October 22, 2019

Re: Opposition to H.R. 2513, the Corporate Transparency Act of 2019

Dear Representative:

The American Bar Association (ABA) commends the sponsors of H.R. 2513 for their efforts to combat money laundering and terrorist financing that can be used to fund illicit drug activity, human trafficking, and other serious crimes, and we support reasonable and necessary domestic and international measures to do so. However, the ABA opposes the proposed regulatory approach set forth in H.R. 2513, the Corporate Transparency Act of 2019, and believes that other recently adopted reforms will be more effective in addressing these criminal acts—without the many downsides and flaws of the proposed legislation.

This legislation would require millions of small businesses and their agents (including attorneys and others) who help them form corporations and limited liability companies (LLCs) to submit detailed information about the businesses’ “beneficial owners” to the Treasury Department’s Financial Crimes Enforcement Network (FinCEN) and require FinCEN to disclose that information to governmental agencies and financial institutions upon request and without a subpoena. We urge you to oppose H.R. 2513 when it is considered by the full House this week in combination with H.R. 2514, the COUNTER Act of 2019, for several important reasons.

First, the bill would impose burdensome, costly, and unworkable new regulatory burdens on many small businesses and their agents. Millions of small businesses and their agents who help them form corporations and LLCs would be required to disclose detailed information about the businesses’ “beneficial owners” to FinCEN and then update that information continuously during the lifespan of those businesses. Failure to timely submit this information or to update it annually and after any changes could subject the businesses and their agents to harsh civil and criminal penalties, including stiff fines and prison sentences, for essentially paperwork violations.

One of the most problematic aspects of the bill is its vague, overly broad, and unworkable definition of the term “beneficial owner.” It includes every natural person who directly or indirectly exercises “substantial control” over the company, owns 25 percent or more of its equity interests, or receives “substantial economic benefits” from its assets, subject to several exceptions. Because the definition is so expansive and unclear, it would be almost impossible for many small businesses and their agents to comply with the bill’s disclosure requirements. The new federal regulatory regime created by the bill, combined with the broad and confusing definition of beneficial owner, would be costly, impose onerous burdens on legitimate businesses and their agents, and subject them to harsh civil and criminal penalties if they fail to fully comply.

Second, H.R. 2513 raises serious privacy concerns for small businesses and the many individuals who would be designated as beneficial owners. The bill would require FinCEN to maintain this sensitive personal information in a government database and disclose it upon request to any federal, state, tribal or local law enforcement agency or to any foreign law enforcement agency if certain conditions are met. While previous versions of the bill would have required an agency to secure a
criminal or civil subpoena or summons before obtaining the information, the current bill would require FinCEN to disclose the information in response to a simple agency request pursuant to certain vaguely described “appropriate protocols.”

FinCEN also would be required to disclose the information to any financial institution with “customer consent.” But because those institutions will likely require all customers to provide written consent when opening new accounts, the beneficial owners’ identities and other personal data will be freely shared with those institutions and their affiliates without further permission or knowledge of the customers. As this personal information is shared with more and more entities, the potential for cybersecurity breaches, misuse, loss of data integrity, or unauthorized disclosure will grow exponentially.

Third, the bill’s beneficial ownership reporting requirements are unnecessary and duplicative because the federal government already has other, more effective tools to fight money laundering and terrorist financing. FinCEN’s new Customer Due Diligence Rule, which became fully effective in May 2018, and various other FinCEN regulations already require banks and other financial institutions to collect beneficial ownership data about most business entities opening new accounts as well as existing account holders with an elevated risk profile. Since 2016, the Internal Revenue Service (IRS) has also required every business with at least one employee to submit IRS Form SS-4, which includes the name of a “responsible party” within the business, i.e., an individual who is able to “control, manage, or direct the entity and the disposition of its funds and assets.”

Together, these existing FinCEN and IRS rules provide the federal government with access to substantial beneficial ownership information on almost every business entity in the United States. Therefore, because federal law enforcement authorities are already able to access the information they need to fight money laundering and terrorist financing, it is unnecessary to create a duplicative new regulatory regime that would impose unfair burdens, excessive costs, and the risk of severe civil and criminal liability on millions of small businesses and their agents.

Finally, H.R. 2513 is opposed by many other stakeholders. In addition to the ABA, numerous small business groups—including the National Federation of Independent Business, National Restaurant Association, S-Corporation Association, and more than 30 others—have voiced concerns over the bill’s effects on small businesses. Many individual rights groups—including the ACLU, the National Association of Criminal Defense Lawyers, FreedomWorks, and the Due Process Institute—have also expressed concerns regarding the bill’s impact on individuals’ privacy and due process rights.¹

For all these reasons, the ABA urges you to oppose H.R. 2513. Thank you for considering our views on these important issues, and if you have any questions, please contact ABA Associate Governmental Affairs Director Larson Frisby at (202) 662-1098 or larson.frisby@americanbar.org.

Sincerely,

Judy Perry Martinez

¹ Copies of those groups’ previous letters to Congress—and other useful background information—are available at https://www.americanbar.org/advocacy/governmental_legislative_work/priorities_policy/independence_of_the_legal_profession/bank_secrecy_act/