

115TH CONGRESS
1ST SESSION

S. 1717

To amend title 31, United States Code, to ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

AUGUST 2, 2017

Mr. WYDEN (for himself and Mr. RUBIO) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

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1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Corporate Trans-
5 parency Act of 2017”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Nearly 2,000,000 corporations and limited
9 liability companies are being formed under the laws
10 of the States each year.

11 (2) Very few States obtain meaningful informa-
12 tion about the beneficial owners of the corporations
13 and limited liability companies formed under their
14 laws.

15 (3) A person forming a corporation or limited
16 liability company within the United States typically
17 provides less information to the State of incorpora-
18 tion than is needed to obtain a bank account or driv-
19 er’s license and typically does not name a single ben-
20 efiticial owner.

21 (4) Criminals have exploited the weaknesses in
22 State formation procedures to conceal their identi-
23 ties when forming corporations or limited liability
24 companies in the United States, and have then used
25 the newly created entities to commit crimes affecting

1 interstate and international commerce such as ter-
2 rorism, drug trafficking, money laundering, tax eva-
3 sion, securities fraud, financial fraud, and acts of
4 foreign corruption.

5 (5) Law enforcement efforts to investigate cor-
6 porations and limited liability companies suspected
7 of committing crimes have been impeded by the lack
8 of available beneficial ownership information, as doc-
9 umented in reports and testimony by officials from
10 the Department of Justice, the Department of
11 Homeland Security, the Financial Crimes Enforce-
12 ment Network of the Department of the Treasury,
13 the Internal Revenue Service, and the Government
14 Accountability Office, and others.

15 (6) In July 2006, a leading international anti-
16 money laundering organization, the Financial Action
17 Task Force on Money Laundering (in this section
18 referred to as the “FATF”), of which the United
19 States is a member, issued a report that criticizes
20 the United States for failing to comply with a FATF
21 standard on the need to collect beneficial ownership
22 information and urged the United States to correct
23 this deficiency by July 2008. In December 2016,
24 FATF issued another evaluation of the U.S., which
25 found that little progress has been made over the

1 last ten years to address this problem. It identified
2 the “lack of timely access to adequate, accurate and
3 current beneficial ownership information” as a fun-
4 damental gap in U.S. efforts to combat money laun-
5 dering and terrorist finance.

6 (7) In response to the 2006 FATF report, the
7 United States has repeatedly urged the States to
8 strengthen their incorporation practices by obtaining
9 beneficial ownership information for the corporations
10 and limited liability companies formed under the
11 laws of such States.

12 (8) Many States have established automated
13 procedures that allow a person to form a new cor-
14 poration or limited liability company within the
15 State within 24 hours of filing an online application,
16 without any prior review of the application by a
17 State official. In exchange for a substantial fee, 2
18 States will form a corporation within 1 hour of a re-
19 quest.

20 (9) Dozens of Internet Web sites highlight the
21 anonymity of beneficial owners allowed under the in-
22 corporation practices of some States, point to those
23 practices as a reason to incorporate in those States,
24 and list those States together with offshore jurisdic-
25 tions as preferred locations for the formation of new

1 corporations, essentially providing an open invitation
2 to criminals and other wrongdoers to form entities
3 within the United States.

4 (10) In contrast to practices in the United
5 States, all 28 countries in the European Union are
6 required to have formation agents identify the bene-
7 ficial owners of the corporations formed under the
8 laws of the country.

9 (11) To reduce the vulnerability of the United
10 States to wrongdoing by United States corporations
11 and limited liability companies with hidden owners,
12 to protect interstate and international commerce
13 from criminals misusing United States corporations
14 and limited liability companies, to strengthen law en-
15 forcement investigations of suspect corporations and
16 limited liability companies, to set minimum stand-
17 ards for and level the playing field among State in-
18 corporation practices, and to bring the United States
19 into compliance with its international anti-money
20 laundering standards, Federal legislation is needed
21 to require the collection of beneficial ownership in-
22 formation for the corporations and limited liability
23 companies formed under the laws of such States.

24 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

25 (a) TRANSPARENT INCORPORATION PRACTICES.—

1 (1) IN GENERAL.—Chapter 53 of title 31,
2 United States Code, is amended by inserting after
3 section 5332 the following new section:

4 **“§ 5333. Transparent incorporation practices**

5 “(a) REPORTING REQUIREMENTS.—

6 “(1) IN GENERAL.—Not later than the begin-
7 ning of fiscal year 2019, the Secretary of the Treas-
8 ury shall issue regulations requiring each corpora-
9 tion and limited liability company formed in a State
10 that does not have a formation system described
11 under subsection (b) to file with the Financial
12 Crimes Enforcement Network such information as
13 the corporation or limited liability company would be
14 required to provide the State if such State had a for-
15 mation system described under subsection (b).

