

Beneficial Ownership Roadmap

USEITI

The United States Extractive Industries
Transparency Initiative

TABLE OF CONTENTS

- 4.1 Consider how beneficial ownership disclosure can support national reform priorities
- 4.2 Consider the institutional framework for beneficial ownership disclosure
- 4.3 Consider how to develop a definition of beneficial ownership
- 4.4 Consider reporting obligations for politically exposed persons
- 4.5 Consider the level of detail to be disclosed
- 4.6 Consider data collection procedures
- 4.7 Consider how to develop a methodology for assuring the accuracy of the data
- 4.8 Consider data timeliness
- 4.9 Consider data accessibility
- 4.10 Consider capacity building needs
- 4.11 Consider needs for technical and financial assistance
- 4.12 Consider deadlines and responsibilities for roadmap activities

4.1 Consider how beneficial ownership disclosure can support national reform priorities

The U.S. has focused on beneficial ownership disclosure efforts both domestically and internationally. The U.S. has led efforts within the major economic powers of the G-8, and the Financial Action Task Force (FATF), to strengthen international standards on combatting money laundering and terrorist financing and to facilitate their implementation. As part of the U.S. G-8 Action Plan for Transparency of Company Ownership and Control, the G-8 has called for law enforcement's access to accurate and current beneficial ownership information at the time of company formation.

The FATF is the international standard-setting body for safeguarding against money laundering and combatting the financing of terrorism. The FATF initially set international standards on beneficial ownership in 1990. In 2012, FATF strengthened its standards, which now focus on the collection of beneficial ownership information and making the information available to competent authorities. The U.S. is committed to—and strongly supports other countries—working toward developing and effectively implementing the legal frameworks that facilitate access to beneficial ownership information in accordance with the FATF standards.

Domestically, since President Obama signed the Foreign Account Tax Compliance Act (FATCA), the precursor of the Common Reporting Standard, into law in 2010, the U.S. has negotiated agreements with more than 100 countries that help these countries implement FATCA. FATCA's pioneering approach to automatic information sharing on tax matters is the template for the development of international standards that the G-20 nations have endorsed and are being deployed around the world.

Further, the Administration recently made efforts to compel the collection of and access to beneficial ownership information. On May 6, 2016, the Department of the Treasury (Treasury), on behalf of the Administration, sent beneficial ownership legislation to Congress. This proposed legislation would require companies that are formed within the U.S. to file beneficial ownership information with Treasury, or else they will face penalties for failing to comply. This proposal would increase the transparency into “beneficial ownership” of companies formed in the U.S. by requiring companies to know and report their true owners and to provide additional law enforcement tools to combat corruption and money laundering. Treasury remains committed to working with Congress to pass beneficial ownership legislation. See <https://www.treasury.gov/press-center/press-releases/Documents/20160506%20BO%20Legislation.pdf> for the draft legislation.

While obtaining beneficial ownership information at the time of company formation is important, obtaining beneficial ownership information at the time of the account opening is also key. To that end, on May 11, 2016, Treasury issued a final customer due diligence rule (CDD Rule), which was a four-year effort that included a significant comment period. The CDD Rule streamlines and clarifies several components of customer due diligence under the Bank Secrecy Act to promote consistency. The CDD Rule also adds a key new requirement for U.S. financial institutions to know the real people who own, control, and profit from companies (the “beneficial owners”) and verify their identities. When companies open a new account at covered financial institutions, the customer will be required to disclose the identity of (1) each individual who owns 25 percent or more of the company and (2) an individual who controls the company. These requirements are consistent with FATF standards.

The CDD Rule will apply to over 29,000 institutions in the U.S., and it is the first of two steps to ensure financial transparency. The CDD Rule clarifies and strengthens customer due diligence requirements for banks; brokers or dealers in securities; mutual funds; futures commission merchants; and introducing brokers in commodities. As demonstrated through the Panama Papers, companies formed in one jurisdiction may bank in a different jurisdiction. For example, a person can form a company abroad and

use that company to open a bank account in the U.S., or a person can form a company in the U.S. and use the company to open an account abroad. As such, it is important to have both the CDD Rule as well as beneficial ownership legislation to capture information at both company formation and at the account opening.

