

112<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 3416

To amend title 31, United States Code, to ensure that persons who form corporations or limited liability companies in the United States disclose the beneficial owners of those corporations or limited liability companies, in order to prevent wrongdoers from exploiting United States corporations and limited liability companies for criminal gain, to assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, and other misconduct involving United States corporations and limited liability companies, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

NOVEMBER 14, 2011

Mrs. MALONEY (for herself, Mr. FRANK of Massachusetts, and Mr. LYNCH) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

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1        *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4        This Act may be cited as the “Incorporation Trans-  
5 parency and Law Enforcement Assistance Act”.

6 **SEC. 2. FINDINGS.**

7        Congress finds the following:

8            (1) Nearly 2,000,000 corporations and limited  
9 liability companies are being formed under the laws  
10 of the States each year.

11           (2) Very few States obtain meaningful informa-  
12 tion about the beneficial owners of the corporations  
13 and limited liability companies formed under their  
14 laws.

15           (3) A person forming a corporation or limited  
16 liability company within the United States typically  
17 provides less information to the State of incorpora-  
18 tion than is needed to obtain a bank account or driv-  
19 er’s license and typically does not name a single ben-  
20 efiticial owner.

21           (4) Criminals have exploited the weaknesses in  
22 State formation procedures to conceal their identi-  
23 ties when forming corporations or limited liability  
24 companies in the United States, and have then used  
25 the newly created entities to commit crimes affecting

1 interstate and international commerce such as ter-  
2 rorism, drug trafficking, money laundering, tax eva-  
3 sion, securities fraud, financial fraud, and acts of  
4 foreign corruption.

5 (5) Law enforcement efforts to investigate cor-  
6 porations and limited liability companies suspected  
7 of committing crimes have been impeded by the lack  
8 of available beneficial ownership information, as doc-  
9 umented in reports and testimony by officials from  
10 the Department of Justice, the Department of  
11 Homeland Security, the Financial Crimes Enforce-  
12 ment Network of the Department of the Treasury,  
13 the Internal Revenue Service, and the Government  
14 Accountability Office, and others.

15 (6) In July 2006, a leading international anti-  
16 money laundering organization, the Financial Action  
17 Task Force on Money Laundering (in this section  
18 referred to as the “FATF”), of which the United  
19 States is a member, issued a report that criticizes  
20 the United States for failing to comply with a FATF  
21 standard on the need to collect beneficial ownership  
22 information and urged the United States to correct  
23 this deficiency by July 2008.

24 (7) In response to the FATF report, the United  
25 States has repeatedly urged the States to strengthen

1 their incorporation practices by obtaining beneficial  
2 ownership information for the corporations and lim-  
3 ited liability companies formed under the laws of  
4 such States.

5 (8) Many States have established automated  
6 procedures that allow a person to form a new cor-  
7 poration or limited liability company within the  
8 State within 24 hours of filing an online application,  
9 without any prior review of the application by a  
10 State official. In exchange for a substantial fee, 2  
11 States will form a corporation within 1 hour of a re-  
12 quest.

13 (9) Dozens of Internet Web sites highlight the  
14 anonymity of beneficial owners allowed under the in-  
15 corporation practices of some States, point to those  
16 practices as a reason to incorporate in those States,  
17 and list those States together with offshore jurisdic-  
18 tions as preferred locations for the formation of new  
19 corporations, essentially providing an open invitation  
20 to criminals and other wrongdoers to form entities  
21 within the United States.

22 (10) In contrast to practices in the United  
23 States, all 27 countries in the European Union are  
24 required to have formation agents identify the bene-

1        ficial owners of the corporations formed under the  
2        laws of the country.

3            (11) To reduce the vulnerability of the United  
4        States to wrongdoing by United States corporations  
5        and limited liability companies with hidden owners,  
6        to protect interstate and international commerce  
7        from criminals misusing United States corporations  
8        and limited liability companies, to strengthen law en-  
9        forcement investigations of suspect corporations and  
10       limited liability companies, to set minimum stand-  
11       ards for and level the playing field among State in-  
12       corporation practices, and to bring the United States  
13       into compliance with its international anti-money  
14       laundering standards, Federal legislation is needed  
15       to require the States to obtain beneficial ownership  
16       information for the corporations and limited liability  
17       companies formed under the laws of such States.

18 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

19        (a) TRANSPARENT INCORPORATION PRACTICES.—

20            (1) IN GENERAL.—Chapter 53 of title 31,  
21        United States Code, is amended by inserting after  
22        section 5332 the following new section:

23 **“§ 5333. Transparent incorporation practices**

24        “(a) REPORTING REQUIREMENTS.—

1           “(1) IN GENERAL.—Not later than the begin-  
2           ning of fiscal year 2014, the Secretary of the Treas-  
3           ury shall issue regulations requiring each corpora-  
4           tion and limited liability company formed in a State  
5           that does not have a formation system described  
6           under subsection (b) to file with the Secretary such  
7           information as the corporation or limited liability  
8           company would be required to provide the State if  
9           such State had a formation system described under  
10          subsection (b).