16 “(2) DISCLOSURE OF BENEFICIAL OWNERSHIP
17 INFORMATION.—Beneficial ownership information
18 reported to the Financial Crimes Enforcement Net-
19 work pursuant to paragraph (1) shall be provided by
20 the Financial Crimes Enforcement Network upon re-
21 ceipt of—

22 “(A) a civil or criminal subpoena or sum-
23 mons from a State agency, Federal agency, or
24 congressional committee or subcommittee re-
25 questing such information;

1 “(B) a written request made by a Federal
2 agency on behalf of another country under an
3 international treaty, agreement, or convention,
4 or an order under section 3512 of title 18 or
5 section 1782 of title 28 issued in response to a
6 request for assistance from a foreign country;
7 or

8 “(C) a written request made by a financial
9 institution, with customer consent, as part of
10 the institution’s compliance with due diligence
11 requirements imposed under the Bank Secrecy
12 Act (Public Law 91508; 84 Stat. 1114), the
13 USA PATRIOT Act (Public Law 10756; 115
14 Stat. 272), or other applicable Federal or State
15 law.

16 “(3) LIMITATION.—In issuing regulations pur-
17 suant to paragraph (1), the Secretary shall not re-
18 quire such information to be filed with the Internal
19 Revenue Service.

20 “(b) FORMATION SYSTEM.—

21 “(1) IN GENERAL.—With respect to a State, a
22 formation system is described under this subsection
23 if it meets the following requirements:

24 “(A) IDENTIFICATION OF BENEFICIAL
25 OWNERS.—Except as provided in paragraphs

1 (2) and (4), and subject to paragraph (3), each
2 applicant to form a corporation or limited liabil-
3 ity company under the laws of the State is re-
4 quired to provide to the State during the forma-
5 tion process a list of the beneficial owners of
6 the corporation or limited liability company
7 that—

8 “(i) except as provided in subpara-
9 graph (F), identifies each beneficial owner
10 by—

11 “(I) name;

12 “(II) current residential or busi-
13 ness street address; and

14 “(III) a unique identifying num-
15 ber from a non-expired passport
16 issued by the United States or a non-
17 expired driver’s license issued by a
18 State; and

19 “(ii) if the applicant is not the bene-
20 ficial owner, provides the identification in-
21 formation described in clause (i) relating
22 to the applicant.

23 “(B) UPDATED INFORMATION.—For each
24 corporation or limited liability company formed
25 under the laws of the State—

1 “(i) the corporation or limited liability
2 company is required by the State to update
3 the list of the beneficial owners of the cor-
4 poration or limited liability company by
5 providing the information described in sub-
6 paragraph (A) to the State not later than
7 60 days after the date of any change in the
8 list of beneficial owners or the information
9 required to be provided relating to each
10 beneficial owner;

11 “(ii) in the case of a corporation or
12 limited liability company formed or ac-
13 quired by a formation agent and retained
14 by the formation agent as a beneficial
15 owner for transfer to another person, the
16 formation agent is required by the State to
17 submit to the State an updated list of the
18 beneficial owners and the information de-
19 scribed in subparagraph (A) for each such
20 beneficial owner not later than 10 days
21 after date on which the formation agent
22 transfers the corporation or limited liabil-
23 ity company to another person; and

24 “(iii) the corporation or limited liabil-
25 ity company is required by the State to

1 submit to the State an annual filing con-
2 taining the list of the beneficial owners of
3 the corporation or limited liability company
4 and the information described in subpara-
5 graph (A) for each such beneficial owner.

6 “(C) RETENTION OF INFORMATION.—Ben-
7 efiticial ownership information relating to each
8 corporation or limited liability company formed
9 under the laws of the State is required to be
10 maintained by the State until the end of the 5-
11 year period beginning on the date that the cor-
12 poration or limited liability company terminates
13 under the laws of the State.