The Administration is also focused on beneficial ownership for tax compliance. Toward those efforts, also in May 2016, Treasury and the Internal Revenue Service (IRS) issued foreign-owned single-member Limited Liability Companies (LLC) proposed regulations that would close a loophole in U.S. laws that has allowed foreign persons to hide assets or financial activity behind anonymous entities established in the U.S. The rule will require foreign-owned entities that are “disregarded entities” for tax purposes, including foreign-owned single-member LLCs, to obtain an Employer Identification Number (EIN) with the IRS and annually report transactional information with their owners to the IRS. These entities represent a narrow class of foreign-owned U.S. entities that have previously had no obligation to report information to the IRS or to get a tax identification number and, thus, could be used to shield the foreign-based owners of non-U.S. assets or non-U.S. bank accounts. The proposed rule will strengthen the IRS’s ability to prevent the use of these entities for tax avoidance purposes, and it will build on the success of other efforts to curb the use of foreign entities and accounts to evade U.S. tax.

Along with the Treasury proposals, the Department of Justice sent several pieces of draft legislation to Congress to combat transnational corruption. This legislation would enhance law enforcement’s ability to prevent bad actors from concealing and laundering illegal proceeds of transnational corruption. It would also allow U.S. prosecutors to more effectively pursue kleptocracy cases and prosecute money laundering as part of foreign corruption. The proposals would assist investigators and prosecutors in gathering evidence, which can be used in prosecuting those who seek to hide and move illegal funds. For a list of the various legislations, see <https://www.justice.gov/opa/pr/justice-department-proposes-legislation-advance-anti-corruption-efforts>.

Also in May 2016, through a letter from Treasury Secretary Lew, the Administration called upon the U.S. Senate to approve tax treaties that have been pending for several years, and that would help crack down on offshore tax evasion. There are eight such tax treaties with other countries, including amendments to our existing treaties with Switzerland and Luxembourg that would better equip the U.S. to obtain information about U.S. taxpayer activity in those countries. The inability to obtain this information has impeded investigations and enforcement relating to offshore tax evasion. The Administration also renewed its call for Congress to act to strengthen authorities and to close the gaps in U.S. laws that can be abused by bad actors and would keep the U.S. at the forefront of international efforts to combat financial crimes. For Secretary Lew’s letter to Congress, see <https://www.treasury.gov/press-center/press-releases/Documents/Lew%20to%20Ryan%20on%20CDD.PDF%20%20>.

The President has proposed providing full “reciprocity” under FATCA in the last three budgets he submitted to Congress. Secretary Lew’s letter reiterates that Congress should act on the Administration’s legislative proposal as soon as possible in order to ensure that the U.S. meets international standards. Any increase in availability of beneficial ownership in extractive industry companies would be supportive of this active and ongoing larger U.S. government effort both domestically and internationally.

4.2 Consider the institutional framework for beneficial ownership disclosure

There is no institutional framework for public disclosure of beneficial ownership disclosure information in the U.S. There is, however, a substantial and growing framework for the collection on beneficial

ownership information from both public and private companies operating in the U.S. Below is a discussion of the various U.S. mechanisms to collect beneficial ownership information.

State Government Requirements Related to Legal Entity Formation

States manage the corporate formation process, and 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.

While no State registries consistent with the EITI Standard exist, there is an existing framework at the State level (the incorporation system), which collects much of this data and, in some cases, makes it public upon request. Examples of States that make certain data on incorporated companies accessible to the public through online systems include Alabama¹, Connecticut², Massachusetts³, Nebraska⁴, North Carolina⁵, Texas⁶, and Virginia⁷.

Requirements to Obtain an Employer Identification Number from the Internal Revenue Service

U.S. law requires all legal entities that have a Federal tax filing requirement obtain an EIN for tax administration purposes. Further, an entity is required to obtain an EIN if it has employees, or is required to file documents other than tax returns, with the IRS. An EIN is also required by all legal entities, under the Banking Secrecy Act, to open a bank account. In order to obtain an EIN, an entity must file a Form SS-4, which was amended in 2010 to require that a “responsible party” be named. The responsible party is generally defined as “the person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds or assets.” Additionally, any changes in the “responsible party” identified on Form SS-4 must be reported to the IRS within 60 days using a Form 8822-B.

Public Company Disclosure Requirements Implemented by SEC under the Exchange Act

Section 13(d) of the Securities Exchange Act of 1934 requires any person or group that acquires more than five percent “beneficial ownership” of public company equity securities to disclose its position within 10 days of crossing the threshold. SEC rules currently define “beneficial owner” to include any person who directly or indirectly shares voting or investment power in (the power to sell) the security, even if the shares are held by somebody else.

