



July 20, 2020

Re: Vote 'NO' On Proposed Amendment 499 to H.R. 6395

Dear Representative,

The American Civil Liberties Union, Due Process Institute, and FreedomWorks urge you to vote NO on proposed amendment 499 to the H.R. 6395, William M. Thornberry National Defense Authorization Act when it is offered on the House floor. Proposed amendment 499 consists of the text of H.R. 2513, the Corporate Transparency Act of 2019. Our organizations recently opposed the passage of this bill by the House of Representatives and we continue to urge you to vote NO and to work with us on future legislation to ensure our concerns are addressed. The ACLU will score this vote.

Vote 'NO' On Proposed Amendment 499 to H.R. 6395.

Proposed amendment 499 to H.R. 6395 ("Amd. 499") would require people who form or already own businesses, particularly small businesses, to submit extensive personal, financial, and business-related information to the government's Financial Crimes Enforcement Network (FinCEN). Legislative efforts to stop international crime by trying to "follow the money" such as Amd. 499 likely have the best intentions in mind. However, the creation of at least 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 amendment 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 amendment fails to adequately address how all of the personal and financial information disclosed to, and collected by, the government will be used solely for legitimate purposes or specifically address how privacy interests will be protected.

Key Terms are Too Vague

Importantly, numerous key terms and phrases in the amendment 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 an entity. What does it mean to indirectly control an entity? The bill does not explain. We also cannot look to current FinCEN regulations to divine meaning. The amendment does not replicate current FinCEN definitions of beneficial ownership and broadens the current definition to include an individual that "receives substantial economic benefits from the assets of a corporation." Again, the amendment does not explain the terms. This lack of clarity has very serious consequences

when an amendment creates at least 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 investigations and prosecutions.

Complex Criminal Compliance Laws Unfairly Burden Small Businesses & Nonprofits

Furthermore, this amendment 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 are exempt—leaving the reporting burdens solely to small or independent business owners as well as many nonprofits. Compounding this problem, these new disclosure requirements would apply not only to newly formed entities but also to those that have already been in existence—yet a business owner (even a first-time offender) who fails to comply with any aspect of the requirements could face a prison sentence, as might a non-profit organization that inadvertently fails to meet all of the requirements to qualify for an exemption in the amendment. These kinds of requirements easily set traps for honest people trying to faithfully comply with complex laws, particularly owners who lack experience or significant funds and volunteer-based nonprofits also lacking in funds and expertise to retain sophisticated business lawyers who can help them.

Beneficial Ownership Information Would Lack Sufficient Privacy Protection

The amendment currently would permit beneficial ownership information to be shared with local, Tribal, State, or Federal law enforcement under nearly any circumstances where they may assert an existing investigatory basis and agree to abide by vague privacy standards. The receiving agency may then use that information, without meaningful limitation, for any other law enforcement, national security, or intelligence purpose. These standards are entirely too broad and leave far too much personal information vulnerable to disclosure. The amendment should permit FinCEN to disclose beneficial ownership information only when presented with a warrant based on probable cause. Without a clear standard limiting information disclosure, there would be few if any limits on the sharing of this information. Search warrants based on probable cause are the standard for obtaining information in criminal investigations and it would be reasonable to require them in this context. Moreover, the amendment contains inadequate safeguards for protecting against the improper disclosure of information or for appropriately limiting the use of the information disclosed. At a minimum, the amendment should limit use of the information to the investigative purposes for which it was collected and require the deletion of information after it is no longer useful for its investigative purpose. And it fails to provide either.

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 amendment is an unnecessary step in the wrong direction.

We hope you share our bipartisan concerns and vote “NO” on Amendment 499.

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

Sincerely,

American Civil Liberties Union
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FreedomWorks