14 “(D) INFORMATION REQUESTS.—Bene-
15 ficial ownership information relating to each
16 corporation or limited liability company formed
17 under the laws of the State shall be provided by
18 the State upon receipt of—

19 “(i) a civil or criminal subpoena or
20 summons from a State agency, Federal
21 agency, or congressional committee or sub-
22 committee requesting such information;

23 “(ii) a written request made by a Fed-
24 eral agency on behalf of another country

1 under an international treaty, agreement,
2 or convention, or section 1782 of title 28;

3 “(iii) a written request made by the
4 Financial Crimes Enforcement Network; or

5 “(iv) a written request made by a fi-
6 nancial institution, with customer consent,
7 as part of the institution’s compliance with
8 due diligence requirements imposed under
9 the Bank Secrecy Act (Public Law 91508;
10 84 Stat. 1114), the USA PATRIOT Act
11 (Public Law 10756; 115 Stat. 272), or
12 other applicable Federal or State law.

13 “(E) NOTICE.—The State discloses clearly
14 and conspicuously that the beneficial ownership
15 information collected under the formation sys-
16 tem may be provided to the entities described in
17 subparagraph (D), pursuant to the require-
18 ments of such subparagraph.

19 “(F) NO BEARER SHARE CORPORATIONS
20 OR LIMITED LIABILITY COMPANIES.—A cor-
21 poration or limited liability company formed
22 under the laws of the State may not issue a cer-
23 tificate in bearer form evidencing either a whole
24 or fractional interest in the corporation or lim-
25 ited liability company.

1 “(2) STATES THAT LICENSE FORMATION
2 AGENTS.—

3 “(A) IN GENERAL.—Notwithstanding para-
4 graph (1), a State described in subparagraph
5 (B) may permit an applicant to form a corpora-
6 tion or limited liability company under the laws
7 of the State, or a corporation or limited liability
8 company formed under the laws of the State, to
9 provide the required information to a licensed
10 formation agent residing in the State, instead
11 of to the State directly, if the application under
12 paragraph (1)(A) or the update under para-
13 graph (1)(B) contains—

14 “(i) the name, current business ad-
15 dress, contact information, and licensing
16 number of the licensed formation agent
17 that has agreed to maintain the informa-
18 tion required under this subsection; and

19 “(ii) a certification by the licensed
20 formation agent that the licensed forma-
21 tion agent has possession of the informa-
22 tion required under this subsection and
23 will maintain the information in the State
24 licensing the licensed formation agent in
25 accordance with State law.

1 “(B) STATES DESCRIBED.—A State de-
2 scribed in this subparagraph is a State that
3 maintains a formal licensing system for forma-
4 tion agents that requires a formation agent to
5 register with the State, meet standards for fit-
6 ness and honesty, maintain a physical office
7 and records within the State, undergo regular
8 monitoring, and be subject to sanctions for non-
9 compliance with State requirements.

10 “(C) LICENSED FORMATION AGENT DU-
11 TIES.—A licensed formation agent that receives
12 beneficial ownership information under State
13 law in accordance with this paragraph shall—

14 “(i) maintain the information in the
15 State in which the corporation or limited
16 liability company is being or has been
17 formed in the same manner as required for
18 States under paragraph (1)(C);

19 “(ii) provide the information under
20 the same circumstances as required for
21 States under paragraph (1)(D); and

22 “(iii) perform the duties of a forma-
23 tion agent under paragraph (3).

24 “(D) TERMINATION OF RELATIONSHIP.—

1 “(i) IN GENERAL.—Except as pro-
2 vided in clause (ii), a licensed formation
3 agent that receives beneficial ownership in-
4 formation relating to a corporation or lim-
5 ited liability company under State law in
6 accordance with this paragraph and that
7 resigns, dissolves, or otherwise ends a rela-
8 tionship with the corporation or limited li-
9 ability company shall promptly—

10 “(I) notify the State in writing
11 that the licensed formation agent has
12 resigned or ended the relationship;
13 and

14 “(II) transmit all beneficial own-
15 ership information relating to the cor-
16 poration or limited liability company
17 in the possession of the licensed for-
18 mation agent to the licensing State.

19 “(ii) EXCEPTION.—If a licensed for-
20 mation agent receives written instructions
21 from a corporation or limited liability com-
22 pany, the licensed formation agent may
23 transmit the beneficial ownership informa-
24 tion relating to the corporation or limited
25 liability company to another licensed for-

1 mation agent that is within the same State
2 and has agreed to maintain the informa-
3 tion in accordance with this section.

4 “(iii) NOTICE TO STATE.—If a li-
5 censed formation agent provides beneficial
6 ownership information to another licensed
7 formation agent under clause (ii), the li-
8 censed formation agent providing the infor-
9 mation shall promptly notify in writing the
10 State under the laws of which the corpora-
11 tion or limited liability company is formed
12 of the identity of the licensed formation
13 agent receiving the information.