Possible Department of the Interior Mechanisms

The Department of the Interior (DOI) does not currently receive or have any mechanism to collect beneficial ownership information to fulfill its regulatory mandate to conduct lease sales for extractive industry operating rights on U.S. Federal lands or for regulating extractive operations and collecting production related fees and royalties. However, DOI is in contact with many of the entities for which beneficial ownership data is sought through its bidding and payment collection processes.

The EITI Standard requires that the Multi-Stakeholder Group (MSG) publish a roadmap for disclosing beneficial ownership information, determine all milestones and deadlines in the roadmap, evaluate

¹ <http://www.sos.alabama.gov/government-records/business-entity-records>

² <http://www.ct.gov/sots/site/default.asp>

³ <https://www.sec.state.ma.us/cor/>

⁴ <https://www.nebraska.gov/sos/corp/corpsearch.cgi>

⁵ <https://www.sosnc.gov/corporations/>

⁶ <http://www.sos.state.tx.us/Corp/sosda/index.shtml>

⁷ <https://www.scc.virginia.gov/clk/bussrch.aspx>

implementation of the roadmap, discuss and agree on a definition of beneficial ownership and the relevant identifying information to be disclosed, and agree to an approach for assuring the accuracy of the beneficial ownership information participating companies provide. The USEITI MSG, which DOI convened, will undertake these discussions, which will inform further steps to implement the EITI Standard in the U.S., including potential DOI mechanisms.

There is a statutory prohibition against agencies taking action that is outside their statutory authority. "To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall -- (2) hold unlawful and set aside agency action, findings, and conclusions found to be -- (C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right [or] (D) without observance of procedure required by law[.]" 5 U.S.C. 706.

4.3 Consider how to develop a definition of beneficial ownership

First, it is helpful to reiterate EITI guidance (Section 2.5 (f)) for definition of beneficial ownership:

- i. A beneficial owner in respect of a company means the natural person(s) who directly or indirectly ultimately owns or controls the corporate entity.
- ii. The multi-stakeholder group should agree on an appropriate definition of the term beneficial owner. The definition should be aligned with (f)(i) above and take international norms and relevant national laws into account, and should include ownership threshold(s). The definition should also specify reporting obligations for politically exposed persons.

Second, as noted above, the U.S. does not have a single definition of beneficial ownership, so looking at the various definitions is instructive.

As described above, the CDD Rule includes a definition of beneficial ownership. More specifically the rule states:

(d) Beneficial owner. For purposes of this section, beneficial owner means each of the following:

(1) Each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of a legal entity customer; and (2) A single individual with significant responsibility to control, manage, or direct a legal entity customer, including: (i) An executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or (ii) Any other individual who regularly performs similar functions.

Additionally, as mentioned above, the EIN form includes the responsible party, which is similar, although not equivalent to, a beneficial owner. The term “responsible party” is defined for non-publicly traded companies as:

The person who has a level of control over, or entitlement to, the funds or assets in the entity that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds or assets.

As discussed above, the SEC has a definition of beneficial ownership for purposes of investor protection: (Exchange Act Section 13d). Specifically, Section 13(d) of the Securities Exchange Act of 1934 requires:

...any person or group that acquires more than five percent “beneficial ownership” of public company equity securities to disclose its position within 10 days of crossing the threshold. SEC rules currently define “beneficial owner” to include any person who directly or indirectly shares voting or investment power in (the power to sell) the security, even if the shares are held by somebody else.

Internationally, the U.S. issued an action plan released after the G-8 agreed to beneficial ownership principles in June 2013. The action plan included the following definition:

...a natural person who, directly or indirectly, exercises substantial control over a covered legal entity or has a substantial economic interest in, or receives substantial economic benefit from, such legal entity, subject to several exceptions.

4.4 Consider reporting obligations for politically exposed persons

The February 2012 FATF definition of Politically Exposed Persons (PEP), revised from 2003, is as follows:

- Foreign PEPs: individuals who are or have been entrusted with prominent public functions by a foreign country; for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials
- Domestic PEPs: individuals who are or have been entrusted domestically with prominent public functions; for example, Heads of State or of government, senior politicians, senior government, judicial or military officials, senior executives of state owned corporations, important political party officials

U.S. law, specifically Section 312 of the USA Patriot Act and its implementing regulations, provides for enhanced due diligence for Senior Foreign Political Figures (SFPF), defined as: "a current or former senior official in the executive, legislative, administrative, military, or judicial branches of a 'foreign' government...a senior official of a major 'foreign' political party; and a senior executive of a 'foreign' government-owned commercial enterprise." The term “PEP” is not included in the U.S. regulations.

