

September XX, 2019

The Honorable Lindsey Graham
Chairman, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Dianne Feinstein
Ranking Member, Senate Committee on the Judiciary
224 Dirksen Senate Office Building
Washington, DC 20510

The undersigned organizations, representing hundreds of thousands of small businesses across the country, write to express our strong opposition to S. 1889, the *True Incorporation Transparency for Law Enforcement (TITLE) Act*. **This legislation would impose duplicative and problematic reporting burdens on over 5 million small businesses in the United States and would threaten the privacy of law-abiding small business owners.**

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 legal entities with which they conduct commerce. There is no public information regarding the efficacy of the CDD rule. Yet, the *TITLE Act* would mandate millions of small businesses to file additional "beneficial ownership" paperwork with the government. The legislation would require nearly every corporation or limited liability company (LLC) with 20 or fewer employees, \$5 million or less in gross receipts or sales, a physical operating presence in the U.S., or 100 or fewer shareholders – over 90% of businesses in the U.S. – to report beneficial ownership information to States at incorporation, update any changes in ownership within 60 days, and annually update this information.

Complying with the *TITLE Act* would be difficult, and failure to comply would result in substantial penalties. The legislation lacks a clear definition of a beneficial owner. The *TITLE Act* defines a beneficial owner as a person who "directly or indirectly exercises substantial control over a corporation or limited liability company through ownership interests, voting rights, agreement, or otherwise; or has a substantial interest in or receives substantial economic benefits from the assets of a corporation or the assets of a limited liability company." A small business owner would have a difficult time ascertaining who specifically may exercise indirect substantial control over, who may have a substantial interest in, or who may receive substantial economic benefits from a corporation or LLC. These are imprecise terms and failure to provide completed, and updated beneficial owners would result in devastating civil penalties up to \$1 million, criminal penalties of up to 3 years in prison, or both. States may also layer on additional civil and criminal penalties.

S. 1889 raises significant privacy concerns as beneficial ownership reports would contain the names, current residential or business street addresses, dates of birth, and unexpired drivers' license numbers or passport numbers of millions of small business owners. Beneficial ownership information would be available to FinCEN, the Department of Treasury, financial institutions, and law enforcement agencies of foreign countries via requests by U.S. federal agencies without a subpoena or a warrant. This access would remove current privacy protections afforded to small business owners as the CDD rule requires law enforcement to issue subpoenas to financial institutions for beneficial ownership information.

The legislation would also allow Congressional committees and subcommittees to access the information with a subpoena. Allowing Congressional access to beneficial ownership information could lead to Congress investigating small businesses for political motives rather than the stated national security goals. Additionally, the bill requires any small business that bid on a federal contract to submit beneficial ownership information with any bid or proposal. Expanded distribution and access to beneficial ownership information poses an increased risk of abuse.

Further, the *TITLE Act* allows States to disclose publicly any or all of the beneficial ownership information "through statute or otherwise." Public disclosure of small business owners' personally-identifiable information is deeply concerning.

The *TITLE Act* poses serious cybersecurity risks for small businesses. As the 2015 breach of the Office of Personnel Management (OPM) demonstrated, state and federal governments are not immune to cyberattacks. In addition, millions of small businesses would be required to maintain and distribute information about owners and investors in the companies, thus creating another point of vulnerability for an attack. This risk is particularly acute because the *TITLE Act* only targets small businesses and those entities are often the least equipped to guard against cyberattacks.

This letter does not include every problem in S. 1889; however, it does highlight the problems this legislation will present for over 5 million small businesses. We urge members of the Senate Judiciary Committee to oppose the *TITLE Act*.

Sincerely,

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