Dear Chairman Hill and Ranking Member Waters,

We were deeply disappointed with H.R. 425 and subsequent mark up the Amendment in the Nature of a Substitute (ANS) that passed the House Committee on Financial Services. Beyond disappointment, we were also concerned about several misconceptions stated during the mark up as justifications to support repeal and the hollowing out of the Corporate Transparency Act (CTA).

There has been enough documented evidence of harms – both at the markup and placed in the public record – that we won't repeat here the dangers posed by anonymous companies to public safety, financial stability, and national security. We do think it is important for members to better understand the law and clarify some misconceptions and historical context expressed during the mark up.

Misconception: The amendment does not repeal the CTA, it simply focuses resources on foreign actors, which present the highest risk.

> *In reality, the ANS does not effectively address the risks presented by foreign interests.* The bill does not require a foreigner who creates a U.S.-based company to declare beneficial ownership. The ANS only requires foreign entities doing business in the U.S. to declare their beneficial ownership information. There are only an estimated 12,000 entities that meet that criteria, representing just 0.02% of the entities originally covered in the bipartisan law passed by Congress. The reason is that it is standard practice for foreign entities doing business in the U.S. to register a domestic entity through which business is conducted. Reflecting a common sentiment among corporate attorneys, one lawyer we spoke with wrote: "It would almost be an accident, in my view, that an entity ended up being a foreign reporting company."
>
> Furthermore, in every single example cited in testimony and other additions to the public record over the last decade of debate over the CTA that involved a foreign individual or entity, money was laundered using a U.S.-based company. It is patently false to suggest that the ANS covers all foreign individuals and entities operating in the U.S.
>
> *The ANS dismisses the threats posed by bad U.S. actors, demonstrated in more than two decades of evidence gathered by Congress*. There are substantial numbers of examples cited in the public record that highlight U.S. individuals engaged in fraud scams (a stated priority of the Trump Administration) and other illicit activity using anonymous companies. It is inaccurate to conclude that the risks of harm from anonymous ownership are isolated to foreigners or foreign entities.

Concern: There are other ways to collect this information. In fact, the information is already collected, so this is simply redundant.

> *Congress considered alternative proposals during the decade-long debate over the CTA and chose the centralized database at FinCEN as the most acceptable option.*
>
> - An early bill called for incentives for states to collect beneficial ownership information (BOI). State leaders strongly opposed that approach and, as a result, the bill faced bipartisan opposition.
>
> - Another promising bill called for allowing law enforcement and national security access to an IRS form that collected much of the data. The bill was introduced in the House and supported by the Obama Treasury Department. There were initial concerns from outside

advocates and experts that the data collected by the tax agency was not that of all beneficial owners, but the IRS updated its beneficial ownership definition in the midst of the debate to be more comprehensive. However, the approach faced strong opposition from certain Senate Republicans concerned about opening tax records to a broader set of constituencies.

While other reasonable approaches exist, giving the responsibility of BOI collection to FinCEN proved to be the option with the greatest support. Police, prosecutors and state officials favored a centralized database and certain senators in leadership positions preferred FinCEN over the IRS.

Bank collection of BOI under the Customer Due Diligence (CDD) Rule does not suffice for law enforcement purposes. Not all companies use banks or other financial institutions subject to the CDD rule, which leaves open multi-trillion dollar markets to illicit finance vulnerabilities, including virtual assets, real estate, private investment and other financial sectors. The lack of a universal requirement for all companies to report BOI at formation would provide more of a roadmap for evasion than tool for enforcement and accountability.

Misconception: The law will be ineffective because criminals will not report themselves.