Below is a summary of relevant U.S. statutes and regulations that restrict employee ownership of certain financial interests, require employee reporting of certain financial interests, and restrict employee participation in certain official Government matters that would affect an employee’s personal or imputed financial interests or that might affect an employee’s personal or business relationships.

5 CFR § 3501.103(c) prohibits, with limited exceptions, all DOI employees, their spouses, and their minor children from acquiring or retaining any claim, permit, lease, small tract entries, or other rights that are granted by DOI in Federal lands. This prohibition does not restrict the recreational or other personal or non-commercial use of Federal lands by an employee, or the employee's spouse or minor children, on the same terms available to the general public.

5 CFR § 3501.103(b), with limited exceptions, prohibits the Secretary of the Interior and employees of the Office of the Secretary and other Departmental offices that report directly to a Secretarial officer who are in positions classified at GS-15 and above from acquiring or holding any direct or indirect financial interest in Federal lands or resources that the Department administers. This generally includes stock or

bond interests in most oil, gas, and mining companies that hold leases on Federal lands to conduct their operations.

43 USC § 11, implemented by 43 CFR § 20.401, prohibits Bureau of Land Management (BLM) employees from voluntarily acquiring direct or indirect financial interests in Federal lands. Prohibited interests include stocks and bonds in oil, gas, geothermal, and mining companies that hold leases or other property rights on Federal lands, as well as companies that hold substantial rights-of-way on Federal lands. BLM employees may not be members or employees of a business that has interests in Federal lands. Additionally, BLM employees may not occupy or use Federal lands (other than for recreational or other personal and non-commercial use on the same terms as use of Federal lands is available to the general public), or take any benefits from Federal lands, based upon a contract, grant, lease, permit, easement, rental agreement, or application.

43 USC § 31(a), implemented by 43 CFR § 20.401(b), prohibits U.S. Geological Survey (USGS) employees from holding financial interests in Federal lands which DOI administers or controls. Prohibited interests include stocks and bonds in oil, gas, and other mining companies that hold significant leases on such lands. Additionally, 5 CFR § 3501.104 sets limits on investments in entities engaged in mining activities on private land in the U.S. The ability of USGS employees to own oil, gas, or other mineral leases or to receive royalties from those leases is extremely limited.

30 USC § 1211(f), implemented by 30 CFR Part 706 and 43 CFR § 20.402, prohibits all Office of Surface Mining Reclamation and Enforcement (OSMRE) employees and any other Federal employee who performs functions and duties under the Surface Mining Control and Reclamation Act of 1977 from having any direct or indirect financial interests in underground or surface coal mining operations. Prohibited financial interests under this law include interests in companies that are involved in developing, producing, preparing, or loading coal or reclaiming the areas upon which such activities occur. Additionally, 30 USC § 1267(g), as implemented by 30 CFR Part 705, provides that no employee of a State regulatory authority performing any function or duty under the Surface Mining Control and Reclamation Act of 1977 shall have a direct or indirect financial interest in any underground or surface coal mining operations.

The Ethics in Government Act of 1978, as amended (5 USC app. § 101), implemented by 5 CFR Part 2634, requires senior officials in the executive, legislative, and judicial branches to file public reports of their finances, as well as other interests outside the Government. Executive branch personnel file such reports using the OGE Forms 278e (previously the OGE Form 278) and 278-T. Unlike confidential financial statements that some mid-level employees file, the OGE Forms 278e and 278-T are available to the public. Ethics officials within each executive branch agency review, certify, and maintain these reports. Executive branch agencies also forward OGE Forms 278e and 278-T that Presidential appointees, which the Senate confirms, submit to the Office of Government Ethics (OGE) for additional review and certification. The primary purpose of the public disclosure program is to prevent conflicts of interest and to identify potential conflicts of interest of current and prospective employees. If a reviewing official identifies a potential conflict of interest, several remedies are available to avoid an actual or apparent violation of Federal ethics laws and regulations, which include recusal, reassignment, and divestiture of the financial interest(s). 28 USC § 535 requires executive branch agencies to report to the Attorney General any information, allegations, or complaints relating to violations of title 18 of the U.S. Code involving Government officers and employees.

