

February 6, 2018

The Honorable Chuck Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510

Dear Chairman Grassley and Ranking Member Feinstein:

While the undersigned organizations—which collectively represent millions of small businesses from all fifty states—support the overarching goal of preventing terrorists and criminals from accessing capital, we write to express our strong opposition to the True Incorporation Transparency for Law Enforcement (“TITLE”) Act because of the unprecedented burdens and complexities that the legislation would impose on millions of small businesses in America. Rather than hampering bad actors, the TITLE Act, if enacted into law, would hobble capital formation for small businesses and undermine the privacy rights of law-abiding citizens.

Under the TITLE Act, anyone who forms (or has already formed) a legal entity would likely need to retain an attorney on a recurring basis to help them determine how far the bill’s definition of “beneficial owner” extends. Such “owners” may include trusts, corporations, partnerships, venture capital firms, lenders, creditors, contractors, and lien holders. The potential labyrinth of direct and indirect “beneficial owners” under the TITLE Act could also change daily as loans are sold, interests in closely held entities are encumbered, new lines of credit or financing are accepted, or heirs and trustees are changed in estate plans.

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 business. The legislation would impose a duty on 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, and to report the personal information of those individuals. In other words, the TITLE Act would compel disclosure of information that business owners have only limited means to obtain, let alone on a timely basis.

These burdens are further compounded because after initial disclosure, beneficial ownership information would be required to be updated within 60 days of *any* changes and verified in annual filings. Situations may arise where a business may not be aware of a change in beneficial ownership and would be subjected to civil and possible criminal prosecution under the TITLE Act.

Moreover, to the extent the legislation would permit states to collect and disclose information, it fails to ensure any privacy protections against the public disclosure of this information. According to the National Association of Secretaries of States, entity information filed with the state business registry as envisioned by the TITLE Act is public information “*thus*

beneficial ownership information filed with the state would be public information.” That is because approximately 40 states have “right to know” laws requiring business filings to be made public. This lack of privacy protections could harm individuals’ privacy and may jeopardize early stage investments in start-up businesses. Venture capital firms and other early investors in innovative start-up enterprises realize value by performing careful analysis and identifying promising ideas and business models before they are widely recognized. The TITLE Act would endanger this important vehicle of capital formation for start-up companies in states that exercise their discretion to collect and disseminate this information without significant changes to their state public information regimes.

This letter is not exhaustive, but meant to illustrate just some of the many systemic problems the TITLE Act would create for millions of small businesses in America. We are committed to rooting out terrorism financing and money laundering, but do not think this legislation properly achieves that goal. We are willing to work with the Committee and members 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,

Air Conditioning Contractors of America
Angel Capital Association
Associated Builders and Contractors, Inc.
Associated General Contractors of America
International Franchise Association
National Association of Manufacturers
National Association for the Self-Employed
National Federation of Independent Business
National Lumber & Building Material Dealers Association
National Retail Federation
National Small Business Association
National Venture Capital Association
Petroleum Marketers Association of America
Promotional Products Association International
Service Station Dealers of America and Allied Trades
Small Business & Entrepreneurship Council
Small Business Legislative Council
Specialty Equipment Market Association
Specialty Tools & Fasteners Distributors Association
The Real Estate Roundtable
Tire Industry Association
U.S. Chamber of Commerce

cc: Members of the Committee on the Judiciary