



**FACTCOALITION**  
Financial Accountability & Corporate Transparency

March 26, 2019

The Honorable Emanuel Cleaver  
Chairman, Subcommittee on National Security,  
International Development, and Monetary  
Policy  
U.S. House Committee on Financial Services  
2335 Rayburn House Office Building  
Washington, DC 20515

The Honorable Steve Stivers  
Ranking Member, Subcommittee on National  
Security, International Development, and  
Monetary Policy  
U.S. House Committee on Financial Services  
2234 Rayburn House Office Building  
Washington, DC 20515

**RE: March 13, 2019 Hearing titled “Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crime”**

Dear Chairman Cleaver and Ranking Member Stivers,

We write on behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition to support the discussion draft of the **Corporate Transparency Act of 2019 (H.R. \_\_\_\_\_)**, sponsored by Representative Carolyn Maloney (D-NY).

The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to combat the harmful impacts of corrupt financial practices.

We greatly appreciate the hearing, titled “Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crime,” held by the House Financial Services Subcommittee on National Security, International Development, and Monetary Policy on March 13, 2019.

Anonymous companies formed in the United States have been used for a wide range of dangerous and illicit activities, including as fronts for rogue countries to evade sanctions,<sup>1</sup> to foster corruption by foreign kleptocrats,<sup>2</sup> to cloak arms dealers shipping weapons into conflict zones,<sup>3</sup> to fuel the opioid crisis in communities across the country,<sup>4</sup> to enable human trafficking,<sup>5</sup> to rip off Medicare,<sup>6</sup> to defraud honest businesses,<sup>7</sup> and to undermine the safety of our troops through the sale of faulty equipment.<sup>8</sup>

The draft Corporate Transparency Act of 2019 provides important new tools to effectively combat terrorism and financial crimes by ending the incorporation of anonymous companies in the United States. Specifically, this legislation would enable law enforcement to more effectively and efficiently conduct investigations and enhance safety by saving time and resources in pursuing complex money laundering operations.

Members raised several questions during the March 13<sup>th</sup> hearing. We offer these comments to provide additional background and information beyond what the witnesses explained.

## **Exemptions**

The exemptions in the bill are included for one of several reasons. In some instances, exemptions were a recognition that the filing would be redundant (e.g. publicly traded companies) or that the definitions in the bill were not appropriate for all corporate entities (e.g. charities).

We agree with Representative French Hill (R-AR) that if we acknowledge that charities and religious institutions do not fit within the rubric of this bill, then all nonprofit businesses — including 501(c)(4) entities — should be exempt. That correction has been made in the discussion draft. We also support the bill's call for a study of the exempt entities to assess whether exclusion of these structures does present a national security or money laundering threat.

Some raised concerns that honest businesses could be criminally liable for forgetting to file the information. We would note that the bill only penalizes knowing and willful violations; it does not penalize negligence. As a result, there is little chance that any exempt entity would face law enforcement actions if they were unaware of the requirement and did not file.

## **Collection of the Beneficial Ownership Information**

Approaches to have the information collected by individual states, the Financial Crimes Enforcement Network (FinCEN), and the Internal Revenue Service (IRS) were all raised during the hearing.

State collection has been the approach written into a number of Senate bills for more than a decade.<sup>9</sup> This approach takes advantage of the existing process for corporate formation and is, as a matter of policy, a viable option. However, state policymakers have strongly opposed this approach. Many law enforcement groups and national security experts have preferred a centralized approach to ensure consistency and accessibility of the data. And, since the bills under consideration in Congress do not contemplate making the information public, there have also been concerns from some constituencies regarding how states would manage the information given “sunshine laws” in many states.

The IRS creates significant hurdles. The combination of existing forms that have been suggested in various proposals collect some relevant information but not all. For example, the SS-4 form's “responsible party” was originally created to ensure a contact for the IRS to call should there be a problem with a tax return. It was not envisioned as an anti-money laundering tool to help law enforcement track illicit actors. Additionally, tax information is among the most protected information held by the federal government. While there are exceptions to the tax privacy laws, law enforcement, national security officials, and others we charge with anti-money laundering responsibilities would not have appropriate and timely access to the information. That is why the various stakeholders all strongly oppose empowering the IRS to collect this information. Congress does not appear likely to grant the IRS new and expanded powers nor to open up tax data to additional constituencies. Additionally, Rep. Hill's draft bill would indeed require the IRS to provide FinCEN staff with the information, but the draft does not specify how or if FinCEN can share the information with law enforcement or others with anti-money laundering responsibilities. The information would still be considered protected IRS tax information, creating undue obstacles to access by anyone outside of FinCEN that appropriately needs the

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information. If the information is not readily available to the appropriate parties, then the law will be ineffective.