5 USC app. § 107, implemented by Subpart I of 5 CFR Part 2634, also provides that certain executive branch employees who are not required to file a public financial disclosure report but whose duties involve the exercise of discretion in sensitive areas, such as contracting, procurement, administration of grants and licenses, and regulating or auditing non-Federal entities, are required to file confidential

financial disclosure reports (OGE Form 450). This reporting system generally tracks the approach of the public financial disclosure system with some differences. For example, asset values and income amounts are not required to be reported, nor are interests in or income from bank accounts, money market mutual funds, U.S. obligations, and Government securities. The most notable difference between public and confidential reports, however, is that confidential financial disclosure reports are not available to the public.

30 USC § 1211(f), implemented by 30 CFR Part 706, requires that each OSMRE employee and any other Federal employee who performs any function or duty under the Surface Mining Control and Reclamation Act of 1977 must file a statement of employment and financial interests upon entrance to duty and annually thereafter. 30 USC § 1267(g), as implemented by 30 CFR Part 705, also requires State regulatory authority employees performing any duties or functions under the Act to file a statement of employment and financial interest upon entrance to duty and annually thereafter.

A Federal criminal conflict of interest statute, 18 USC § 208, prohibits executive branch employees from participating personally and substantially, in an official capacity, in any “particular matter” that would have a direct and predictable effect on the employee’s own financial interests or on the financial interests of,

- The employee’s spouse or minor child
- A general partner of a partnership in which the employee is a limited or general partner
- An organization in which the employee serves as an officer, director, trustee, general partner, or employee
- A person with whom the employee is negotiating for or has an arrangement concerning prospective employment

A “particular matter” is virtually any Government matter to which an employee might be assigned, including policy matters and matters involving specific parties, such as contracts or grants. (A few matters in Government, however, may be so broad in scope that the conflict of interest law does not require an employee's disqualification even though the employee’s own or “imputed” financial interests are among those affected by the matter.) Disqualification (“recusal”) is mandatory in the circumstances specified in the statute. Moreover, disqualification is often the appropriate way to prevent a conflict of interest in the long term, unless an “exemption” applies or the circumstances warrant the use of other means of resolving the conflict of interest.

An executive branch-wide regulation, 5 CFR § 2635.502, recognizes that a reasonable person may believe that an employee’s impartiality can be influenced by interests other than the employee’s own or those that are imputed to the employee by the conflict of interest laws. Under 5 CFR § 2635.502, employees are required to consider whether their impartiality would be questioned whenever their involvement in a “particular matter involving specific parties” might affect certain personal or business relationships. The term “particular matter involving specific parties” refers to a subset of all “particular matters” and includes Government matters, such as a contract, grant, permit, license, or loan. If a particular matter involving specific parties is likely to have a direct and predictable effect on the financial interests of a member of the employee's household, or if a person with whom the employee has a “covered relationship” is or represents a party to such matter, the employee must consider whether a reasonable person would question the employee’s impartiality in the matter. An employee has a covered relationship with,

- A person with whom the employee has or seeks a business, contractual, or other financial relationship

- A person who is a member of the employee’s household or is a relative with whom the employee has a close personal relationship
- A person for whom the employee’s spouse, parent, or dependent child serves or seeks to serve as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee
- Any person for whom the employee has, within the last year, served as an officer, director, trustee, general partner, agent, attorney, consultant, contractor, or employee
- Any organization (other than a political party) in which the employee is an active participant

If the employee concludes that participation in such a matter would cause a reasonable person to question the employee’s impartiality, the employee should not work on the matter pending possible authorization from the appropriate agency official. Moreover, an employee should not work on any matter if the employee is concerned that circumstances other than those expressly described in the regulation would raise a question regarding the employee’s impartiality. The employee should follow agency procedures so that the agency can determine whether participation is appropriate.

4.5 Consider the level of detail to be disclosed

The U.S. does not have one specific framework for disclosing beneficial ownership information.

