

November 29, 2017

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
United States House of Representative
Washington, D.C. 20515

The Honorable Maxine Waters
Ranking Member
Committee on Financial Services
United States House of Representatives
Washington, D.C. 20515

Dear Chairman Hensarling and Ranking Member Waters:

While we support the overarching goal of preventing terrorists and criminals from accruing capital, the undersigned organizations write to express our strong opposition to the beneficial ownership section of the Counter Terrorism and Illicit Finance Act because of the unprecedented burdens and complexities that the section's reporting provisions would impose on non-bank businesses—especially small businesses—and the extent to which these provisions would impair vast amounts of legitimate capital formation and threaten important privacy protections.

Should the beneficial ownership provisions in this legislation become law, anyone who forms (or has already formed) an entity will likely have to retain an attorney to help determine how far the bill's definition of "beneficial owner" extends. The bill's exemptions focus on large businesses. The alleged small business exemption does not apply until a corporation or limited liability company (LLC) has more than \$5 million in gross receipts and more than 20 full-time employees.

While at first glance the bill's definition of "beneficial owner" appears straightforward with a 25% threshold ownership test, the totality of the definition is much broader and far more ambiguous. These vague terms would be imposed upon every single laymen business owner to decipher and evaluate on an ongoing basis, expending critical limited resources.

This task is made exponentially more difficult when coupled with the bill's "look-through" requirement. Ownership of an entity by one or more other corporations or LLCs is common with small businesses. The legislation imposes a duty on all business owners to look-through every layer of corporate and LLC affiliates to identify if any individuals associated with any such entities are qualifying beneficial owners.

This burden is further compounded because after initial disclosure, beneficial ownership information must be updated within 60 days of any changes and verified in annual filings. Business owners may not have the legal right or practical ability to force the disclosure of this information to them, and yet they would be subject to liability for failure to do so. This look-through requirement does not further the purpose of the bill because corporate and LLC shareholders would have their own independent reporting obligation under the bill to disclose any beneficial owners. Effectively, there is no limit to the number of direct and indirect

beneficial owners an entrepreneur may have to report, which creates confusion and immense burden on small businesses.

The vague obligations this bill would impose on businesses that are bank customers stand in stark contrast to the approach taken by the Financial Crimes Enforcement Network (FinCEN) in its recent rulemaking on customer due diligence requirements (“CDD”) for financial institutions. Under the CDD rule, a business owner will never be required to report more than five names to a financial institution. We find the approach taken under the CDD rule to be much more reasonable than the vague terms included in the current draft legislation, and urge the sponsors of the bill to consider adopting the definitions included in the CDD rule.

Additionally, the legislation would compel FinCEN to collect a vast amount of information it currently does not collect including the name, address, and unexpired driver’s license or passport number of every individual who may ultimately constitute a direct or indirect beneficial owner under this legislation. The bill’s federal contactor provision requiring changes to the Federal Acquisition Regulations also ensures that many federal agencies beyond FinCEN will be collecting and storing this information. In light of the recent hacking of enormous federal databases at the Office of Personnel Management and the Securities and Exchange Commission, we feel strongly that FinCEN should be required to protect against misappropriation of the data by third parties and safeguard against negligent or intentional mishandling of it by government officials.

This letter is not exhaustive, but meant to illustrate just some of the many systemic problems the beneficial ownership provisions of the Counter Terrorism and Illicit Financing Act will create for millions of small businesses in America. We are committed to routing out terrorism financing and money laundering, but do not think this legislation properly achieves that goal. We are committed to working with you and the rest of Congress on legislation that addresses these critical national security issues without imposing unprecedented burdens and risks on the law-abiding job creators we represent.

Sincerely,

Angel Capital Association
National Association of Manufacturers
National Federation of Independent Business
National Venture Capital Association
The Real Estate Roundtable
U.S. Chamber of Commerce

cc: Members of the House Committee on Financial Services