For those concerned about the national security and law enforcement threats created by anonymous ownership, Rep. Maloney’s discussion draft offers a solution that satisfies those who need the information and those who want certain guardrails preventing disclosure. FinCEN is a thoughtful and workable alternative. It is an approach that has bipartisan support.

Unlike other proposed repositories for the information to fight illicit financial crime, FinCEN’s mission is “to safeguard the financial system from illicit use, combat money laundering, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.” The most logical place for the information to guard against financial crime is with the entity charged with fighting financial crime.

### **Access to the Information**

FinCEN is secure and has existing relationships with law enforcement and financial institutions in which information is already safely shared.

During the hearing, there was some confusion about how FinCEN might handle the sharing of the information it collects. As the discussion proceeds, it is important to understand how FinCEN works.

- There are existing protocols that include, among others, a requirement that only select people with special training and approval have access to any part of the FinCEN database. Contrary to what has been suggested, a local patrolman conducting a routine traffic stop cannot access the database to harass a motorist. That is not how the system works, and no one is seriously suggesting new rules to allow that type of access.
- The FinCEN database electronically tracks everyone who logs on and what their requests involved. If someone were to access the database for inappropriate reasons, the system records the inquiry and that person can face criminal penalties.

We appreciate the opportunity to offer these comments. We thank you for your consideration and look forward to working with you to move forward this important legislation. Should you have any additional questions, please contact Clark Gascoigne at [cgascoigne@thefactcoalition.org](mailto:cgascoigne@thefactcoalition.org) or +1 (202) 810-1334.

Sincerely,

**Gary Kalman**  
Executive Director  
The FACT Coalition

**Clark Gascoigne**  
Deputy Director  
The FACT Coalition

cc: The Honorable Maxine Waters, Chairwoman, U.S. House Committee on Financial Services  
The Honorable Patrick McHenry, Ranking Member, U.S. House Committee on Financial Services  
Members of the U.S. House Committee on Financial Services

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- <sup>1</sup> *United States Department of Justice*, “Manhattan U.S. Attorney Announces Court Judgment Finding Midtown Office Building Secretly Owned And Controlled By Government Of Iran Subject To Forfeiture For Violations Of The Iranian Transactions Regulations And Money Laundering Offenses,” September 17, 2013, <https://www.justice.gov/usao-sdny/pr/manhattan-us-attorney-announces-court-judgment-finding-midtown-office-building-secretly>.
  - <sup>2</sup> Ben Judah, “The Kleptocracy Curse: Rethinking Containment,” *Hudson Institute*, October 2016, <https://www.hudson.org/research/12928-the-kleptocracy-curse-rethinking-containment>.
  - <sup>3</sup> Written Testimony of U.S. Department of the Treasury Assistant Secretary Daniel L. Glaser before the Senate Committee on the Judiciary, Subcommittee on Crime and Terrorism, 1 November 2011: <https://www.treasury.gov/press-center/press-releases/Pages/tg1346.aspx>.
  - <sup>4</sup> Nathan Proctor and Julia Ladics, “Anonymity Overdose: Ten Cases that Connect Opioid Trafficking and Related Money Laundering to Anonymous Shell Companies,” *Fair Share Education Fund*, August 2016, [https://www.fairshareonline.org/sites/default/files/AnonymityOverdose\\_Aug1\\_2016.pdf](https://www.fairshareonline.org/sites/default/files/AnonymityOverdose_Aug1_2016.pdf).
  - <sup>5</sup> *Polaris Project*, “Hidden in Plain Sight: How Corporate Secrecy Facilitates Human Trafficking in Illicit Massage Parlors,” April 2018, <https://polarisproject.org/resources/hidden-plain-sight-how-corporate-secrecy-facilitates-human-trafficking-illicit-massage>.
  - <sup>6</sup> Brian Grow, “Special Report: Phantom firms bleed millions from Medicare,” *Reuters*, December 21, 2011, <http://reut.rs/uGkAPw>.
  - <sup>7</sup> *United States Department of Justice*, “Security Contractors Plead Guilty to Illegally Obtaining \$31 Million From Contracts Intended for Disadvantaged Small Businesses,” March 18, 2013, <https://www.justice.gov/usao-edva/pr/security-contractors-plead-guilty-illegally-obtaining-31-million-contracts-intended>.
  - <sup>8</sup> *Global Witness*, “Hidden Menace,” July 2016, <https://www.globalwitness.org/en/reports/hidden-menace/>.
  - <sup>9</sup> See, for example: S.2956, 110<sup>th</sup> Congress; S.569, 111<sup>th</sup> Congress; S.1483, 112<sup>th</sup> Congress; S.1465, 113<sup>th</sup> Congress; S.2489, 114<sup>th</sup> Congress; and S.1454, 115<sup>th</sup> Congress.

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