

June 10, 2019

The Honorable Maxine Waters  
Chairwoman  
House Committee on Financial Services  
2129 Rayburn House Office Building  
Washington, DC 20515

The Honorable Patrick McHenry  
Ranking Member  
House Committee on Financial Services  
4340 O'Neill House Office Building  
Washington, DC 20024

Dear Chairwoman Waters and Ranking Member McHenry,

While we support the goal of preventing wrongdoers from exploiting United States corporations and limited liability companies (LLCs) for criminal gain, the undersigned organizations write to express our strong opposition to H.R. 2513, the *Corporate Transparency Act of 2019*. **This legislation would impose burdensome, duplicative reporting burdens on approximately 4.9 million small businesses in the United States and threatens the privacy of law-abiding, legitimate small business owners.**

The Financial Crimes Enforcement Networks (FinCEN) Customer Due Diligence (CDD) rule became effective in May of 2018. The CDD rule requires financial institutions to collect the beneficial ownership information of legal entities with which they conduct commerce. This legislation would shift the reporting requirements from large banks, those best equipped to handle the reporting requirements, to millions of small businesses, those least equipped to handle the reporting requirements.

The reporting requirements in the legislation would not only be duplicative, but they would also be burdensome. Under this legislation, millions of small businesses would be required to register with FinCEN, upon incorporation, and file annual reports with FinCEN for the life of the business. Failure to comply with these reporting requirements would be a federal crime with civil penalties of up to \$10,000 and criminal penalties of up to 3 years in prison.

This legislation contains a definition of beneficial ownership that expands upon the current CDD rule. The CDD rule requires disclosure of any owners with a 25 percent ownership interest in a business and any individual with significant responsibilities to control a business. The draft bill would expand that definition, requiring disclosure of any individual who "receives substantial economic benefits from the assets of" a small business. The legislation defers to regulators at the Department of Treasury to determine "substantial economic benefits."

In addition, this legislation would impose a "look-through" reporting requirement, necessitating small business owners to look through every layer of corporate and LLC affiliates to identify if any individuals associated with such entities are qualifying beneficial owners. Ownership of an entity by one or more other corporations or LLCs is common. Corporate and LLC shareholders would already have their own independent reporting obligation under this bill to disclose any beneficial owners, making this provision excessively burdensome.

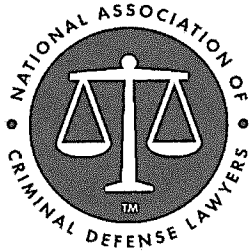
H.R. 2513 raises significant privacy concerns as the proposed FinCEN beneficial ownership database would contain the names, dates of birth, addresses, and unexpired drivers' license numbers or passport numbers of millions of small business owners. This information would be accessible upon request "through appropriate protocols" to any local, state, tribal, or federal law enforcement agency, or to law enforcement agencies of other countries via requests by U.S. federal agencies. This type of regime presents unacceptable privacy risks.

The *Corporate Transparency Act* also introduces serious data breach and cybersecurity risks. Under the legislation, FinCEN would maintain a database of private information that could be hacked for nefarious reasons. As the 2015 breach of the Office of Personnel Management demonstrated, the federal government is not immune from cyber-attacks and harmful disclosure of information. In addition, millions of American companies would be required to maintain and distribute information about owners and investors in the company, thus creating another point of vulnerability for attack. This risk is particularly acute because the *Corporate Transparency Act* is focused only on small businesses and those entities are often the least equipped to fight off cyber intrusions.

While this letter does not enumerate all of our concerns, it highlights the problems H.R. 2513 would cause for millions of small businesses in the United States.

Sincerely,

Air Conditioning Contractors of America  
American Hotel and Lodging Association  
American Rental Association  
Asian American Hotel Owners Association  
Associated Builders and Contractors  
Auto Care Association  
International Franchise Association  
National Association for the Self-Employed  
National Association of Home Builders  
National Association of Wholesaler-Distributors  
NFIB  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National Small Business Association  
National Tooling and Machining Association  
Precision Machined Parts Association  
Precision Metalforming Association  
Service Station Dealers of America and Allied Trades  
S-Corporation Association  
Small Business & Entrepreneurship Council  
Specialty Equipment Market Association  
Tire Industry Association



May 7, 2019

The Honorable Maxine Waters  
Chairwoman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Re: Corporate Transparency Act of 2019, H.R. 2513

Dear Chairwoman Waters and Ranking Member McHenry:

The National Association of Criminal Defense Lawyers (NACDL) and the American Civil Liberties Union (ACLU) write to oppose the Corporate Transparency Act of 2019 introduced on May 3, 2019.