Treasury’s CDD rule requires the following information from legal entities when they open new accounts:

- Name and title of natural person opening account
- Name and address of legal entity for which the account is being opened
- For each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise, owns 25 percent or more of the equity interests of the legal entity listed above: name, date of birth, address (residential or business street address), for U.S. persons – Social security Number, for foreign persons – a passport number and country of issuance; this information is not publicly available
- For one individual with significant responsibility for managing the legal entity listed above, such as an executive officer or senior manager (for example, a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer) or any other individual who regularly performs similar functions: name/title, date of birth, address (residential or business street address), for U.S. persons – social security number, for foreign persons – a passport number and country of issuance

Legal entities with a federal tax obligation or opening an account at a financial institution subject to CDD rules are required to have an EIN. The vast number of legal entities in the U.S. already have a tax identification number, which would include both EINs, as well as social security numbers (SSNs). For tax year 2014, 27.6 million Schedule C’s were filed, and 1.9 million Schedule F’s were filed with individual tax returns reporting profit or loss from a sole proprietorship and farming. C corporations filed 2.2 million returns, S corporations filed 4.6 million returns, and partnerships filed 3.8 million returns. Individual filers, who must list their social security number on their tax return, may not be required to obtain an EIN. However, a sole proprietorship or self-employed farmer who establishes a qualified retirement plan, or is required to file excise, employment, alcohol, tobacco, or firearms returns, must have an employment identification number. A partnership, corporation, REMIC (real estate mortgage investment conduit), nonprofit organization (church, club, etc.), or farmers’ cooperative must use an EIN for any tax-related purpose even if the entity does not have employees. For more information, see the [2015 Internal Revenue Service Data Book and IRS Statistics of Income \(SOI\), Individual Income Tax Returns Line Item Estimates, 2014](#). Safeguarding personally identifiable information in possession of the government and preventing its breach are essential to ensure that the government retains the American public’s trust. This is a

responsibility shared by officials accountable for administering operational and privacy and security programs, legal counsel, Agencies' Inspectors General and other law enforcement, and public and legislative affairs. It is also a function of applicable laws, such as the Federal Information Security Management Act of 2002 and the Privacy Act of 1974.

The Mineral Leasing Act of 1920 (MLA) requires that companies holding onshore Federal mineral leases meet citizenship and acreage requirements (30 USC 181 and 184). The regulations for different types of minerals implement citizenship and acreage disclosures in different ways. From most to least disclosing, the regulations are as follows: coal (43 CFR 3472.2-2 and 3422.3-4), solid minerals (43 C.F.R. 3502.27, .28, .29, and .34), oil and gas (43 CFR 3102.5-2 and .5-3), and geothermal (43 CFR 3202.11).

When disclosures are required, they must be made before the companies obtain a lease (around the time of the bidding process). For coal, 10% ownership in a partnership or association must be disclosed to ensure compliance with the MLA acreage and citizenship requirements (see 43 CFR 3472.2-2(b)). For leaseable solid minerals other than coal, 10% ownership in a partnership or association must also be disclosed (see 43 CFR 3502.27 - individuals must disclose when they own 10% or more of a partnership - and 43 CFR 3502.28 - partnerships themselves must disclose). For oil and gas, publicly traded partnerships and associations must certify that their constituent members who own more than 10% are in compliance with the MLA (see 43 CFR 3102.5-2).

Per BLM, execution and submission of an offer, competitive bid form, or request for approval of a transfer of record title or of operating rights (sublease) constitutes certification of compliance. All lease offers, competitive bid forms, or requests for approval of a transfer of record title or of operating rights (sublease), are made part of and tracked in the official case file maintained at the appropriate BLM State Office. For geothermal, there is no 10% threshold for either partnerships or corporations.

Regulations applicable to locatable minerals on Federal lands (such as gold or copper) provide that mining claims may be located only by U.S. citizens, legal immigrants who have filed for citizenship, business entities (which may include, but are not limited to, corporations and partnerships) organized under the laws of a State, and agents of persons or entities falling into any of these three categories (43 CFR 3830.3). Mining claims and the names of the locators must be recorded with BLM; however, there is no requirement to record the names of the underlying owners of a business entity (43 CFR 3833.11). Claimants must "record" their claims with BLM within 90 days after they locate their claim. The required information is extracted from a location notice that the claimant fills out and files with BLM. This information is filed in the BLM State Office of the State where the claim is located and is added to their automated data base, LR2000 (<http://www.blm.gov/lr2000/index.htm>). As of 9/30/2015, there were about 341,000 active mining claims.

