November 9, 2015

The President
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Re: Recommended commitments on beneficial ownership transparency, including in federal procurement, for the United States National Action Plan on Responsible Business Conduct

Dear Mr. President:

We, the 32 undersigned organizations, are pleased to submit the following comments on the United States National Action Plan on Responsible Business Conduct. We welcome the development of this plan and the opportunity for the Administration to demonstrate its leadership and innovation in promoting a business environment conducive to responsible practices. We are pleased to offer these comments and specific recommendations on beneficial ownership transparency, including in US federal procurement, for inclusion in the National Action Plan. We look forward to working with the US government and other stakeholders to implement the plan.

The ability to incorporate a company anonymously in the US and abroad is undermining US efforts to curb corruption and to protect against human rights abuses. Years of research demonstrate that the US is a favored place for incorporating anonymous shell companies that have been used to hide stolen assets; bribe public officials; evade sanctions; dodge taxes; launder drug money; and defraud vulnerable Americans, businesses and the government, including through public procurement. Furthermore, many US states rank among the easiest places in the world to form a company without revealing the identity of the people who ultimately own or control it (often called "beneficial owners").

To address this issue, the Administration should:

1. Commit to productive engagement with Congress to ensure prompt legislative action on beneficial ownership transparency. The Administration should **reaffirm its commitments to require American companies to disclose their ultimate beneficial owners to the government and strengthen it by making this information publicly accessible in an open data format**.
2. The Administration should **require all US agencies to collect, verify and publish on a centralized website, such as the System for Award Management (SAM), information on the beneficial owners for any entity other than a publicly listed company, including the primary contractor and its subcontractor at any subsequent tier, upon registration for the right to bid for and/or receive government funds**, and any changes of beneficial ownership on record thereafter within 60 days. For an entity already registered, the Administration should require that entity to disclose its beneficial ownership information to remain eligible to bid and/or receive future government funds. All beneficial ownership, award and contract information should be made publicly available for free and in a machine-readable, an open data format, such as the Open Contracting Data Standard.

Federal procurement is an important area where the Administration has the authority to act without Congress, and to significantly impact fraud and abuse that has devastating consequences to human

rights. In Fiscal Year 2014, the US federal government spent more than $445 billion and in 2013, $460 billion. Research by the UN has found that corruption may amount to as much as 25% of government procurement budgets globally. The US is not immune to fraud and corruption in federal procurement:

- A US Lieutenant Colonel passed on information to a business owner and contractor to create the perfect bid, and steal more than $20 million from taxpayers and Afghan commando troops while transferring their loot through anonymous shell companies in Virginia and Massachusetts.
- A Pentagon supplier formed two shell companies in Wyoming and pretended they were largely owned by ethnic minorities to win preferential treatment for government contracts so that he could profit from supplying substandard parts to the military.
- Conspirators used sham companies from North Carolina, Nevada and Tennessee to steal more than $2 million from subcontractors that they tricked into fulfilling US procurement contracts.
- An Ohio school district employee used a web of fake companies to abuse his position and bill for m illio ns o f do llars' worth of services that school kids never received.

We recognize the Administration's commitments to address anonymous company ownership in its Open Government Partnership National Action Plan, the US G8 Action Plan for Transparency of Company Ownership and Control and through the G20. We also commend recent steps taken by the European Union to finalize a measure requiring all member-states to create central registries of beneficial ownership information for companies established in their countries. All member states are required to make the information available to European law enforcement, tax inspectors, lawyers, banks and accountants, and those with a "legitimate interest" in the information. Although, not all states are required to create this "legitimate interest" test and may implement public registers, as the UK is doing. Other countries, such as Ukraine and Norway have gone further and are working to not only collect the information, but are also making the information available to the public.

In a series of anti-corruption measures in July 2015, the UK government committed to examining whether there is a case for insisting that any non-UK company wishing to bid on a contract with the UK government should also publicly state who really owns it. In that same month, the World Bank also committed to examine ways to collect and publish information about the real owners of companies participating in Bank-financed contracts as a part of its new procurement policy, which stands to affect a portfolio of about $42 billion invested in more than 172 countries.

