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. A new Treasury rule (Dec 2016) requires foreign-owned, single-member LLCs to obtain an EIN for filing tax returns, or provide responsible party information to 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.

- A newly-implemented 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 to help law enforcement gain access to banking transactions for investigations related to terrorism and financial crimes.

States Oppose Federal Legislation

NASS opposes the TITLE Act and CTA and their 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:

- **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 bills are 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 bills are 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. It's like taking a filing cabinet in your office and trying to turn it into a security system by propping it against the front door. 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

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\(^{1}\) 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.
owners are highly valued in the U.S. Beneficial ownership information filed with the state would be public information, but filings to the IRS are not.

- **UNREASONABLE BURDENS:** Compliance with the bills 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.