

July 1, 2020

The Honorable Mitch McConnell  
Majority Leader  
U.S. Senate  
S-230, The Capitol  
Washington, DC 20510

The Honorable Chuck Schumer  
Minority Leader  
U.S. Senate  
S-221, The Capitol  
Washington, DC 20510

The Honorable James Inhofe  
Chairman  
U.S. Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

The Honorable Jack Reed  
Ranking Member  
U.S. Senate Committee on Armed Services  
228 Russell Senate Office Building  
Washington, DC 20510

Dear Leader McConnell, Leader Schumer, Chairman Inhofe, and Ranking Member Reed,

While we all have a strong desire to keep our nation secure, the undersigned small business organizations write to express our strong opposition to Title LIV of S. 4049, Establishing Beneficial Ownership Information Reporting Requirements.

This amendment circumvents the normal legislative process as it has never been considered in committee. A controversial amendment, such as this one, should not be attached to a must-pass, unrelated bill like the National Defense Authorization Act or an appropriations bill.

This amendment 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 bill attempts to ease regulations on large banks and exempts larger businesses from the requirements. This legislation would add a new regulation on small businesses as they try to recover from an unprecedented public health and economic crisis.

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, and file additional updated reports within a year of any information changes. Willful failure to provide complete and updated reports could result in civil penalties of \$500 per day up to \$10,000, and criminal penalties of up to 2 years in prison, or both.

This amendment raises significant privacy concerns as the proposed FinCEN "beneficial ownership" database would contain the full legal names, dates of birth, residential or business 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, this amendment would make this information accessible through a written request to any federal law enforcement or intelligence agency or to law enforcement agencies from other countries via requests by U.S. federal agencies. Local, state,

and Tribal law enforcement officials can also access the database if a court has authorized them to seek the information in criminal or civil investigations.

The Foreign Intelligence Surveillance Court's admonishing of 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 should be required to safeguard the privacy of small business owners.

This legislation contains a provision that would allow Treasury employees and officials access to "beneficial ownership" information for the purposes of tax administration. Supporters of this amendment argue that it is vital to national security but have yet to make the case that this information is necessary for tax compliance. This section, along with sections relating to federal contracting, demonstrates that Congress and federal agencies will access "beneficial ownership" information for reasons outside of national security.

This amendment also 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.

For the above reasons, we urge Senators to oppose this amendment.

Sincerely,

Agricultural Retailers Association  
Air Conditioning Contractors of America (ACCA)  
American Farm Bureau Federation  
American Foundry Society  
American Mold Builders Association  
American Rental Association  
American Supply Association  
American Veterinary Medical Association  
Asian American Hotel Owners Association  
Associated Builders and Contractors  
Associated Equipment Distributors  
Associated General Contractors of America  
Auto Care Association  
Automotive Service Association  
Construction Industry Round Table  
Convenience Distribution Association  
DHI – Door Security and Safety Professionals  
Equipment Dealers Association  
Family Business Coalition  
Foodservice Equipment Distributors Association  
Heating, Air-conditioning, & Refrigeration Distributors International  
Independent Bakers Association  
Independent Electrical Contractors  
Industrial Fasteners Institute

International Association of Plastics Distribution  
International Council of Shopping Centers  
International Franchise Association  
Iowa-Nebraska Equipment Dealers Association  
Manufactured Housing Institute  
Material Handling Equipment Distributors Association  
NACS  
National Association of Electrical Distributors  
National Association of Professional Insurance Agents  
National Association of Wholesaler-Distributors  
National Cattlemen's Beef Association  
National Community Pharmacists Association  
National Demolition Association  
National Electrical Contractors Association  
National Grocers Association  
National Lumber and Building Material Dealers Association  
National Restaurant Association  
National RV Dealers Association  
National Pest Management Association  
National Ready Mixed Concrete Association  
National Roofing Contractors Association  
National Small Business Association  
National Tooling and Machining Association  
NFIB  
North American Die Casting Association  
North American Association of Food Equipment Manufacturers  
Owner-Operator Independent Drivers Association  
Petroleum Equipment Institute  
Petroleum Marketers Association of America  
Plumbing-Heating-Cooling Contractors—National Association  
Policy and Taxation Group  
Precision Machined Products Association  
Precision Metalforming Association  
PRINTING United Alliance  
Reserve Organization of America  
S Corporation Association  
Secondary Materials and Recycled Textiles Association  
Security Hardware Distributors Association  
Service Station Dealers of America and Allied Trades  
Small Business & Entrepreneurship Council  
Society of Collision Repair Specialists  
Specialty Equipment Market Association  
The Association for Hose and Accessories Distribution  
The Payroll Group  
Tire Industry Association  
Truck Renting and Leasing Association  
Wholesale Florist and Florist Supplier Association