

June 30, 2020

The Honorable Mitch McConnell
Majority Leader
U.S. Senate
S-230, The Capitol
Washington, DC 20510

The Honorable Chuck Schumer
Minority Leader
U.S. Senate
S-221, The Capitol
Washington, DC 20510

The Honorable James Inhofe
Chairman
U.S. Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

The Honorable Jack Reed
Ranking Member
U.S. Senate Committee on Armed Services
228 Russell Senate Office Building
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Inhofe, and Ranking Member Reed,

While we all have a strong desire to keep our nation secure, the undersigned small business organizations write to express our strong opposition to Title LIV of S. 4049, Establishing Beneficial Ownership Information Reporting Requirements.

This amendment circumvents the normal legislative process as it has never been considered in committee. A controversial amendment, such as this one, should not be attached to a must-pass, unrelated bills like the National Defense Authorization Act or an appropriations bill.

This amendment would impose duplicative, burdensome reporting burdens on millions of small businesses in the United States and threatens the privacy of law-abiding, legitimate small business owners. The bill attempts to ease regulations on large banks and exempts larger businesses from the requirements. This legislation would add a new regulation on small businesses as they try to recover from an unprecedented public health and economic crisis.

The Financial Crimes Enforcement Network's (FinCEN) Customer Due Diligence (CDD) rule became applicable on May 11, 2018. The CDD rule requires financial institutions to collect the "beneficial ownership" information of business customers when they open accounts. This legislation would attempt to shift the reporting requirements from large banks – those best equipped to handle reporting requirements – to millions of small businesses – those least equipped to handle reporting requirements.

The reporting requirements in the legislation would not only be duplicative, they would also be burdensome. Under this legislation, millions of small businesses would be required to register personally identifiable information with FinCEN, and file additional updated reports within a year of any information changes. Willful failure to provide complete and updated reports could result in civil penalties of \$500 per day up to \$10,000, and criminal penalties of up to 2 years in prison, or both.

This amendment raises significant privacy concerns as the proposed FinCEN "beneficial ownership" database would contain the full legal names, dates of birth, residential or business addresses, and unexpired driver's license numbers or passport numbers of millions of small business owners. Unlike the CDD rule, which requires law enforcement to obtain a subpoena or warrant prior to accessing "beneficial ownership" information from financial institutions, this amendment would make this information accessible through a written request to any federal law enforcement or intelligence agency

or to law enforcement agencies from other countries via requests by U.S. federal agencies. Local, state, and Tribal law enforcement officials can also access the database if a court has authorized them to seek the information in criminal or civil investigations.

The Foreign Intelligence Surveillance Court's admonishing of the Federal Bureau of Investigation for improperly accessing bulk data collected by the National Security Agency demonstrates that federal law enforcement databases can be misused. A subpoena or a warrant should be required to safeguard the privacy of small business owners.

This legislation contains a provision that would allow Treasury employees and officials access to "beneficial ownership" information for the purposes of tax administration. Supporters of this amendment argue that it is vital to national security but have yet to make the case that this information is necessary for tax compliance. This section, along with sections relating to federal contracting, demonstrate that Congress and federal agencies will access "beneficial ownership" information for reasons outside of national security.

This amendment also introduces serious data breach and cybersecurity risks. Under the legislation, FinCEN would maintain a database of small business owners' personally identifiable information that could be hacked for nefarious reasons. As the 2015 breach of the Office of Personnel Management demonstrated, the federal government is not immune to cyber-attacks and harmful disclosure of information.

For the above reasons, we urge Senators to oppose this amendment.

Sincerely,