43 USC 1337 requires that leases be issued to the highest responsible qualified bidder. The regulations governing each of the three resource types are (1) oil, gas, and sulfur; (2) other minerals; and (3) renewables – leased under the Outer Continental Shelf Leasing Act (OCSLA), and these regulations specify how bidders demonstrate that they are qualified. All three sets of regulations require that (1), if an individual, the person must be a citizen or national of the U.S. or an alien lawfully admitted for permanent residence; (2), if a corporation, the corporation must be organized under the laws of a State or territory; and, (3) if an association, the association's members must be qualified individuals or corporations (30 CFR 556.401; 30 CFR 581.4; and 30 CFR 585.106 respectively). For oil, gas, sulfur, and renewables, the regulations 30 CFR 556.402; 30 CFR 585.107 require the bidder to submit evidence showing that the bidder is qualified and meets other criteria (such as not having been debarred from doing business with the Department). For corporations and associations, there is no requirement to disclose the underlying owners (30 CFR 585.107).

4.6 Consider data collection procedures

As discussed above, under the CDD Rule, the Certification of Beneficial Owner(s) must be completed by the person opening a new account on behalf of a legal entity (or such person must otherwise certify the beneficial ownership information) with any of the following U.S. financial institutions: (1) a bank or credit union; (2) a broker or dealer in securities; (3) a mutual fund; (4) a futures commission merchant; or (5) an introducing broker in commodities.

Also, as discussed above, entities with filing obligations under the U.S. Federal tax law or opening an account at a financial institution subject to CDD requirements are required to have an EIN, which is issued by the IRS and requires companies to identify the responsible party. The IRS collects and keeps this information.

All of the information on the EIN application is subject to strict confidentiality provisions accorded to all U.S. Federal tax information under U.S. law (26 U.S.C. 6103) that prevents such information from being disclosed or used for any purpose other than U.S. Federal tax administration, except as permitted under specifically delineated statutory provisions under U.S. Federal internal revenue laws.

4.7 Consider how to develop a methodology for assuring the accuracy of the data

Verification under the CDD Rule⁸ is as follows:

- Under the CDD Rule, covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers. Customer due diligence procedures will enable the institution to:
 - Identify the beneficial owner(s) of each legal entity customer at the time when a new account is opened, unless the customer is otherwise excluded pursuant to paragraph (e) of this section, or the account is exempted pursuant to paragraph (h) of this section. A covered financial institution may accomplish this either by obtaining a certification in the form of a Certification of Beneficial Owner from the individual opening the account on behalf of the legal entity customer, or by obtaining from the individual the information required by the form by another means, provided that the individual certifies, to the best of the individual’s knowledge, the accuracy of the information.
 - Verify to the covered financial institution the identity of each beneficial owner identified, according to risk-based procedures to the extent reasonable and practicable. At a minimum, these procedures must contain the elements required for verifying the identity of customers that are individuals and in the case of document verification, the financial institution may use photocopies or other reproductions. A covered financial institution may rely on the information supplied by the legal entity customer regarding the identity of its beneficial owner or owners, provided that it has no knowledge of facts that would reasonably call into question the reliability of such information. Additionally, in line with Customer Identification Program (CIP) rule requirements, financial institutions are expected to implement procedures for collecting and verifying beneficial ownership information “appropriate for [their] size and type of business.” Regulators regularly examine financial institutions for the quality of their CIP.

Penalties for Failure to Comply with Section 13d of the Securities and Exchange Act are as follows: as previously discussed, Section 13(d) requires any person or group that acquires more than five percent

⁸ See 31 C.F.R. § 1010.230(b) <https://www.federalregister.gov/documents/2016/05/11/2016-10567/customer-due-diligence-requirements-for-financial-institutions>

“beneficial ownership” of public company equity securities to disclose its position within 10 days of crossing the threshold. Failure to disclose the information requested by this schedule may result in civil or criminal action against the persons involved for violation of the federal securities laws and rules promulgated thereunder.

4.8 Consider data timeliness

Covered financial institutions have two years (May 11, 2018) to make changes to their account opening and anti-money laundering compliance systems to implement the CDD Rule. The CDD Rule does not impose a categorical requirement that financial institutions must update customer information, including beneficial ownership information, on a continuous or periodic basis. Rather, the updating requirement is event-driven and occurs as a result of normal monitoring as required by the Bank Secrecy Act. When a financial institution detects information (including a change in beneficial ownership information) about the customer in the course of its normal monitoring that is relevant to assessing or reevaluating the risk posed by the customer, it must update the customer information, including beneficial ownership information.

