



Fact Sheet: Beneficial Ownership and Section 885 Reform

The Problem

As part of the fiscal year 2021 National Defense Authorization Act, Congress enacted Section 885, a provision to enable government officials and the public to learn more about the beneficial owners — or true owners — of companies that receive in excess of \$500,000 in federal contracts or grants.¹ This transparency is critical in the fight against bad actors, like Russian oligarchs and kleptocrats, who take advantage of anonymous corporate structures to hide assets and fuel their involvement in illicit activities ranging from fraud to supporting a war against a sovereign nation.² As the Project On Government Oversight has previously reported, anonymous companies have also been tied to public corruption, organized crime, intellectual property theft, money laundering, terrorist financing, and the opioid crisis.³

Unfortunately, there is a loophole in this provision as it is currently written that undermines its original intent. Specifically, Section 885 provides too much discretion to corporations on when to comply. The law as it applies to corporate information includes a “to the extent practicable” condition that creates a major gap, which will allow contractors and grantees to conceal their beneficial owners.⁴ This makes it possible for covered entities to decline to submit their beneficial ownership information by claiming it was simply too burdensome to produce.

The Solution

Section 885 must be amended to strike the “extent practicable” language and close this reporting loophole. Additionally, the beneficial ownership identification provision must be fully incorporated into current law in order to close all other potential regulatory loopholes. It must be referenced in multiple sections related to the corporate information included in an existing contractor responsibility database and the semiannual disclosures that the entities are required to submit to the government.

Remedies to hold corporations accountable for not identifying their beneficial owners are also missing from the law. It is commonplace for contractors to violate existing spending transparency reporting rules, so a provision establishing penalties would help encourage compliance and reducing the beneficial ownership reporting threshold would make it consistent with Section 847 of the National Defense Authorization Act for fiscal year 2020.

Finally, it is important to track the collection and use of beneficial ownership information. Doing so will help the federal government better understand how it can use this information, in coordination with our allies and partners abroad, to identify criminal actors and crack down on misconduct.

¹ National Defense Authorization Act, H.R. 6395, 116th Cong. § 885 (2019), <https://www.documentcloud.org/documents/21418790-885-pdf>.

² Government Accountability Office report, *Defense Procurement, Ongoing DOD Fraud Risk Assessment Efforts Should Include Contract Ownership*, GAO20106 (November 2019), <https://www.gao.gov/assets/gao-20-106.pdf>.

³ Tim Stretton, “Defense Bill Includes Two Landmark Transparency Provisions,” Project On Government Oversight, January 21, 2021, <https://www.pogo.org/analysis/2021/01/defense-bill-includes-two-landmark-transparency-provisions>.

⁴ 41 U.S.C. § 2313(d)(3), <https://www.law.cornell.edu/uscode/text/41/2313>.

Proposed Amendment

SEC. __ Liability for Failure to Disclose or Update Information.

Section 2313 of title 41, United States Code, is amended—

(1) in subsection (d)(3), by striking “, to the extent practicable,”;

(2) in subsection (f)—

(A) in paragraph (1), by striking “subsection (c)” and inserting “subsections (c) and (d)”;

(B) by striking “\$10,000,000” and inserting “\$5,000,000”;

(3) by redesignating subsection (g) as subsection (i); and

(4) by inserting after subsection (f) the following new subsections:

“(g) LIABILITY.—A knowing and willful failure to disclose or update information in accordance with subsections (d)(3) and (f) can result in one or more of the following:

“(1) Entry of the violation in the database described by this section.

“(2) A civil fine of not more than \$200,000, depending on the extent and gravity of the violation.

“(3) Liability pursuant to section 3729 of title 31.

“(4) Referral for suspension or debarment.

“(h) ANNUAL REPORT ON AWARDEE BENEFICIAL OWNERSHIP REPORTING AND COMPLIANCE.—

“(1) IN GENERAL.—Not later than October 31 of each year, the Secretary of Defense shall submit to the congressional defense committees a report that assesses the utility and risks of beneficial ownership disclosures by persons with federal agency contracts and grants.

“(2) CONTENT.—The report required under paragraph (1) shall address and include information about the number of beneficial ownership disclosures that were made by persons with federal agency contracts and grants, gaps in the data caused by the divergent reporting threshold for government and awardee entries, the impact on small business concerns (as defined under section 3 of the Small Business Act (15 U.S.C. 632)), data on contractors owned by entities outside of the United States, data on violations of disclosure rules and any penalties assessed for disclosure non-compliance, and recommendations for improving the System For Award Management disclosures by a person with Federal agency contracts and grants.”

Contact

Scott Amey, J.D., General Counsel, Project On Government Oversight, scott.amey@pogo.org