Reporting and Reconciliation Workgroup

Beneficial Ownership Overview

June 28, 2016

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2016 EITI Standard

- By 2020 implementing countries must ensure companies disclose their beneficial owners (also politically exposed persons holding ownership rights).
- All oil, gas, and mining companies that bid for, operate, or invest in extractive projects.
- Information: owner name, nationality, country of residence, level of ownership.
- First step: publish roadmap outlining activities and preparations MSG considers necessary to implement beneficial ownership requirements by 2020.
- EITI recommends beneficial ownership information is available through public registers (optional).
- At a minimum, the information must be included in the country's EITI Report.

The Standard Requires the MSG to:

- Agree on an appropriate definition of the term beneficial owner - can include percent ownership and company size thresholds;
- Evaluate implementation of the roadmap as part of the MSG's annual activity report; and
- Agree on an approach for companies assuring information accuracy.

Considerations

- How beneficial ownership disclosure can support national reform priorities (relevance / opportunities)
- The institutional framework for beneficial ownership disclosure (opportunities / constraints)
- How to develop a definition of beneficial ownership
- Reporting obligations for politically exposed persons
- Level of detail to be disclosed
- Data collection procedures
- How to develop a methodology for assuring the accuracy of the data
- Data timeliness
- Data accessibility
- Capacity building needs

States, Incorporation, and Beneficial Ownership

- There are no Federal laws regulating incorporation.
- States manage the corporate formation process. Information gathering requirements vary widely from state to state.
- No state requires persons forming corporations to name beneficial owners at the time of corporate formation.
- There are no mechanisms that capture, track, and manage beneficial owners currently being used at the state level.
- According to the 2013 census data: there are 26,459,941 Establishments and 22,474,651 Firms.
- Nearly 2,000,000 corporations and LLCs are formed under the laws of the States each year.

The Mineral Leasing Act

- Requires that companies holding onshore Federal mineral leases meet citizenship and acreage requirements. (30 U.S.C. 181 and 184)
- Regulations for different types of minerals implement citizenship and acreage disclosures in different ways.
- Regulations governing locatable minerals (i.e. gold, copper, etc.) require claim name and locator.
- There is no requirement to disclose beneficial owners.

The Outer Continental Shelf Lands Act

- Regulations governing the three resource types – (1) oil, gas, and sulfur; (2) other minerals; and (3) renewables – leased under OCSLA specify how bidders demonstrate that they are qualified.
- There is no requirement to disclose beneficial owners.

Publicly Traded & Privately Owned Companies on Federal Land

- ~ 7,500 companies or private individuals paid **DOI** $7.8 billion in CY2015; ONRR received $7.5 billion from royalties, bonuses, rents, etc.; BLM received $100 million from permit fees; OSMRE received $200 million from AML fees.
- ~ 2,400 entities paid **ONRR** and initial research estimates that about **10%** are publicly traded companies (United States or Foreign stock exchanges) and account for ~ **80%** of total payments.
- ~ 4,700 entities paid **BLM** and ~ 400 paid **OSMRE** and most of the large companies also paid ONRR and are included in the estimate above.
- Numerous publicly traded companies that do not report to ONRR pay permit fees to BLM for locatable minerals and mineral materials.
- Only ~ 25 of the 400 entities paying OSMRE AML fees produce from Federal leases.
- 735 entities exceeded the $100,000 DOI payment threshold for CY2015 whose revenues were unilaterally disclosed on the USEITI Data Portal.
- ~ **50%** of the entities reporting to DOI paid less than $1,000 annually.

Congressional Bills

- During the past 10 years, then Senator Carl Levin (D-MI) introduced several similar legislative proposals in every Congress to require the identification of beneficial owners of companies formed in the United States.

- The *Incorporation Transparency and Law Enforcement Assistance Act*, (S. 569); S. 1483 (a bill by the same title) (November 2011); and S. 1465 (a bill by the same title) (August 2013).

- On February 3, 2016**,** Senators Sheldon Whitehouse (D-RI) and Chuck Grassley (R-IA) re-introduced the *Incorporation Transparency and Law Enforcement Assistance Act,* (S. 2489), a bill substantially similar to then Senator Levin's S. 1465. A companion bill in the House was also introduced by Congresswoman Carolyn Maloney (D-NY), Congressman Peter King (R-NY), and others (H.R. 4450).

Incorporation Transparency and Law Enforcement Assistance Act

- Secretary of Treasury would promulgate implementing regulations.
- S. 2489 requires the state to collect the information.
- H.R. 4450 requires Treasury to collect the information, unless the state is already doing it.
- Beneficial owner defined: living person exercising substantial control or receives economic benefit from the company.
- Provides for civil and criminal penalties for submitting false information to the government.
- Retention of records 5 years after termination of LLC.
- No % threshold definition of beneficial owner.
- No public disclosure / State discretion.
- No duty of verification.

Past Administration Budget Proposals and New Proposal and Regulation

- In March, 2014, a proposal for collection of beneficial ownership information was included in the 2015 Governmental Receipts chapter of the Budget's Analytical Perspectives. Proposals were also included in FY 2016 and 2017 Budget Green Book.
- On May 6, 2016, Treasury sent beneficial ownership legislation to Congress. The proposed legislation would require companies formed within the United States to file beneficial ownership information with the Treasury Department and includes penalties for failure to comply.
- On May 11, 2016, Treasury issued a new customer due diligence rule ("CDD" rule) amending existing regulations to clarify and strengthen CDD obligations.
    - The rule adds a requirement for financial institutions to collect and verify the identity of the "beneficial owners" of companies when they open an account at banks and other types of financial institutions.
    - Financial institutions will be required to identify and verify the identity of any individual who directly or indirectly owns 25 percent or more of a legal entity and any one individual who has significant authority to control the legal entity.