By leveraging the vast purchasing power of the US government, impacts from the procurement sector can be realized beyond economics. Recent changes to procurement regulations aimed at preventing and addressing trafficking in persons demonstrates how the government can use its position in the market to raise the standard of US business conduct at home and abroad.

As a matter of public interest that involves taxpayer funds, and the exposure to high levels of risk and corruption, we believe that the public has the right to know how its money is being spent and who is benefiting from those funds. It should be a privilege to do business with the US government, to provide US citizens with roads, schools and medicine, and our troops across the globe with the supplies and services they need while serving the nation. Therefore, companies should be required to demonstrate, as a matter of best practice, a commitment to business integrity and transparency.

It is essential for the government, the largest single purchaser in the global economy, to have access to beneficial ownership information for all bidders of US-funds in order to conduct its own human rights due diligence. At the very least, contracting officers should have access to information on the true identity of the government's suppliers and business partners. This would allow those officers to properly vet bidders in order to better safeguard against wasteful, fraudulent and corrupt activities, such as collusion and bid rigging. Under current conditions, the government is being stolen from, and companies attempting to do business responsibly and transparently are economically disadvantaged, excluded from the market or racing to the bottom when forced to compete with such nefarious business actors.

The Administration should also take this opportunity to highlight what it is doing to encourage an enabling environment for responsible business conduct. It should work to promote respect for human rights by business enterprises with which it conducts commercial transactions, including through contract terms (UN Guiding Principle 6). The closer a business enterprise is to the state, or the more it relies on taxpayer support, the stronger the state's policy rationale becomes for ensuring that the enterprise respects human rights (UN Guiding Principle 4). The Administration should therefore work to ensure that companies achieve the highest standards of responsible business conduct when entrusted with providing products and services to its citizens and troops. Given the prevalence of anonymous companies and corruption in federal procurement, there is a high likelihood that the US government's failure to ensure that companies in this process operate in a manner consistent with the US' human rights obligations will entail both reputational and legal consequences for the government itself (UN Guiding Principle 5).

Risk-based human rights due diligence is at the heart of preventing and addressing impacts that result from commercial activities. However, when the true owner of a company is obfuscated, or when this information is held only within the government, efforts by companies, the government and stakeholders to fully conduct the process by which they may identify, prevent and mitigate actual and potential adverse impacts, and account for how these impacts are addressed, are seriously undermined.

Unlocking beneficial ownership information for corporate actors would open new channels of fruitful human rights due diligence along supply chains and for business partners. Vetting efforts would become more streamlined; small and medium size firms struggling to compete against their dishonest competitors would have greater opportunities to shine as legitimate, responsible actors. Furthermore, when the true nature of institutional investors' investments are clear, they too are equipped to conduct the necessary due diligence to protect the long-term value of their holdings and to ensure their own responsible business conduct.

We are pleased to offer these comments and specific recommendations on beneficial ownership transparency, including in US federal procurement, for inclusion in the US National Action Plan on Responsible Business Conduct. Thank you for soliciting our input to this process, and we look forward to hearing from you.

Please contact Eryn Schornick at eschornick@globalwitness.org or (202) 580 - 9711 for additional information or to schedule a meeting.

Sincerely,

American Federation of Labor and Congress of Industrial Organizations (AFL-CIO)
Alliance for a Just Society

America's Future
American Sustainable Business Council
Citizens for Tax Justice
Center for International Environmental Law
Enough Project
Financial Accountability & Corporate Transparency (FACT) Coalition
Fair Share Education Fund
Financial Transparency Coalition
Global Financial Integrity
Global Integrity
Global Witness
Government Accountability Project
Human Rights Watch
International Labor Rights Forum
iSolon.org
Jubilee USA Network
Main Street Alliance
New Rules for Global Finance
Open Contracting Partnership
OpenTheGovernment.org
Oxfam America
Public Citizen
Project on Government Oversight (POGO)
Project on Organizing, Development, Education, and Research (PODER)
Publish What You Pay – US
Responsible Sourcing Network
Sunlight Foundation
Sustainable Purchasing Leadership Council
Transparency International – USA
U.S. Public Interest Research Group (PIRG)