



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, 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 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 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 bill 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 bill does not explain the term. 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 investigations and 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 are exempt—leaving the reporting burdens solely to small or independent businessowners 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 businessowner (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 bill. 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 Protection

The bill 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 a law enforcement purpose and agree to abide by a vague privacy standard. The receiving agency may then use that information, without 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 bill 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 receiving law enforcement agency should be prohibited from disclosing the information except to the extent necessary in the course of the investigation or legal proceedings in which it was requested. The use of the information should also be limited to the particular investigation for which it was requested. Currently, the bill contains none of these basic safeguards.

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

Creating criminal penalties for paperwork errors will not prevent money laundering, terrorism, 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 them with other government entities with little meaningful assurance that their privacy will be properly protected. Rather than curbing abuse, the bill would impose criminal penalties, including jail time, on small 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.

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