The bill would impose a criminal penalty of up to three years of imprisonment for conduct that is essentially a paperwork violation—even for a first-time offender. Given the bill’s broad reach and vague definitions, the provision could result in the conviction of individuals who have no intent to violate the law, whose greatest offense may simply be not understanding complicated and vague financial rules, and whose conduct causes no social harm. Such a change is unnecessary, unwise, and fundamentally unjust.

H.R. 2513 would require any “applicant” who wishes to form a corporation or limited liability company under the laws of any state to file and update with FinCEN information concerning anyone deemed a “beneficial owner” of the company. The act then requires the “applicant” to provide a list of every “beneficial owner” of the business, along with various other information (such as current addresses of those owners), to FinCEN.

The bill does not provide clarity in the definition of who qualifies as a “beneficial owner.” The vague definition of “beneficial owner” is particularly concerning given that the bill criminalizes various activities related to failing to comply with the new requirements referenced

above. For example, the bill criminalizes the failure to provide complete or merely current beneficial ownership information as well as the provision of incorrect beneficial ownership information, but the definition of who constitutes a “beneficial owner” is both overly broad and vague. As a result, someone could be prosecuted for simply failing to understand what the law actually requires.

Under the bill’s current language, any person who “directly or indirectly” through any “contract, arrangement, understanding, relationship, or otherwise,” has “substantial control over,” “owns 25 percent or more of the equity interests,” or “receives substantial economic benefits from” the corporate entity, is a beneficial owner. (Further, “substantial economic benefits” is circularly defined as “entitlement to . . . the funds or assets of the company.”) This vague definition could encompass numerous persons who have no apparent or official ties to a business, including adult children, spouses or ex-spouses, other relatives, or even friends. And yet, a person submitting the report to FinCEN may be subject to criminal penalties for failure to list these various persons as “beneficial owners.”

Even the enumerated exceptions to the definition of “beneficial owner” are unclear. For example, creditors may receive “substantial economic benefits” from borrowers and may exercise “substantial control over” them through loan covenants. Presumably recognizing this, the current bill language lists “creditors” as an exception to the definition of “beneficial owner.” Yet the language that does so is circular and renders the exemption illusory. It states that the term “beneficial owner” shall not include “a creditor of a corporation, *unless the creditor also meets the requirements of subsection A,*” which is the section defining the term “beneficial owner” (emphasis added). In other words, creditors are exempt unless they are covered, which they may very well be. Clearly, creditors would need to no exception unless they were covered by the definition, but the exception language itself provides that they cannot be exempted if they are covered. This “exception” is circular and illusory. It contributes to a lack of clarity regarding who is a beneficial owner, which is dangerous when inaccurate reporting of beneficial owners may carry a prison sentence.

Moreover, the inclusion of a catch-all phrase such as “or otherwise” in a definition renders any previous definitional clauses inconsequential. Unlike other existing definitions of “beneficial owner,” the bill’s definition does not require that an individual have any agreement bestowing control or entitlement to funds, nor does the bill require someone to actually control, manage, or direct the corporation. Instead, the definitions that serve as the basis of these new legal obligations are frustratingly vague. Fundamental notions of fairness, as well as basic constitutional principles, require that individuals understand what is required of them under the law before they can be imprisoned for noncompliance.

The concerns that arise over vague definitions for key statutory terms are compounded by the specific application of some of the criminal provisions. For example, the disclosure offense at bill Section 5333(c)(1)(C), which makes it a crime to disclose “the existence of a subpoena,

summons, or other request for beneficial ownership information,” is extremely troubling because it is not limited in its application to people who would be on notice of the prohibition of such a disclosure. There is nothing inherent in this type of situation that would naturally alert anyone that any request for information should not be disclosed. To criminalize the disclosure of a request for such commonplace information (like the name and address of a business’s owner) could turn law-abiding individuals into felons. Similarly, the offense at bill Section(c)(1)(A) punishes the act of knowingly providing “false” beneficial ownership information. Given the broad reach of the definition of the term “beneficial ownership,” a person may be accused of providing “false” information based only on a misunderstanding of the law’s terms. Thus, a person might face criminal punishment for knowingly providing information which happens to have been incorrect, even if that person intended to comply with the law.