14 “(3) CERTAIN BENEFICIAL OWNERS.—If an ap-
15 plicant to form a corporation or limited liability com-
16 pany or a beneficial owner, officer, director, or simi-
17 lar agent of a corporation or limited liability com-
18 pany who is required to provide identification infor-
19 mation under this subsection does not have a non-
20 expired passport issued by the United States or a
21 non-expired driver’s license or identification card
22 issued by a State, each application described in
23 paragraph (1)(A) and each update described in
24 paragraph (1)(B) shall include a certification by a

1 formation agent residing in the State that the for-
2 mation agent—

3 “(A) has obtained for each such person a
4 current residential or business street address
5 and a legible and credible copy of the pages of
6 a non-expired passport issued by the govern-
7 ment of a foreign country bearing a photo-
8 graph, date of birth, and unique identifying in-
9 formation for the person;

10 “(B) has verified the name, address, and
11 identity of each such person;

12 “(C) will provide the information described
13 in subparagraph (A) and the proof of
14 verification described in subparagraph (B) upon
15 request under the same circumstances as re-
16 quired for States under paragraph (1)(D); and

17 “(D) will retain the information and proof
18 of verification under this paragraph in the
19 State in which the corporation or limited liabil-
20 ity company is being or has been formed until
21 the end of the 5-year period beginning on the
22 date that the corporation or limited liability
23 company terminates under the laws of the
24 State.

25 “(4) EXEMPT ENTITIES.—

1 “(A) IN GENERAL.—A formation system
2 described in paragraph (1) shall require that an
3 application for an entity described in subpara-
4 graph (C) or (D) of subsection (d)(2) that is
5 proposed to be formed under the laws of a
6 State and that will be exempt from the bene-
7 ficial ownership disclosure requirements under
8 this subsection shall include in the application
9 a certification by the applicant, or a prospective
10 officer, director, or similar agent of the entity—

11 “(i) identifying the specific provision
12 of subsection (d)(2) under which the entity
13 proposed to be formed would be exempt
14 from the beneficial ownership disclosure re-
15 quirements under paragraphs (1), (2), and
16 (3);

17 “(ii) stating that the entity proposed
18 to be formed meets the requirements for
19 an entity described under such provision of
20 subsection (d)(2); and

21 “(iii) providing identification informa-
22 tion for the applicant or prospective offi-
23 cer, director, or similar agent making the
24 certification in the same manner as pro-
25 vided under paragraph (1) or (3).

1 “(B) EXISTING ENTITIES.—On and after
2 the date that is 2 years after the effective date
3 of the amendments to the formation system of
4 a State made to comply with this section, an
5 entity formed under the laws of the State be-
6 fore such effective date shall be considered to
7 be a corporation or limited liability company for
8 purposes of, and shall be subject to the require-
9 ments of, this subsection unless an officer, di-
10 rector, or similar agent of the entity submits to
11 the State a certification—

12 “(i) identifying the specific provision
13 of subsection (d)(2) under which the entity
14 is exempt from the requirements under
15 paragraphs (1), (2), and (3);

16 “(ii) stating that the entity meets the
17 requirements for an entity described under
18 such provision of subsection (d)(2); and

19 “(iii) providing identification informa-
20 tion for the officer, director, or similar
21 agent making the certification in the same
22 manner as provided under paragraph (1)
23 or (3).

24 “(C) EXEMPT ENTITIES HAVING OWNER-
25 SHIP INTEREST.—If an entity described in sub-

1 paragraph (C) or (D) of subsection (d)(2) has
2 or will have an ownership interest in a corpora-
3 tion or limited liability company formed or to be
4 formed under the laws of a State, the applicant,
5 corporation, or limited liability company in
6 which the entity has or will have the ownership
7 interest shall provide the information required
8 under this subsection relating to the entity, ex-
9 cept that the entity shall not be required to pro-
10 vide information regarding any natural person
11 who has an ownership interest in, exercises sub-
12 stantial control over, or receives substantial eco-
13 nomic benefits from the entity.

