Who could oppose cracking down on money laundering by terrorists, drug dealers and human traffickers? Especially if all it cost was more paperwork?

That’s the argument for the Corporate Transparency Act, which the House Financial Services Committee passed in June. Its boosters frame the law in national security terms to override pesky questions about efficacy and costs. The reality is that the law would hit small businesses with another compliance burden, their confidential information would become less secure, and real criminals are unlikely to be deterred.

The bill requires corporations or limited liability companies of fewer than 20 employees or $5 million or less in revenue to disclose details about their beneficial owners to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN). A beneficial owner either exercises substantial control over a company or enjoys substantial economic benefits from it. The idea is to make it more difficult for money launderers to hide behind anonymous shell companies.
These small businesses would have to report details of beneficial owners—e.g., names, dates of birth, addresses, driver’s licenses and Social Security numbers—or face civil and criminal penalties. That could mean $10,000 in fines or up to three years in prison.

Local, state and federal law enforcement would have access to this information without a subpoena or warrant. The more access, the harder it will be to keep it confidential. After the Obama scandals of the IRS and “unmasking” names of people caught on wiretaps, it isn’t hard to imagine someone leaking information about political opponents.

Similar proposals have been around for a while, but this has legs because it has strong support from banks. Today banks have to report much of this information for every new account. The legislation eases the burden on banks and dumps it on small businesses.

Others are pushing back. The American Bar Association says the bill’s definition of beneficial owner is “vague, overly broad and unworkable.” The National Association of Manufacturers notes that the “vast majority” of companies required to comply will be law-abiding, and “overly strict standards that result in fines and enforcement action against a broad range of small businesses that make filing mistakes would unnecessarily waste FinCEN’s time, stretch thin critical resources that should be targeted toward detecting illicit activity” and deter business formation.

The National Federation of Independent Business (NFIB) calls the legislation a “real threat to more than 5 million small businesses in America.” A mom and pop shop can’t afford teams of lawyers to parse the many permutations of “beneficial owners.” The NFIB’s Karen Harned told the Senate in June that the House Financial Services Committee “did not invite testimony from any organizations representing small businesses—the only stakeholders that would be negatively impacted by the legislation.”

It is also far from clear that criminals would be affected. Terrorists and drug dealers are already breaking the law. What’s to stop them from giving false information, or setting up their company in one of the many ways—e.g., a partnership or business trust—that’s exempt from these reporting requirements?

As it happens, FinCEN already enforces the Customer Due Diligence Rule that took effect in May 2018. Before Congress vastly expands reporting burdens, wouldn’t it be wiser to produce a
thorough analysis of how the current rule is working to stop money laundering? If fixes are needed, tailor them narrowly.

This bill contradicts the Trump Administration’s deregulation drive, and there is still time to stop it in the Senate. Let’s hope Senators ask the tough questions the House ignored—and spare small business owners from the burden of overly broad and dubious new legislation.

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