October 18, 2019

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.

Sincerely,

Air Conditioning Contractors of America
American Business Conference
American Farm Bureau Federation
American Foundry Society
American Hotel and Lodging Association
American Rental Association
Asian American Hotel Owners Association
Associated Builders and Contractors
Associated General Contractors of America
Auto Care Association
Family Business Coalition
International Foodservice Distributors Association
International Franchise Association
National Apartment Association
National Association for the Self-Employed
National Association of Home Builders
National Association of Wholesaler-Distributors
NFIB
National Grocers Association
National Lumber and Building Material Dealers Association
National Pest Management Association
National Restaurant Association
National Retail Federation
National Roofing Contractors Association
National Small Business Association
National Tooling and Machining Association
Petroleum Equipment Institute
Petroleum Marketers Association of America
Policy and Taxation Group
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
The Real Estate Roundtable
Tire Industry Association