Exchange Action Section 13d

The SEC requires beneficial ownership reporting to be updated whenever there is a change in status.

4.9 Consider data accessibility

In the U.S., there is no authoritative source for beneficial ownership information of legal entities, as there is no requirement for U.S. States to collect this information at the time when a company is formed. However, as discussed above, any legal entity that has income or employees, or is otherwise required to file any documents with the IRS or opens an account at a financial institution, is required to have an EIN and requires companies to disclose the responsible party. The IRS collects and keeps this form, and they make it available to law enforcement upon receipt of a subpoena court order.

CDD Rule: Covered financial institutions are required to establish and maintain written procedures that are reasonably designed to identify and verify beneficial owners of legal entity customers.

SEC Rule: Under Section 13d, the beneficial ownership information is publicly available, as the primary purpose of this information is investor protection.

With respect to publicly traded and privately owned companies on Federal land, there were approximately 7,500 companies or private individuals that paid DOI \$7.8 billion in calendar year 2015. The Office of Natural Resources Revenue (ONRR) received \$7.5 billion from royalties, bonuses, rents, etc.; BLM received \$100 million from permit fees; and OSMRE received \$200 million from Abandoned Mine Land fees. Of the approximately 2,400 entities making payments to ONRR, initial research estimates are that about 10 percent are publicly traded companies (U.S. or Foreign stock exchanges) and account for about 80 percent of total payments.

4.10 Consider capacity building needs

A gap analysis of U.S. beneficial ownership practices and standards should be conducted, which compares these to international standards and the EITI Standard (as indicated in Section 2.5 (f)(ii) of the EITI Standard). This gap analysis will improve the MSG’s ability to assess further needs and to implement the roadmap.

4.11 Consider needs for technical and financial assistance

At this time, there are no technical and financial needs necessary in order to implement the roadmap.

4.12 Consider deadlines and responsibilities for roadmap activities

The USEITI MSG agreed to the formation of a Beneficial Ownership Roadmap Workgroup to oversee the development of the Roadmap. The Workgroup, which has members from each of the three sectors, began meeting in July 2016. The Workgroup will present a draft Roadmap for MSG consideration at the November 2016 MSG meeting.

Preliminary Proposed Timeline and Objectives:

- January 2017: USEITI Beneficial Ownership Roadmap Submitted to EITI International Board
- 2017: The MSG agrees to the working definition of Beneficial Owner
- 2017: Conduct a legal review of the legal barriers and enablers to public disclosure of beneficial ownership information under U.S. law
- 2017 USEITI Reporting Season: The MSG explores the possibility of requesting beneficial ownership information through the USEITI reporting template and collection of data for disclosure in the 2018 report (public companies may have the opportunity to indicate that beneficial ownership is done through periodic filings with the SEC, where appropriate, and, if it is determined, this disclosure is sufficient)
- 2017 and 2018: DOI and other relevant parties explore possibilities to request beneficial ownership information from companies engaged in bidding processes or otherwise operating in lands under its jurisdiction consistent with MLA, OCSLA, and/or other regulatory action within the power of the agency
- January 2018: Assuming that the preceding was successful, USEITI report with 2017 data including results of beneficial ownership query is released
- 2018 USEITI Reporting Season: Assuming that the preceding was successful, a request for beneficial ownership information is included in the USEITI reporting template, and results will be included in the 2019 USEITI report
- 2018: The USEITI MSG explores the possibility of regulatory/legislation action related to the “invest in” provision of the beneficial ownership requirement
- 2019 USEITI Reporting Season: Assuming that preceding efforts were successful, a request for beneficial ownership information is included in the USEITI reporting template, and results will be included in 2020 USEITI report
- 2019: Assuming that preceding efforts were successful, DOI and other relevant parties seek to request beneficial ownership information from companies engaged in bidding processes or otherwise operating in lands under its jurisdiction consistent with the MLA, the OCSLA, and/or other regulatory action within the power of the agency

DRAFT – October 30, 2016

- 2019: The USEITI MSG explores the possibility of regulatory/legislation action related to the “invest in” provision of the beneficial ownership requirement
- 2020: Assuming that the preceding was successful, reporting by entities bidding for activities and operating on lands in the jurisdiction of the MLA, the OCSLA, and/or other regulatory action within the power of DOI commences
- 2020: Assuming that preceding efforts were successful, reporting related to the “invest in” provision commences