These new disclosure obligations will disproportionately impact small businesses that may be least equipped to understand the complicated set of new requirements. The bill provides a lengthy list of large, exempt business entities, thus leaving the disclosure obligations to fall predominantly on small businesses. These small businesses are less likely to have sophisticated in-house lawyers or the resources to engage outside attorneys for the purpose of properly understanding and meeting these new disclosure requirements. Thus, many small business owners will be forced to decide between the risk of possible criminal prosecution and the expense of counsel; though, for many, financial circumstances will dictate the decision. Surprisingly, this legislation would apply retroactively and apply to all existing legal entities (not just those formed after enactment). Thus, with no notice, small businesses that have been in operation for decades will suddenly be subject to brand new obligations, which, if they do not meet, can trigger criminal penalties including jail time.

The inclusion of new federal criminal penalties for first-time “paperwork” violations and the creation of new felony criminal offenses is a dramatic step in the wrong direction. Criminal prosecution and punishment constitute the greatest power that a government uses against its own citizens. This law would result in a criminal conviction and up to 3 years’ imprisonment for a person’s failure to provide the proper paperwork. This could include a person who is merely disorganized, or who happens to make a mistake, even where there is no actual harm resulting from his or her conduct.

Finally, to the extent that the criminal provisions would merely punish the making of a false statement, such penalties would be entirely redundant with 18 U.S.C. § 1001, which already criminalizes making a false statement to the U.S. Government. Redundant criminal penalties for substantially similar conduct contribute to numerous problems in our criminal justice system, including overcriminalization, excessive prison sentences, and coerced guilty pleas.

No matter how well-intentioned, the Corporate Transparency Act would have a disastrous impact on those bearing no relation to terrorism or money laundering. Instead it would create new, unnecessary federal criminal laws based on vague and overreaching definitions. For all the

reasons listed herein, we urge you to oppose the bill unless these provisions are removed or appropriately amended.

If you have further questions, feel free to contact Nathan Pysno at 202-465-7627 or [npysno@nacdl.org](mailto:npysno@nacdl.org) or Kathleen Ruane at [KRuane@aclu.org](mailto:KRuane@aclu.org).

Respectfully,

The National Association of Criminal Defense Lawyers (NACDL)

American Civil Liberties Union (ACLU)

# HILL ALERT



**DUE PROCESS**  
INSTITUTE



**FreedomWorks**

**ACLU**

## **No Benefit to a Beneficial Ownership Reporting System That Increases America's Over-Incarceration Problem and Fails to Adequately Protect Privacy**

H.R. 2513 would require people who form or already own businesses to submit extensive personal, financial, and business-related information to the government. Legislative efforts to stop international crime by trying to "follow the money" such as H.R. 2513 likely have the best intentions in mind. However, the **Due Process Institute**, the **American Civil Liberties Union**, and **FreedomWorks** have serious concerns with several provisions of the Corporate Transparency Act of 2019 and believe the committee should not move the bill forward until these issues are fully addressed.

In sum, the creation of 5 new federal crimes for first-time "paperwork" violations that are felony criminal offenses calling for prison time is a dramatic step in the wrong direction. No matter how well-intentioned, this bill bears no real relation to combatting terrorism or money laundering and instead eliminates a significant amount of personal and financial privacy. On that score, the bill fails to adequately or specifically address how all of the personal and financial information disclosed to, and collected by, the government will be used solely for legitimate purposes or how privacy interests will be protected.

