



NASS Section by Section Questions and Clarifications of Treasury's Proposal

Responses provided by Treasury

May 6, 2010

Section 2: Findings

- Will the findings section remain as written in S.569? We have some concerns about the accuracy of Finding 6, 7, 8, 10, 11.

Treasury said that any changes to findings or legislative language would be done by the legislative sponsor.

Sec. 3: Transparent Incorporation Practices -Definitions

- What current piece of legislation is being amended? The info is blanked out in the current proposal. Obviously we think it is relevant because it could determine regulatory agency, funding source and committee jurisdiction. Is it Treasury's intention for the bill to stay in HSGAC?

They originally thought it would be a substitute for S.569 but now they think it is just out there for anyone to take on. Treasury agrees that it is a big deal to leave unresolved because it would determine regulator, funding source and committee of jurisdiction.

- Two new options added to "appropriate request," FinCEN and 3512 of Title 18. What are they and why were they added? Is the focus of FinCEN more on money laundering than terrorist financing as the regulators of the Bank Secrecy Act?

Treasury said that they added FinCEN because of the added money laundering concerns and that yes, FinCEN is the agency that regulates the Bank Secrecy Act. The other reference is the U.S. Code that requires cooperation with foreign treaties. Treasury said it was referenced in S.569, but that this reference simply cites the Section of US Code.

- Beneficial Owner says "at least as much of an interest in such a Covered Legal Entity as any other individual" which could be interpreted to mean anybody but the smallest holder.

Treasury said their intention was to collect up to two names, one name for (a) and one name for (b). They also said (a) and (b) could be the same person.

- Was it your intention to allow states to determine whether they would allow for Documentation Agents, Licensed Documentation Agents or both?

Treasury says their intent was to provide the states with options. States can require a documentation agent or a licensed documentation agent or they can allow for both. Treasury also said that a registered agent could be a document agent that wasn't licensed, but they would be responsible for filing the information with the state - all info required of a regular documentation agent.

- Exempt legal entities now include businesses with more than 20, more than \$10 million in revenue and here is U.S. Must have all three to be exempt, correct?

Yes, in order to be exempt you must fulfill all three requirements.

- States now must license documentation agents and develop a new licensing division. Was this based on any current program out there? Short period of time to implement. Is there a definition of "fit and proper"?

No, there was no licensing program they were referencing when they included this language in the proposal. There are a handful of states who register agents, but no state that licenses. Treasury also said that "fit and proper" is a term of art in the financial world. I asked if it was their intention to exempt attorneys from "fit and proper" requirements because of similar requirements that need to be met to be to be accepted in the Bar of a particular state. The answer was no.

- Was it your intention that lawyers could be LDA's? If yes, how would they handle not notifying their client of an "appropriate request?"

Treasury said that they did anticipate that lawyers would be Licensed Documentation Agents. They said they did not see a conflict of interest problem or attorney/client privilege problem and were told by a few attorneys that argument was simply a "red herring."

Section 3b(1) - Obligations of Legal Entities

- This section starts off with "to protect the security of the US, each state that receives funding from _____ shall by Oct 2012 shall amend its laws. Is this language being used to link to Homeland Security funds?

Treasury said the language was taken from the Levin bill. There was no other meaning behind it.

- Where is the funding coming from?

Treasury doesn't know where the funding will come from, but said that since OMB cleared it without funding, the administration may not feel that funding is necessary or required.

- Was a funding trigger considered?

Treasury said they had discussed a trigger, but ultimately decided not to include language on a trigger (trigger means unless funding is appropriated, states would not have to implement). Treasury said the Administration clearly believes this program needs to be implemented regardless of funding but understand why the states are pushing for the funding.

- In (G) a new term "controlled" is used. It isn't included in the definitions section. What does controlled mean?

Uncertain of exact definition. This is to cover those businesses that have been created using an entity formation agent.

Section 3b(2) - Obligations of Documentation Agents or Licensed Documentation Agents

- Paragraph iii says "notify the Secretary of State and each Legal Entity for which is serves of any change of name or address or resignation."

We clarified for Treasury that it isn't always the Secretary of State's office that has jurisdiction over corporate filings in the state. Language will need to be amended if this progresses to a congressional bill.

- Paragraph iv says "not disclose the existence of any Appropriate Request for beneficial ownership information (other than as necessary to anyone employed by or an agent of the Documentation Agent or Licensed Documentation Agent)."

We asked for clarification on this language. We wondered why If a documentation agent files all info with the state, why they would be getting an "appropriate request?" Wouldn't the request be going to the state? What does "other than as necessary to anyone employed by or an agent of the Documentation Agent or Licensed Document Agent" mean? Treasury staff we spoke with couldn't remember exactly why this was in there or who included the statement.

Sec. 3b(3) - Obligations of the States of Formation

- (3)(A)(ii) "has been signed by all persons or entities required to do so; "

We noted that the SOS office or relevant agency wouldn't know if the required individuals signed, only that signatures were provided. In which case, wouldn't the issue be covered by (3)(A)(i). Treasury said that they wanted the states to ensure that the forms were filled out completely, so that maybe it was covered under (i).

- (H) references an obligation of a Legal Entity. It is also included under the section of Obligations of a Legal Entity Sec. 3(b)(1)(J).

We suggested that this entry references the obligations of a legal entity, not the obligation of a state. This proposal also includes this language in the obligations of a legal entity section. It should not be here. Treasury didn't entirely agree.

Section 4 - Penalties for non-compliance with Beneficial Ownership Information Requirements

- This section begins with "Any person who affects interstate or foreign commerce by," but unclear as to why the section begins that way. Why doesn't it just say "Any person who" and then list all the illegal acts?

Treasury indicated that DOJ was responsible for the penalties language and they don't know why it includes that interstate/foreign commerce language.