



Fact Sheet: Time for Pentagon to Implement the Law

The Problem

Certain Pentagon contractors have been using shell companies to defraud the U.S. government and to disguise their foreign ownership, costing the American taxpayers hundreds of millions of dollars and endangering our national security.

According to the nonpartisan Government Accountability Office (GAO), some Department of Defense (DOD) contractors “have an opaque ownership structure that conceals other entities or individuals who own, control, or financially benefit from the company.”¹ As a result, DOD “faces several types of financial and nonfinancial fraud and national security risks.”²

A GAO review of 32 court cases resolved between 2012 and 2018 revealed that the Pentagon lost an estimated \$875 million to fraudulent contractors with anonymous ownership structures.³ These companies created the appearance of competition to make deceitful price increases seem genuine.⁴ They did this, for example, by creating fake entities to submit arbitrarily high subcontractor bids, and by contracting with their own subcontractors to charge inflated prices.⁵ According to the GAO, foreign adversaries have also circumvented U.S. export controls to “access sensitive government information” and could infiltrate DOD’s supply chain to “facilitate state or company espionage.”⁶

Although Congress passed a law over three years ago to address this critical problem, DOD has failed to implement it, further jeopardizing taxpayer funds and national security.

Congress passed Section 847 of the National Defense Authorization Act (NDAA) for fiscal year 2020 to require companies with federal contracts valued at more than \$5 million to disclose beneficial owners — the people or entities who actually own or control the companies.⁷ That section intends to “improve the process and procedures for the assessment and mitigation of risks related to foreign ownership, control, or influence (FOCI) of contractors and subcontractors doing business with the Department of Defense.”⁸

¹ Government Accountability Office, *Defense Procurement: Ongoing DOD Fraud Risk Assessment Efforts Should Include Contractor Ownership* (November 2019), <https://www.gao.gov/assets/gao-20-106.pdf>.

² Government Accountability Office, *Defense Procurement* [see note 1].

³ Government Accountability Office, *Defense Procurement* [see note 1]; Neil Gordon, “Contractors Use Shell Games to Hide Owners, Cheat Taxpayers,” Project On Government Oversight, December 18, 2019, <https://www.pogo.org/analysis/2019/12/contractors-use-shell-games-to-hide-owners-cheat-taxpayers>.

⁴ Government Accountability Office, *Defense Procurement*, 14-16 [see note 1].

⁵ Government Accountability Office, *Defense Procurement*, 14-16 [see note 1].

⁶ Government Accountability Office, *Defense Procurement*, 27 [see note 1].

⁷ National Defense Authorization Act for Fiscal Year 2020, Pub. L. No. 116-92, § 847(b)(1), 113 Stat. 1198 (2019), <https://www.congress.gov/116/crpt/hrpt333/CRPT-116hrpt333.pdf>.

⁸ National Defense Authorization Act for Fiscal Year 2020, § 847(b)(1) [see note 7].

The following year, Congress passed the NDAA for fiscal year 2021, which amended Section 847 by tasking the secretary of defense with developing an implementation plan by March 1, 2021, to improve the disclosure and mitigation processes.⁹ DOD completely missed this deadline, and failed to develop any implementation plan. Instead, the Pentagon has signaled that it won't even issue a proposed rule until an unspecified date in 2023.¹⁰

The Solution

DOD must fully implement all of the statutory requirements of Section 847, as amended, as soon as possible to protect taxpayer funds and our national security. Specifically, the secretary of defense must

- **develop and share an implementation plan** with the House and Senate Armed Services Committees;
- **enforce mandatory disclosures of beneficial ownership** for covered contractors and subcontractors, including any entities with foreign ownership, control, or influence, and any changes to ownership after contracts are awarded;
- **require reports and conduct examinations** of covered contractors and subcontractors to assess compliance with Section 847;
- **designate a DOD official** to be responsible for overseeing contracts that pose a risk to national security;¹¹ and
- **develop standard contract clauses** to enforce beneficial ownership disclosures and effective mitigation of risks related to foreign ownership, control, or influence.

Additional Context

DOD has had more than enough time to implement the law, as demonstrated by other agencies' successful and timely implementation of similar transparency protections. For example, as part of the FY 2021 NDAA, Congress also passed the Corporate Transparency Act that requires certain companies incorporated or doing business in the United States to disclose their beneficial ownership to the Department of the Treasury.¹² Treasury has already issued a final rule implementing those ownership transparency requirements.¹³

Contact

Dylan Hedtler-Gaudette, Director of Government Affairs, Project On Government Oversight,
dylan.hedtlergaudette@pogo.org

⁹ National Defense Authorization Act for Fiscal Year 2021, Pub. L. No. 116-283, § 819(c)(1), 134 Stat. 3388 (2020), <https://www.congress.gov/bill/116th-congress/house-bill/6395>.

¹⁰ Department of Defense, "Open DFARS Cases as of 3/10/2023," 9, <https://www.acq.osd.mil/dpap/dars/opencases/dfarscasenum/dfars.pdf>.

¹¹ 10 U.S.C. § 2509(b) (2022), <https://www.govinfo.gov/content/pkg/USCODE-2020-title10/pdf/USCODE-2020-title10-subtitleA-partIV-chap148-subchapII-sec2508.pdf>. The under secretary of defense for acquisition and sustainment and the director of the defense counterintelligence and security agency currently lead the department's efforts to mitigate risk in the acquisition process.

¹² National Defense Authorization Act for Fiscal Year 2021, § 6403 [see note 9].

¹³ Reports of Beneficial Ownership, 87 Fed. Reg. 59498, 59510, (September 30, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf>.