

# Coalition for Integrity

December 6, 2017

The Honorable Jeb Hensarling  
Chairman  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

The Honorable Maxine Waters  
Ranking Member  
Committee on Financial Services  
U.S. House of Representatives  
Washington, D.C. 20515

Re: H.R. \_\_\_\_, the “Counter Terrorism and Illicit Finance Act” and Recommendations Regarding Section 9 (“Transparent Incorporation Practices”).

Dear Chairman Hensarling and Ranking Member Waters:

The Coalition for Integrity is a non-profit, non-partisan organization dedicated to strengthening accountability and transparency and combating corruption in the United States and internationally. We work in coalition with a wide range of individuals and organizations to promote integrity in the public and private sectors.

We commend the Committee on Financial Services’ interest in requiring transparency of the beneficial owners of companies and strengthening U.S. anti-money laundering laws to counter terrorism and illicit finance. Beneficial ownership transparency is also crucial to end safe havens for kleptocrats and their stolen assets.

It is common for money launderers and criminals trying to send or receive funds or assets, while concealing their involvement in bribery and other crimes, to hide their identities behind complex webs of shell companies. Once the shell company is formed, it can easily open one or more bank accounts, wire money, buy property and engage in activities that launder the tainted funds. The World Bank calls the U.S. one of the preeminent providers of corporate vehicles, including anonymous shell companies. The state of Delaware, known for its user-friendly incorporation rules, is home to thousands of anonymous shell companies. Nevada and Wyoming aren’t far behind. In fact, it is possible anywhere in the U.S. to set up a company without naming the true beneficial owner. Anonymous companies allow corrupt politicians and organized crime to transfer and hide illicitly acquired funds worldwide, and fuel an abuse of power and a culture of impunity, and endanger U.S. national security interests.

To achieve its objective of preventing terrorist finance and other forms of illicit money from entering the U.S., we respectfully request that the Committee’s draft legislative proposal include the following recommendations:

1. Beneficial Ownership Definition.

We support the strong definition of beneficial ownership currently contained in the proposal. It is important to not conflate senior management with the beneficial owner. Often officials named in leadership positions for corporate entities are figureheads and control of the entity is exercised through other means. The current definition captures people who do not have legal ownership but ultimately control the entity behind the scenes and it is important that it is retained in the final version of the bill.



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2. Access to Beneficial Ownership Database by Law Enforcement.
  - a. It is crucial that federal, state, and local law enforcement have complete access to the beneficial ownership database and that access does not require a subpoena. Law enforcement may require company ownership information to support a wide range of criminal and civil investigations, including securities fraud, business misconduct, health care fraud, human trafficking, drug trafficking, etc., and therefore it is crucial for domestic law enforcement to have access to beneficial ownership information.
  - b. Foreign law enforcement should also have access to beneficial ownership transparency information to be used in criminal and civil prosecutions. Every large international corruption story in recent times, including IMDB, Petrobras, FIFA, and VimpelCom, has featured anonymous companies. It is therefore important that any legislation to counter illicit finance support foreign governments' access to beneficial ownership information.
3. Financial institutions should implement the Customer Due-Diligence Rule on schedule in May 2018.

Financial institutions have a crucial role to play as the first line of defense against the transfer of corrupt funds. Requiring financial institutions to obtain and verify beneficial ownership information for account holders is critical to keep the proceeds of corruption and other crimes from being laundered through the U.S. financial system. In May 2016, the U.S. Department of the Treasury issued final rules under the Bank Secrecy Act (BSA) to clarify and strengthen customer due diligence (CDD) requirements for covered financial institutions and created a new separate requirement to identify the beneficial owners of legal entity customers. Treasury also provided financial institutions two years (until May 11th, 2018) to update their policies, procedures and implement their new processes.

Regardless of how long Financial Crimes Enforcement Network (FinCEN) has to set up an entirely new database of beneficial ownership information, financial institutions need to know their customers and they have already been working to put the necessary procedures in place to comply with the CDD rule for the last 18 months, therefore the Committee should not issue any requirement that suspends the CDD regulations from going into force in May 2018.

4. Requirement for foreign nationals to file with FinCEN their beneficial ownership in connection with company formation.

The discussion draft does not appear to require applicants that form entities to submit beneficial ownership information to FinCEN if they don't have an unexpired U.S. passport or U.S. drivers' license, thus favoring foreign owners over U.S. applicants. Both foreign owners and U.S. owners should be required to file beneficial ownership information with FinCEN.



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5. Enforcement of the beneficial ownership disclosure requirement.

It is important that FinCEN has mechanisms in place to ensure that the bill under discussion is enforced. The application to form a legal entity should not be valid until the necessary beneficial ownership information has been received by FinCEN.

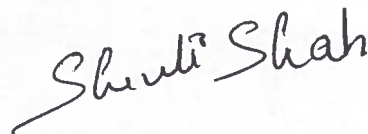
6. Extending anti-money laundering program requirements to gatekeepers.

The proposal could be strengthened by requiring lawyers who carry out real estate transactions for their clients or serve as company service providers to conduct due diligence and screenings of their clients and to alert the authorities to suspicious transactions. Similarly, the real estate industry should carry out background checks to determine where the money used to purchase luxury property comes from and to conduct adequate due diligence. Congress should lift the "temporary" exemption created in 2002 that excuses certain categories of persons from complying with the 2001 law requiring them to establish anti-money laundering programs, including "persons involved in real estate closings and settlements." A deadline should be established to bring everyone into compliance with the law, which is now 16 years old. As a part of this effort, the Treasury Department should also require disclosure of the beneficial owners who ultimately own companies purchasing real estate throughout the U.S.

We ask that you please consider our comments as you discuss the "Legislative Proposals to Counter Terrorism and Illicit Finance".

Over the years, the United States has committed to implementing beneficial ownership transparency in a number of different fora. Robust rules requiring transparency of beneficial ownership of companies would send a strong signal that the U.S. is taking the necessary steps to uphold its commitments. We thank you in advance for your continued action to ensure a strong and effective rule.

Sincerely,



Shruti Shah  
Vice President  
Programs and Operations



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