### **Terms are too vague**

Importantly, numerous key terms and phrases in the bill are poorly defined. For example, the current definition of "beneficial owner" includes anyone who "directly or indirectly" exercises substantial control or receives substantial economic benefit from the entity. What does it mean to indirectly control an entity? The bill does not explain, and this lack of clarity has very serious consequences when a bill creates 5 new federal criminal laws that do nothing but increase this nation's overreliance on criminalization as a cure for every problem. Vague or overly broad statutory text leaves people vulnerable to unfair criminal prosecutions. Furthermore, this bill exempts most large entities with the compliance teams necessary to help them navigate new and burdensome requirements. Determining what is to be reported, when, and by whom, in a complex regulatory scheme is difficult. Large corporations have successfully lobbied to be spared these requirements—leaving the reporting burdens solely to small or independent businessowners. Compounding this problem, these new disclosure requirements would apply not only to newly formed businesses but those who have already been in existence—yet a businessowner (even a first-time offender) who fails to learn of the law or who fails to comply with any aspect of the requirements could face a prison sentence. These kinds of requirements easily set traps for honest people trying to faithfully comply with complex laws, particularly business owners who lack experience or significant funds to retain sophisticated business lawyers who can help them.

### **Casting a wide net – with little chance of catching what you want**

Creating criminal penalties for paperwork errors will not prevent money laundering, terrorism, and or any other crimes. To support this legislation, you would have to accept the premise that those engaging in such crimes—and who are engaging in this practice with the intention to hide behind a legal entity and go unnoticed—would comply with any legal requirement to disclose themselves. Meanwhile, those attempting to comply in good faith would be providing information including their passport or driver's license numbers to government entities that may then share it with other government entities with little meaningful assurance that their privacy will be properly protected. Second, this legislation includes so many exemptions that those seeking to engage in criminal acts would just have to take advantage of one to avoid detection. Rather than curbing abuse, the bill would impose criminal penalties, including jail time, on businesses that fail to meet compliance requirements with no real indication that such requirements would curtail international money laundering cartels. The truth is: there are already hundreds of federal criminal laws on the books, along with a wide swath of powerful investigative tools and authorities, that the government can use to adequately address or prevent money laundering and this bill is an unnecessary step in the wrong direction.

We hope you share our concerns and oppose this legislation unless serious amendments are made.

If you have further questions, feel free to contact Shana O'Toole (202-558-6683 or [Shana@iDueProcess.org](mailto:Shana@iDueProcess.org)), Kate Ruane (202-675-2336 or [kruane@aclu.org](mailto:kruane@aclu.org)), or Jason Pye (202-942-7634 or [jpye@freedomworks.org](mailto:jpye@freedomworks.org)).



1201 F St NW #200  
Washington, D.C. 20004

1-800-552-5342  
NFIB.com

April 18, 2019

The Honorable Carolyn Maloney  
U.S. House of Representatives  
2308 Rayburn House Office Building  
Washington, DC 20515

Dear Congresswoman Maloney:

On behalf of NFIB, I write to express serious concerns with the draft *Corporate Transparency Act of 2019*. The draft legislation imposes burdensome, costly, and intrusive requirements to file yet more reports with the government, this time on beneficial ownership.

As drafted,<sup>1</sup> the legislation requires corporations and limited liability companies that have fewer than 20 employees to file new reports with the Treasury Department's Financial Crimes Enforcement Network regarding beneficial owners of the corporation or company, including reports within 60 days of any change in beneficial ownership and annual reports on beneficial ownership.<sup>2</sup> The legislation imposes its reporting mandates on those least equipped to handle them. Moreover, the legislation makes it a federal crime to fail to comply with the reporting regime, with civil penalties of up to \$10,000 and criminal penalties of up to 3 years in prison.<sup>3</sup>

While large businesses and financial institutions may have access to teams of lawyers, accountants, and compliance experts to gather beneficial ownership information and report it to the government, small business owners do not. Small business owners cannot afford accounting and legal experts to help them understand and comply with the new federal reporting

---

<sup>1</sup> H.R. \_\_\_, *Corporate Transparency Act of 2019* (draft of January 8, 2019, 5:19 p.m.).

<sup>2</sup> Section 3 of the bill contains a proposed new section 5333 of title 31 of the U.S. Code. See proposed 31 U.S.C. 5333 (a)(1)(A) and (B) and (a)(3)(B) (beneficial ownership reports from corporations and limited liability companies (LLCs) on formation (or, if now existing, in 2 years), within 60 days of a change, and annually) and 5333(d)(4)(C)(xiv) (definitions of corporation and LLC exclude a business if it employs more than 20 full time U.S. employees, has \$5 million in gross receipts, and has a physical U.S. presence).