14 “(c) PENALTIES.—

15 “(1) IN GENERAL.—It shall be unlawful for—

16 “(A) any person to affect interstate or for-
17 eign commerce by—

18 “(i) knowingly providing, or attempt-
19 ing to provide, false or fraudulent bene-
20 ficial ownership information, including a
21 false or fraudulent identifying photograph,
22 to a State or licensed formation agent
23 under State law in accordance with this
24 section;

1 “(ii) willfully failing to provide com-
2 plete or updated beneficial ownership infor-
3 mation to a State or licensed formation
4 agent under State law in accordance with
5 this section; or

6 “(iii) knowingly disclosing the exist-
7 ence of a subpoena, summons, or other re-
8 quest for beneficial ownership information,
9 except—

10 “(I) to the extent necessary to
11 fulfill the authorized request;

12 “(II) as authorized by the entity
13 that issued the subpoena, summons,
14 or other request; or

15 “(III) as prescribed by a State;
16 or

17 “(B) in the case of a formation agent,
18 knowingly failing to obtain or maintain credible,
19 legible, and updated beneficial ownership infor-
20 mation, including any required identifying pho-
21 tograph.

22 “(2) CIVIL AND CRIMINAL PENALTIES.—In ad-
23 dition to any civil or criminal penalty that may be
24 imposed by a State, any person who violates para-
25 graph (1)—

1 “(A) shall be liable to the United States
2 for a civil penalty of not more than \$10,000;
3 and

4 “(B) may be fined under title 18, impris-
5 oned for not more than 3 years, or both.

6 “(d) DEFINITIONS.—For the purposes of this section:

7 “(1) BENEFICIAL OWNER.—The term ‘bene-
8 ficial owner’—

9 “(A) means a natural person who, directly
10 or indirectly—

11 “(i) exercises substantial control over
12 a corporation or limited liability company;
13 or

14 “(ii) has a substantial interest in or
15 receives substantial economic benefits from
16 the assets of a corporation or limited liabil-
17 ity company; and

18 “(B) does not include—

19 “(i) a minor child;

20 “(ii) a person acting as a nominee,
21 intermediary, custodian, or agent on behalf
22 of another person;

23 “(iii) a person acting solely as an em-
24 ployee of a corporation or limited liability
25 company and whose control over or eco-

1 nomic benefits from the corporation or lim-
2 ited liability company derives solely from
3 the employment status of the person;

4 “(iv) a person whose only interest in
5 a corporation or limited liability company
6 is through a right of inheritance, unless
7 the person also meets the requirements of
8 subparagraph (A); or

9 “(v) a creditor of a corporation or
10 limited liability company, unless the cred-
11 itor also meets the requirements of sub-
12 paragraph (A).

13 “(2) CORPORATION; LIMITED LIABILITY COM-
14 PANY.—The terms ‘corporation’ and ‘limited liability
15 company’—

16 “(A) have the meanings given such terms
17 under the laws of the applicable State;

18 “(B) include any non-United States entity
19 eligible for registration or registered to do busi-
20 ness as a corporation or limited liability com-
21 pany under the laws of the applicable State;

22 “(C) do not include any entity that is, and
23 discloses in the application by the entity to
24 form under the laws of the State or, if the enti-
25 ty was formed before the date of the enactment

1 of this section, in a filing with the State under
2 State law—

3 “(i) a business concern that is an
4 issuer of a class of securities registered
5 under section 12 of the Securities Ex-
6 change Act of 1934 (15 U.S.C. 78l) or
7 that is required to file reports under sec-
8 tion 15(d) of that Act (15 U.S.C. 78o(d));

9 “(ii) a business concern constituted or
10 sponsored by a State, a political subdivi-
11 sion of a State, under an interstate com-
12 pact between 2 or more States, by a de-
13 partment or agency of the United States,
14 or under the laws of the United States;

15 “(iii) a depository institution (as de-
16 fined in section 3 of the Federal Deposit
17 Insurance Act (12 U.S.C. 1813));

18 “(iv) a credit union (as defined in sec-
19 tion 101 of the Federal Credit Union Act
20 (12 U.S.C. 1752));

21 “(v) a bank holding company (as de-
22 fined in section 2 of the Bank Holding
23 Company Act of 1956 (12 U.S.C. 1841));

24 “(vi) a broker or dealer (as defined in
25 section 3 of the Securities Exchange Act of

1 1934 (15 U.S.C. 78c)) that is registered
2 under section 15 of the Securities Ex-
3 change Act of 1934 (15 U.S.C. 78o);

4 “(vii) an exchange or clearing agency
5 (as defined in section 3 of the Securities
6 Exchange Act of 1934 (15 U.S.C. 78c))
7 that is registered under section 6 or 17A
8 of the Securities Exchange Act of 1934
9 (15 U.S.C. 78f and 78q-1);

