

### Opposition to the Corporate Transparency Act

Many small business associations have been opposing HR 2513, The "So-Called" Corporate Transparency Act of 2019 (CTA). A final copy of the opposition letter is below.

Even though the bill passed only 25 Republicans voted for it while 5 Democrats voted in opposition.

During the Committee vote 10 Republicans voted in favor, and 16 opposed. It passed committee with nearly 40 percent R support. However during the floor vote only 13% of Republicans supported the bill. The floor vote also included Democratic support which did not happen in committee, we thank you for your help in securing those votes.

This also sends a clear message to the Senate that this bill and this concept is not inevitable, and there is real, serious opposition from the business community and others.

You may have noticed that the White House issued a SAP yesterday that went short of endorsing the bill. The Administration claimed that the bill made good progress in addressing problems but "certain steps must be taken to improve H.R. 2513 as it moves through the legislative process..." While this SAP is not ideal it does recognize that this was a flawed bill.

Moving forward, the next real threat is S. 2563, The ILLICIT CASH Act in the Senate. This bill authored by Warner and Cotton is substantially similar to CTA. This bill now has eight cosponsors and is gaining momentum.

Dear Representative,

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.

The Corporate Transparency Act would impose burdensome, duplicative reporting burdens on millions of small businesses in the United States and threatens the privacy of law-abiding, legitimate small business owners.

The Financial Crimes Enforcement Network's (FinCEN) Customer Due Diligence (CDD) rule became applicable on May 11, 2018. The CDD rule requires financial institutions to collect the "beneficial ownership" information of legal entities with which they conduct commerce. This legislation would attempt to shift the reporting requirements from large banks - those best equipped to handle reporting requirements - to millions of small businesses - those least equipped to handle reporting requirements.

The reporting requirements in the legislation would not only be duplicative, they would also be burdensome. Under this legislation, millions of small businesses would be required to register personally identifiable information 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 up to \$10,000, criminal penalties up to 3 years in prison, or both.

The Congressional Budget Office wrote, "Because of the high volume of businesses that must meet the new reporting requirements and the additional administrative burden to file a new report, CBO estimates that the total costs to comply with the mandate would be substantial." The Corporate Transparency Act would generate between 25 million to 30 million new reports annually.

This legislation contains a definition of "beneficial ownership" that expands upon the current CDD rule. The CDD rule requires disclosure of individuals with a 25 percent ownership interest in a business and an individual with significant responsibilities to control a business. The Corporate Transparency Act 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.

The Corporate Transparency Act 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 from 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 every concern, it highlights fundamental problems the Corporate Transparency Act would cause for millions of small businesses in the United States.

Because of the new reporting requirements and privacy concerns, the undersigned organizations urge a no vote on H.R. 2513, the Corporate Transparency Act.

### Beneficial Ownership Legislation 116th Congress

HR 2513, CTA    S. 2563 ILLICIT CASH Act    S. 1889 TITLE Act

Who Has to Report?	All LLC's, and corporations with 20 or less employees, less than \$5 million in revenue, and a physical operating presence in the US	Same as House	All LLC's and corporations with 20 or less employees, less than \$5 million in revenue, a physical operation presence in the US and less than 100 shareholders
How Often Do They Report?	For new businesses at incorporation and annually thereafter. For all businesses within 2 years. The Secretary has the authority to increase the frequency of reporting requirements pending the outcome of a cost benefit analysis.	For new businesses at incorporation, and within 90 days of any beneficial ownership changes. For all businesses within 2 years.	At incorporation, updates within 60 days for ownership changes, as well as annually. Existing businesses must comply within 2 years.
What Information is Being Reported	Full legal name, date of birth, home or business address, unexpired driver's license or passport number of all beneficial owners	Full legal name, date of birth, current home or business address, unexpired driver's license or passport number, of all beneficial owners (Same as House)	Same as HR 2513. Please note this bill requires individual states to collect and hold the info.
Beneficial Owner Definition	A person that exercises substantial control over an entity, owns 25% or more equity in an entity, receives substantial economic benefits from the assets of an entity	Same as House but defines substantial economic benefits as a person having access to 25% or more of the funds of the assets of the entity. Requires a rulemaking on the definition.	A person who exercises substantial control over a corporation or LLC through ownership interests, voting rights, agreement, or otherwise; or has a substantial interest in or receives substantial economic benefits from the assets of a corporation or the assets of a limited liability company.
Who Can Access the Database?	Any law enforcement agency at the federal, state, or local level as well as a request made by a Federal agency on behalf of a law enforcement agency of another country under an international treaty, agreement, or convention, or an order under section 3512 of title 18 or section 1782 of title 28; as well as financial institutions with customer consent	Local, State, Tribal, or Federal law enforcement, national security, or intelligence agency, request made by a Federal agency on behalf of a law enforcement agency of another country under an international treaty, agreement, or convention, or an order under section 3512 of title 18 or section 1782 of title 28; as well as financial institutions with customer consent	A local, state, or federal agency, or congressional committee or subcommittee with a subpoena. A written request by FinCEN or Treasury, written request by a bank with customer consent. Federal agency for a foreign gov (same as other two bills)
Does law enforcement need a subpoena to access the database?	NO	NO	Everyone but FinCEN, Treasury, foreign governments, and banks need subpoenas
Penalties for Violations	Civil penalty of not more than \$10,000, and imprisoned for not more than 3 years, or both	Civil penalties of \$500 per day up to \$10k total and up to 4 years of prison. Negligent violations shall not be subject to civil or criminal penalties. Failure to update expired documentation or addresses shall be considered de-minimis and not result in a penalty if the applicant seeks to remedy the situation.	Up to 3 years in prison and \$1 million in fines
Public Access to Information	NO	NO	Allows Congressional Chairs and Subcommittee Chairs to access via Congressional subpoena. Allows states to post any information collected publicly.