Treasury requires individuals and domestically-formed entities opening financial accounts and conducting business overseas to provide ownership information through annual Report of Foreign Bank and Financial Accounts (so-called "F-BAR" reports) if the combined amount of their foreign financial accounts exceeds $10,000 per calendar year. FBARs also address foreign-owned entities by requiring the disclosure of a U.S. taxpayer ID number or foreign identification.

- **U.S. Treasury Customer Due Diligence (CDD) requirements**: Proposed U.S. Treasury customer due diligence rules for financial institutions strengthen the collection of ownership information for all customers, in order to help federal law enforcement gain access to banking information for investigations related to fraud, money laundering, tax evasion and corruption.

Any bureaucratic obstacles that federal law enforcement officials face in accessing entity ownership information held by the IRS and other federal agencies do not serve as a sufficient justification for creating 50 new channels for this purpose.

President Obama's FY2017 White House Budget includes language that concurs with the NASS approach, confirming that the IRS is collecting the information that law enforcement needs.

The FY2017 budget proposal reads, "Although this responsible party information may be useful to law enforcement when investigating financial crimes, under current law it cannot be shared with law enforcement officials without a court order. The proposal would allow the Secretary of the Treasury or his delegate to share responsible party information with law enforcement without a court order to combat money laundering, terrorist financing and other financial crimes. Such sharing would advance criminal investigations and successful prosecution, and assist in identifying criminal proceeds and assets."

ITLEAA WON'T STOP CRIMINALS

The Incorporation Transparency and Law Enforcement Assistance Act (ITLEAA) is unlikely to be an effective law enforcement tool.

The bill will do little to expose the people involved in criminal activities, the majority of whom will simply find new ways to skirt the bill's disclosure requirements. It is unlikely that entities involved in fraud or illicit activity will bother to file annual reports or keep their paperwork up-to-date with accurate, current information. Adding a new layer of detail in the state company formation filing process will simply place a burden on compliant businesses.

UNWORKABLE PLAN

Compliance with ITLEAA will require a significant and costly expansion of state government oversight and bureaucracy, creating a nightmare for states and businesses alike.

It's not just adding one question to an existing form. States will have to develop administrative procedures for collecting, processing and storing the information in multiple new filings by multiple entities. They will also need to establish redaction policies and new licensing procedures for company formation agents, along with educational outreach plans for the business community. Even "exempt" corporations and LLCs will be required to provide the state with contact information and a certification as to why they are considered exempt.

MEETING GLOBAL PRIORITIES

The U.S. can meet its international commitments to fighting tax abuse and financial wrongdoing by corporate criminals by following the prevailing advice of other nations and world organizations: Follow the money.

If the White House and Congress want to require the disclosure of beneficial ownership information in order to fight crime, they should follow the action plan promoted by UK Prime Minister David Cameron at the June 2013 G8 Summit, which focused on federal registries that are available to TAX AUTHORITIES. This type of approach was also endorsed in February 2012 by the Financial Action Task Force (FATF), an international body whose purpose is to combat money laundering and terrorist financing.

ADDITIONAL RESOURCES

Visit the NASS Company Formation Website page for more resources on this topic.