10 “(viii) an investment company (as de-
11 fined in section 3 of the Investment Com-
12 pany Act of 1940 (15 U.S.C. 80a-3)) or
13 an investment advisor (as defined in sec-
14 tion 202 of the Investment Advisers Act of
15 1940 (15 U.S.C. 80b-2)), if the company
16 or adviser is registered with the Securities
17 and Exchange Commission, or has filed an
18 application for registration which has not
19 been denied, under the Investment Com-
20 pany Act of 1940 (15 U.S.C. 80a-1 et
21 seq.) or the Investment Advisers Act of
22 1940 (15 U.S.C. 80b-1 et seq.);

23 “(ix) an insurance company (as de-
24 fined in section 2 of the Investment Com-
25 pany Act of 1940 (15 U.S.C. 80a-2));

1 “(x) a registered entity (as defined in
2 section 1a of the Commodity Exchange Act
3 (7 U.S.C. 1a)), or a futures commission
4 merchant, introducing broker, commodity
5 pool operator, or commodity trading advi-
6 sor (as defined in section 1a of the Com-
7 modity Exchange Act (7 U.S.C. 1a)) that
8 is registered with the Commodity Futures
9 Trading Commission;

10 “(xi) a public accounting firm reg-
11 istered in accordance with section 102 of
12 the Sarbanes-Oxley Act (15 U.S.C. 7212);

13 “(xii) a public utility that provides
14 telecommunications service, electrical
15 power, natural gas, or water and sewer
16 services, within the United States;

17 “(xiii) a church, charity, or nonprofit
18 entity that is described in section 501(e),
19 527, or 4947(a)(1) of the Internal Revenue
20 Code of 1986, has not been denied tax ex-
21 empt status, and has filed the most re-
22 cently due annual information return with
23 the Internal Revenue Service, if required to
24 file such a return;

25 “(xiv) any business concern that—

1 “(I) employs more than 20 em-
2 ployees on a full-time basis in the
3 United States;

4 “(II) files income tax returns in
5 the United States demonstrating more
6 than \$5,000,000 in gross receipts or
7 sales; and

8 “(III) has an operating presence
9 at a physical office within the United
10 States; or

11 “(xv) any corporation or limited liabil-
12 ity company formed and owned by an enti-
13 ty described in clause (i), (ii), (iii), (iv),
14 (v), (vi), (vii), (viii), (ix), (x), (xi), (xii),
15 (xiii), or (xiv); and

16 “(D) do not include any individual busi-
17 ness concern or class of business concerns
18 which the Secretary of the Treasury, with the
19 written concurrence of the Attorney General of
20 the United States, has determined in writing
21 should be exempt from the requirements of sub-
22 section (a), because requiring beneficial owner-
23 ship information from the business concern
24 would not serve the public interest and would
25 not assist law enforcement efforts to detect,

1 prevent, or punish terrorism, money laundering,
2 tax evasion, or other misconduct.

3 “(3) FORMATION AGENT.—The term ‘formation
4 agent’ means a person who, for compensation—

5 “(A) acts on behalf of another person to
6 assist in the formation of a corporation or lim-
7 ited liability company under the laws of a State;
8 or

9 “(B) purchases, sells, or transfers the pub-
10 lic records that form a corporation or limited li-
11 ability company.”.

12 (2) RULEMAKING.—To carry out this Act and
13 the amendments made by this Act, the Secretary of
14 the Treasury, in consultation with the Secretary of
15 Homeland Security and the Attorney General of the
16 United States, may issue guidance or a rule to—

17 (A) clarify the definitions under section
18 5333(d) of title 31, United States Code, as
19 added by paragraph (1); and

20 (B) specify how to verify beneficial owner-
21 ship information or other identification infor-
22 mation for purposes of such section 5333, in-
23 cluding whether the verification procedures
24 specified in section 5333(b)(3) should apply to
25 all applicants under section 5333(b)(1) or

1 whether such verification process should require
2 the notarization of signatures.

3 (3) CONFORMING AMENDMENTS.—Title 31,
4 United States Code, is amended—

5 (A) in section 5321(a)—

6 (i) in paragraph (1), by striking “sec-
7 tions 5314 and 5315” each place it ap-
8 pears and inserting “sections 5314, 5315,
9 and 5333”; and

10 (ii) in paragraph (6), by inserting
11 “(except section 5333)” after “sub-
12 chapter” each place it appears; and

13 (B) in section 5322, by striking “section
14 5315 or 5324” each place it appears and insert-
15 ing “section 5315, 5324, or 5333”.