<sup>3</sup> See proposed 31 U.S.C. 5333(c).



requirements. And small business owners lack the time to track and gather information to fill out yet more forms for the government.

NFIB members report that the burden of federal paperwork ranks in the top 20% of the problems they encounter as small business owners.<sup>4</sup> When NFIB surveyed its membership concerning beneficial ownership reporting in August 2018, 80% opposed the idea of Congress requiring small business owners to file paperwork with the Treasury Department reporting on beneficial ownership.<sup>5</sup>

In May 2018, the Department of the Treasury issued its final rule on Customer Due Diligence (CDD).<sup>6</sup> The rule requires covered financial institutions to identify and verify the beneficial owners of 25% or more of the equity interest of a legal entity, and individuals with authority to control the legal entity (such as the chief executive officer), at the time the legal entity opens an account at the financial institution, with some exceptions. When the Department issued the CDD rule, it considered an even more draconian alternative, "Alternative 1," that would have required reporting on beneficial owners of 10% or more of the equity interest, but rejected that alternative. The Department noted that the alternative "would predominantly impact legitimate legal entities, and impose upon them a significant burden that would not be outweighed by the incremental benefit to law enforcement."<sup>7</sup> The same is true of the proposed legislation.

The draft legislation also raises serious privacy concerns for small businesses. The legislation requires the Treasury Department to keep the beneficial ownership information for the life of the business plus five years and grants broad access to the information to federal, state, local, or tribal government agencies for virtually any reason through a simple request.<sup>8</sup> The potential for improper disclosure or misuse of private information increases as the number of people with access to the information increases.

---

<sup>4</sup> NFIB Research Center, *Small Business Problems and Priorities*, Table I, p. 12 (August 2016) (problem ranked 12 out of 75), available at <http://www.nfib.com/assets/NFIB-Problems-and-Priorities-2016.pdf>.

<sup>5</sup> When asked, "Should Congress require small business owners to file paperwork with the Financial Crimes Enforcement Network each time they form or change ownership of a business?," a mere 11% said "yes" and a resounding 80% said "no," with 9% undecided. (NFIB survey, August 2018).

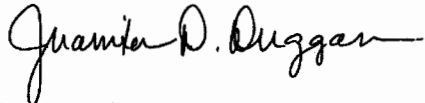
<sup>6</sup> Department of the Treasury, Financial Crimes Enforcement Network, "Customer Due Diligence Requirements for Financial Institutions," Final Rule, 81 *Fed. Reg.* 29398 (May 11, 2016). The rule requires covered financial institutions to identify and verify the beneficial owners of 25% or more of the equity interest of a legal entity, and individuals with authority to control the legal entity (such as the chief executive officer), at the time the legal entity opens an account at the financial institution, with some exceptions.

<sup>7</sup> 81 *Fed. Reg.* at 29433, col. 3 (May 11, 2016).

<sup>8</sup> See proposed 31 U.S.C. 5333(a)(4)(A) (retention for five years after entity termination) and (B) (disclosure upon request from federal, state, local or tribal agency). Indeed, the legislation raises the specter of having the U.S. Government spy on Americans for foreign governments, as it requires disclosure of the beneficial ownership information in certain circumstances to assist foreign agency investigations and foreign tribunals. See proposed 31 U.S.C. 5333(a)(4)(B)(ii).

NFIB appreciates efforts to discourage wrongdoers from exploiting U.S. companies for illegal activities. But the draft legislation creates undue burdens on small business owners. The paperwork burden, civil and criminal penalties, and risks to privacy directly threaten law-abiding American small businesses. Congress should respect America's small business owners and not enact the draft legislation.

Sincerely,

A handwritten signature in black ink that reads "Juanita D. Duggan". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Juanita D. Duggan  
President & CEO  
NFIB

cc: The Honorable Maxine Waters, Chairwoman  
The Honorable Patrick McHenry, Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
2129 Rayburn House Office Building  
Washington, D.C. 20515