

November 13, 2019

The Honorable Mike Crapo  
Chairman, Senate Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

The Honorable Sherrod Brown  
Ranking Member, Senate Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown,

While we support the goal of preventing wrongdoers from exploiting United States corporations and limited liability companies (LLCs) for criminal gain, the undersigned organizations write to express our strong opposition to Title IV of S. 2563, the *Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings Act*, as introduced, also known as the *ILLICIT CASH Act*.

Title IV of the *ILLICIT CASH Act* 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 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, file updated reports within 90 days of any ownership changes, and file additional updated reports within a year of any ownership information changes, such as an expiration of a passport number or a change in address. Failure to comply with these reporting requirements could result in civil penalties of \$500 per day up to \$10,000, criminal penalties of up to 4 years in prison, or both.

This legislation contains a definition of "beneficial ownership" that would expand upon the current CDD rule. The CDD rule requires the disclosure of individuals with a 25 percent ownership interest in a business and an individual with significant responsibilities to control a business. The *ILLICIT CASH Act* would expand that definition, requiring disclosure of any individual who "receives substantial economic benefits from the assets of" a small business. While the bill defines "substantial economic benefits" as a person receiving "access to 25 percent or more of the funds and assets of the entity," it also requires Treasury to provide

clarity on the definition in regulations. This deference to regulators is problematic in that Congress would allow Treasury to expand further the “beneficial owner” definition.

The *ILLICIT CASH Act* raises significant privacy concerns as the proposed FinCEN “beneficial ownership” database would contain the full legal names, dates of birth, 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, the *ILLICIT CASH Act* would make this information accessible upon request “through appropriate protocols” to any local, state, tribal, or federal law enforcement agency or to law enforcement agencies from other countries via requests by U.S. federal agencies. Recent reports of the Foreign Intelligence Surveillance Court’s admonishing 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 would safeguard the privacy of small business owners.

The *ILLICIT CASH Act* 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. In addition, millions of American companies would be required to maintain and distribute information about owners and investors in the company, thus creating another point of vulnerability for attack. This risk is particularly acute because the *ILLICIT CASH Act* is focused only on small businesses and those entities are often the least equipped to fight off cyber intrusions.

For the sake of brevity, this letter does not list every issue with Title IV of the *ILLICIT CASH Act*. It highlights serious problems small businesses will face if the fundamental provisions of this title were to become law.

Sincerely,

Air Conditioning Contractors of America  
American Farm Bureau Federation  
American Foundry Society  
American Hotel and Lodging Association  
American Rental Association  
Associated Builders and Contractors  
Associated Equipment Distributors  
Associated General Contractors of America  
Auto Care Association  
Construction Industry Round Table  
Foodservice Equipment Distributors Association  
Heating Air-conditioning & Refrigeration Distributors International  
Independent Electrical Contractors  
International Council of Shopping Centers

International Franchise Association  
Manufacturer & Business Association  
Material Handling Equipment Distributors Association  
National Apartment Association  
National Association for the Self Employed  
National Association of Home Builders  
National Association of the Remodeling Industry  
National Association of Wholesaler-Distributors  
National Community Pharmacists Association  
National Electrical Contractors Association  
National Fastener Distributors Association  
National Grocers Association  
National Lumber & Building Material Dealers Association  
National Pest Management Association  
National Restaurant Association  
National Retail Federation  
National Roofing Contractors Association  
National Small Business Association  
NFIB  
North American Association of Food Equipment Manufacturers  
Owner-Operator Independent Drivers Association  
Petroleum Equipment Institute  
Petroleum Marketers Association of America  
Plumbing-Heating-Cooling Contractors Association  
Policy and Taxation Group  
Pool & Hot Tub Alliance  
Precision Metalforming Association  
S Corporation Association  
Selected Independent Funeral Homes  
Service Station Dealers of America and Allied Trades  
Small Business and Entrepreneurship Council  
Specialty Equipment Market Association  
The Real Estate Roundtable  
Tire Industry Association