DUE PROCESS
INSTITUTE

May 20, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

RE: Hearing on "Combating Illicit Financing By Anonymous Shell Companies Through the Collection of Beneficial Ownership Information"

Dear Chairman and Ranking Member:

The **Due Process Institute** and **FreedomWorks** write jointly to raise important considerations that will likely not be addressed by the all-government witness panel testifying before the Senate Committee on Banking, Housing, And Urban Affairs in a hearing entitled "Combating Illicit Financing By Anonymous Shell Companies Through the Collection of Beneficial Ownership Information" on May 21, 2019.

While there is no specific legislation that is the subject of this hearing, it should be noted that, for several years, there have been many previously proposed legislative efforts in the Senate regarding the collection of beneficial ownership information. There is no doubt that these bills were well-intentioned efforts to address criminal conduct; however, a broad array of groups have raised concerns with these previous bills and it is our hope that you consider the multitude of concerns raised before moving forward on this issue.

In essence, the proposals all began with the same premise. They would create new mandates that require people who form or already own business entities, including smaller independent businesses and certain nonprofits, to submit additional personal, financial, and business-related information to the government. Unfortunately, however, numerous key terms and phrases in past bills have been left undefined or have been so broad as to be essentially meaningless. For example, every version of the bill has defined a "beneficial owner" [the people who would be subject to the law's requirements] as anyone who "directly *or indirectly*" exercises substantial control or receives substantial economic benefit from the entity. But what does it mean to *indirectly* control an entity? The bills never explain, and this lack of clarity has very serious consequences when each of these bills has also created numerous 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, previous legislative proposals have exempted 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 and nonprofit managers. Compounding this problem, these new disclosure requirements would apply not only to newly formed entities but those who have already been in existence—yet an owner (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 those who lack experience or significant funds to retain sophisticated business lawyers who can help them.

Despite what you will likely hear from the government witnesses at this hearing, creating criminal penalties for paperwork errors will not prevent money laundering, terrorism, and or any other crimes. First, you would have to accept the premise that those engaging in such crimes—and who are doing so with the intention to hide behind a legal entity and go unnoticed—would comply with a new 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, along with other personal and sensitive information, to government entities that may then share it with other government entities with little meaningful assurance that their privacy will be properly protected. (None of the previous bills have adequately or specifically addressed how all of the personal and financial information disclosed to, and collected by, the government would be used solely for legitimate purposes or how privacy interests would be protected.) Second, past iterations of these bills have included 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, these bills have sought to impose criminal penalties, including jail time, on people who fail to meet esoteric 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 already uses to address, prevent, and punish money laundering and other illicit financing crimes and these new criminal legislative proposals are an unnecessary step in the wrong direction.

The **Due Process Institute** and **FreedomWorks** believe the Committee should not move forward with these kinds of legislative proposals until these concerns are meaningfully addressed.

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

Respectfully,

Due Process Institute
FreedomWorks