The law introduces a strong deterrent effect to working with criminals. Prior to the CTA, lawyers, corporate formation agents and other corporate service providers – the ones who establish and manage anonymous shell companies – were not required to ask even basic questions about the beneficiaries of their services. During the debate over collection of beneficial ownership information, an exposé by the investigative organization Global Witness and broadcast on the CBS television program *60 Minutes* demonstrated that 12 of 13 lawyers at reputable firms in New York City expressed a willingness, at the request of someone posing as an agent for an unnamed African public official, to help move highly suspect funds into the U.S. through the creation of anonymous companies. So common was the practice of turning a blind eye that one of the willing lawyers was the then-President of the American Bar Association.

Creating civil and criminal penalties that include formation agents who willfully file false information provides a strong deterrent effect. The penalties make it much more difficult for criminals to access our financial system with impunity, move money through our financial system, and cloak themselves with the legitimacy of U.S.-formed companies.

Law enforcement has said repeatedly and in the public record that following the money often requires only one connection to those engaged in the illicit activity and the CTA provides that link. Without such a link, it is often impossible to move an investigation forward rewarding criminal operations for hiding in plain sight.

Misconception: This is incredibly burdensome.

Small business compliance costs are low in comparable jurisdictions in which beneficial ownership disclosures are in effect. In the lead up to the passage of the CTA, members of Congress and the first Trump Administration were briefed on the compliance burden of a similar beneficial ownership collection law in the United Kingdom (UK). Companies House, the UK agency responsible for managing the beneficial ownership register, ran a post-implementation survey and analysis and found ongoing compliance costs for the equivalent law ran less than $3 per year, with minimal time for compliance for small businesses. Given similar profiles of small businesses in the two countries, there was little reason to assume U.S. business owners would be less capable than their overseas counterparts.

FinCEN compliance costs for small businesses are also estimated to be low for the vast majority of small U.S. businesses. Just prior to implementation, FinCEN estimated that the average cost to

U.S. businesses – both single person firms and firms with more complex structures – would be $82. After the CTA was implemented, the business group Small Business Majority surveyed members who were early registrants under the law. Sixty-eight percent of those surveyed said it was "easy" to file. Only six percent found it very difficult. FinCEN has said that from feedback it received, filing takes small businesses, on average, less than 20 minutes to register.

Many of these small business owners will never change ownership information and, therefore, never have to spend any time on compliance ever again. These numbers are as one would expect by looking at the makeup of CTA covered entities. According to the Small Business Administration, the vast majority – more than 80 percent – of U.S. firms are non-employer firms, meaning they have no employees aside from the owner. The simple structure for these firms makes the filing of four pieces of readily known information, including one's name, address, date of birth and government identification number (e.g., driver's license or passport number), a straightforward exercise.

For those firms that do have more complex structures, we would suggest that it is impossible to have the resources to pay the lawyers and corporate service providers to create the complex structure but not have the wherewithal to then name who sits on the top of the corporate food chain.

No one should conflate the simple filings of truly small businesses with those of more complex and better resourced firms.

Misconception: Business owners face steep fines and jail for simply not knowing about the CTA or making a clerical error.

The law is carefully crafted to work for honest U.S. businesses. We were present for many of the debates over the final compromise language in the CTA. To gain the support of certain CTA skeptics and to ensure that honest mistakes or inadvertent, easily fixable errors by business owners could be corrected upon recognition of the error, the text of the bill was amended from a "knowing" to a "willful" culpability standard.

To our knowledge, there was never a version of the bill, through more than a decade of discussion and debate, that included a "negligence" or "reckless" standard. Suggesting that the CTA makes instant criminals of millions of businesses that are unaware of the new law is, at best, a gross misreading of the legislative text. Missing a filing because the business owner was unaware of the CTA's requirements or deadlines is not punishable. A violation must be willful, with an affirmative determination to ignore the law.

It is therefore inaccurate to suggest that negligence (re: forgetting to file) is punishable under the CTA.

We hope this answers and clarifies some of the concerns that were voiced at the markup and will be taken into consideration in any future discussion of the CTA.

Sincerely,

Gary Kalman
Executive Director

Ian Gary
Executive Director

Transparency International U.S.

Financial Accountability and Corporate Transparency (FACT) Coalition