16 (4) TABLE OF CONTENTS.—The table of con-
17 tents of chapter 53 of title 31, United States Code,
18 is amended by inserting after the item relating to
19 section 5332 the following:

“Sec. 5333. Transparent incorporation practices.”.

20 (5) RESTRICTIONS ON PUBLIC ACCESS.—A
21 State may—

22 (A) restrict public access to all or any por-
23 tion of the beneficial ownership information
24 provided to the State as described under section

1 5332 of title 31, United States Code, as added
2 by this Act; and

3 (B) by statute, regulation, order, or inter-
4 pretation adopted or issued by the State after
5 the date of enactment of this Act, provide for
6 public access to all or any portion of such infor-
7 mation.

8 (6) NO DUTY OF VERIFICATION.—This Act and
9 the amendments made by this Act do not impose
10 any obligation on a State to verify the name, ad-
11 dress, or identity of a beneficial owner whose infor-
12 mation is submitted to such State under section
13 5333 of title 31, United States Code, as added by
14 this Act.

15 (b) FUNDING AUTHORIZATION.—

16 (1) IN GENERAL.—To carry out section 5333 of
17 title 31, United States Code, during the 3-year pe-
18 riod beginning on the date of enactment of this Act,
19 funds shall be made available to each State to pay
20 reasonable costs relating to compliance with the re-
21 quirements of such section.

22 (2) FUNDING SOURCES.—To protect the United
23 States against the misuse of United States corpora-
24 tions and limited liability companies with hidden
25 owners, funds shall be provided to each State to

1 carry out the purposes described in paragraph (1)
2 from one or more of the following sources:

3 (A) Upon application by a State, and with-
4 out further appropriation, the Secretary of the
5 Treasury shall make available to the State un-
6 obligated balances described in section
7 9703(g)(4)(B) of title 31, United States Code,
8 in the Department of the Treasury Forfeiture
9 Fund established under section 9703(a) of title
10 31, United States Code.

11 (B) Upon application by a State, after con-
12 sultation with the Secretary of the Treasury,
13 and without further appropriation, the Attorney
14 General of the United States shall make avail-
15 able to the State excess unobligated balances
16 (as defined in section 524(c)(8)(D) of title 28,
17 United States Code) in the Department of Jus-
18 tice Assets Forfeiture Fund established under
19 section 524(c) of title 28, United States Code.

20 (3) MAXIMUM AMOUNTS.—

21 (A) DEPARTMENT OF THE TREASURY.—
22 The Secretary of the Treasury may not make
23 available to States a total of more than
24 \$30,000,000 under paragraph (2)(A).

1 (B) DEPARTMENT OF JUSTICE.—The At-
2 torney General of the United States may not
3 make available to States a total of more than
4 \$10,000,000 under paragraph (2)(B).

5 (4) RULEMAKING.—Not later than the end of
6 the 180-day period beginning on the date of the en-
7 actment of this Act, the Secretary of the Treasury
8 and the Attorney General shall, jointly, issue regula-
9 tions setting forth the procedures for States to apply
10 for funds under this subsection, including deter-
11 mining which State measures should be funded to
12 assess, plan, develop, test, or implement relevant
13 policies, procedures, or system modifications.

14 (c) COMPLIANCE REPORT.—Nothing in this section
15 or the amendments made by this section authorizes the
16 Secretary of the Treasury to withhold from a State any
17 funding otherwise available to the State because of a fail-
18 ure by that State to comply with section 5333 of title 31,
19 United States Code. Not later than the end of the 42-
20 month period beginning on the date of the enactment of
21 this Act, the Comptroller General of the United States
22 shall submit to the Committee on Financial Services of
23 the House of Representatives and the Committee on
24 Homeland Security and Governmental Affairs of the Sen-
25 ate a report—

1 (1) identifying which States obtain beneficial
2 ownership information as described in such section
3 5333;

4 (2) with respect to each State that does not ob-
5 tain such information, whether corporations and lim-
6 ited liability companies formed under the laws of
7 such State are in compliance with such section 5333
8 and providing the specified beneficial ownership in-
9 formation to the Financial Crimes Enforcement Net-
10 work; and

11 (3) whether the Department of the Treasury is
12 in compliance with such section 5333 and, if not,
13 what steps it must take to come into compliance
14 with this section.

15 (d) FEDERAL CONTRACTORS.—Not later than the
16 first day of the first full fiscal year beginning at least 1
17 year after the date of the enactment of this Act, the Ad-
18 ministrator for Federal Procurement Policy shall revise
19 the Federal Acquisition Regulation maintained under sec-
20 tion 1303(a)(1) of title 41, United States Code, to require
21 any contractor who is subject to the requirement to dis-
22 close beneficial ownership information under section 5333
23 of title 31, United States Code, to provide the information
24 required to be disclosed under such section to the Federal
25 Government as part of any bid or proposal for a contract

1 with a value threshold in excess of the simplified acquisi-
2 tion threshold under section 134 of title 41, United States
3 Code.

4 (e) ANTI-MONEY LAUNDERING OBLIGATIONS OF
5 FORMATION AGENTS.—

6 (1) IN GENERAL.—Section 5312(a)(2) of title
7 31, United States Code, is amended—

8 (A) in subparagraph (Y), by striking “or”
9 at the end;

10 (B) by redesignating subparagraph (Z) as
11 subparagraph (AA); and

12 (C) by inserting after subparagraph (Y)
13 the following:

14 “(Z) any person who, for compensation—

15 “(i) acts on behalf of another person
16 to form, or assist in formation of, a cor-
17 poration or limited liability company under
18 the laws of a State; or

19 “(ii) purchases, sells, or transfers the
20 public records that form a corporation or
21 limited liability company; or”.

22 (2) DEADLINE FOR ANTI-MONEY LAUNDERING
23 RULE FOR FORMATION AGENTS.—

24 (A) PROPOSED RULE.—Not later than 120
25 days after the date of enactment of this Act,

1 the Secretary of the Treasury, in consultation
2 with the Attorney General of the United States
3 and the Commissioner of the Internal Revenue
4 Service, shall publish a proposed rule in the
5 Federal Register requiring persons described in
6 section 5312(a)(2)(Z) of title 31, United States
7 Code, as amended by this subsection, to estab-
8 lish anti-money laundering programs under sub-
9 section (h) of section 5318 of that title.

10 (B) FINAL RULE.—Not later than 270
11 days after the date of enactment of this Act,
12 the Secretary of the Treasury shall publish the
13 rule described in this subsection in final form in
14 the Federal Register.

15 (C) EXCLUSIONS.—Any rule promulgated
16 under this subsection shall exclude from the
17 category of persons involved in forming a cor-
18 poration or limited liability company—

19 (i) any government agency; and

20 (ii) any attorney or law firm that uses
21 a paid formation agent operating within
22 the United States to form the corporation
23 or limited liability company.

1 **SEC. 4. STUDIES AND REPORTS.**

2 (a) OTHER LEGAL ENTITIES.—Not later than 2
3 years after the date of enactment of this Act, the Comp-
4 troller General of the United States shall conduct a study
5 and submit to Congress a report—

6 (1) identifying each State that has procedures
7 that enable persons to form or register under the
8 laws of the State partnerships, trusts, or other legal
9 entities, and the nature of those procedures;

10 (2) identifying each State that requires persons
11 seeking to form or register partnerships, trusts, or
12 other legal entities under the laws of the State to
13 provide information about the beneficial owners (as
14 that term is defined in section 5333(d)(1) of title
15 31, United States Code, as added by this Act) or
16 beneficiaries of such entities, and the nature of the
17 required information;

18 (3) evaluating whether the lack of available
19 beneficial ownership information for partnerships,
20 trusts, or other legal entities—

21 (A) raises concerns about the involvement
22 of such entities in terrorism, money laundering,
23 tax evasion, securities fraud, or other mis-
24 conduct; and

25 (B) has impeded investigations into enti-
26 ties suspected of such misconduct; and

1 (4) evaluating whether the failure of the United
2 States to require beneficial ownership information
3 for partnerships and trusts formed or registered in
4 the United States has elicited international criticism
5 and what steps, if any, the United States has taken
6 or is planning to take in response.

7 (b) EFFECTIVENESS OF INCORPORATION PRAC-
8 TICES.—Not later than 5 years after the date of enact-
9 ment of this Act, the Comptroller General of the United
10 States shall conduct a study and submit to the Congress
11 a report assessing the effectiveness of incorporation prac-
12 tices implemented under this Act and the amendments
13 made by this Act in—

14 (1) providing law enforcement agencies with
15 prompt access to reliable, useful, and complete bene-
16 ficial ownership information; and

17 (2) strengthening the capability of law enforce-
18 ment agencies to combat incorporation abuses, civil
19 and criminal misconduct, and detect, prevent, or
20 punish terrorism, money laundering, tax evasion, or
21 other misconduct.

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