11          “(2) DISCLOSURE OF BENEFICIAL OWNERSHIP  
12          INFORMATION.—Beneficial ownership information  
13          reported to the Secretary of the Treasury pursuant  
14          to paragraph (1) shall be provided by the Secretary  
15          of the Treasury upon receipt of—

16                 “(A) a civil or criminal subpoena or sum-  
17                 mons from a State agency, Federal agency, or  
18                 congressional committee or subcommittee re-  
19                 questing such information;

20                 “(B) a written request made by a Federal  
21                 agency on behalf of another country under an  
22                 international treaty, agreement, or convention,  
23                 or an order under section 3512 of title 18,  
24                 United States Code, or section 1782 of title 28,

1 United States Code, issued in response to a re-  
2 quest for assistance from a foreign country; or

3 “(C) a written request made by the Finan-  
4 cial Crimes Enforcement Network of the De-  
5 partment of the Treasury.

6 “(b) FORMATION SYSTEM.—

7 “(1) IN GENERAL.—With respect to a State, a  
8 formation system is described under this subsection  
9 if it meets the following requirements:

10 “(A) IDENTIFICATION OF BENEFICIAL  
11 OWNERS.—Except as provided in paragraphs  
12 (2) and (4), and subject to paragraph (3), each  
13 applicant to form a corporation or limited liabil-  
14 ity company under the laws of the State is re-  
15 quired to provide to the State during the forma-  
16 tion process a list of the beneficial owners of  
17 the corporation or limited liability company  
18 that—

19 “(i) except as provided in subpara-  
20 graph (F), identifies each beneficial owner  
21 by—

22 “(I) name;

23 “(II) current street address; and

24 “(III) a unique identifying num-  
25 ber from a non-expired passport

1 issued by the United States or a non-  
2 expired drivers license issued by a  
3 State; and

4 “(ii) if the applicant is not the bene-  
5 ficial owner, provides the identification in-  
6 formation described in clause (i) relating  
7 to the applicant.

8 “(B) UPDATED INFORMATION.—For each  
9 corporation or limited liability company formed  
10 under the laws of the State—

11 “(i) the corporation or limited liability  
12 company is required by the State to update  
13 the list of the beneficial owners of the cor-  
14 poration or limited liability company by  
15 providing the information described in sub-  
16 paragraph (A) to the State not later than  
17 60 days after the date of any change in the  
18 list of beneficial owners or the information  
19 required to be provided relating to each  
20 beneficial owner;

21 “(ii) in the case of a corporation or  
22 limited liability company formed or ac-  
23 quired by a formation agent and retained  
24 by the formation agent as a beneficial  
25 owner for transfer to another person, the



1 formation agent is required by the State to  
2 submit to the State an updated list of the  
3 beneficial owners and the information de-  
4 scribed in subparagraph (A) for each such  
5 beneficial owner not later than 10 days  
6 after date on which the formation agent  
7 transfers the corporation or limited liabil-  
8 ity company to another person; and

9 “(iii) the corporation or limited liabil-  
10 ity company is required by the State to  
11 submit to the State an annual filing con-  
12 taining the list of the beneficial owners of  
13 the corporation or limited liability company  
14 and the information described in subpara-  
15 graph (A) for each such beneficial owner.

16 “(C) RETENTION OF INFORMATION.—Ben-  
17 efiticial ownership information relating to each  
18 corporation or limited liability company formed  
19 under the laws of the State is required to be  
20 maintained by the State until the end of the 5-  
21 year period beginning on the date that the cor-  
22 poration or limited liability company terminates  
23 under the laws of the State.

24 “(D) INFORMATION REQUESTS.—Bene-  
25 ficial ownership information relating to each

1 corporation or limited liability company formed  
2 under the laws of the State shall be provided by  
3 the State upon receipt of—

4 “(i) a civil or criminal subpoena or  
5 summons from a State agency, Federal  
6 agency, or congressional committee or sub-  
7 committee requesting such information;

8 “(ii) a written request made by a Fed-  
9 eral agency on behalf of another country  
10 under an international treaty, agreement,  
11 or convention, or section 1782 of title 28,  
12 United States Code; or

13 “(iii) a written request made by the  
14 Financial Crimes Enforcement Network.

15 “(E) NO BEARER SHARE CORPORATIONS  
16 OR LIMITED LIABILITY COMPANIES.—A cor-  
17 poration or limited liability company formed  
18 under the laws of the State may not issue a cer-  
19 tificate in bearer form evidencing either a whole  
20 or fractional interest in the corporation or lim-  
21 ited liability company.

22 “(2) STATES THAT LICENSE FORMATION  
23 AGENTS.—

24 “(A) IN GENERAL.—Notwithstanding para-  
25 graph (1), a State described in subparagraph

1 (B) may permit an applicant to form a corpora-  
2 tion or limited liability company under the laws  
3 of the State, or a corporation or limited liability  
4 company formed under the laws of the State, to  
5 provide the required information to a licensed  
6 formation agent residing in the State, instead  
7 of to the State directly, if the application under  
8 paragraph (1)(A) or the update under para-  
9 graph (1)(B) contains—

10 “(i) the name, current business ad-  
11 dress, contact information, and licensing  
12 number of the licensed formation agent  
13 that has agreed to maintain the informa-  
14 tion required under this subsection; and

15 “(ii) a certification by the licensed  
16 formation agent that the licensed forma-  
17 tion agent has possession of the informa-  
18 tion required under this subsection and  
19 will maintain the information in the State  
20 licensing the licensed formation agent in  
21 accordance with State law.

22 “(B) STATES DESCRIBED.—A State de-  
23 scribed in this subparagraph is a State that  
24 maintains a formal licensing system for forma-  
25 tion agents that requires a formation agent to

1 register with the State, meet standards for fit-  
2 ness and honesty, maintain a physical office  
3 and records within the State, undergo regular  
4 monitoring, and be subject to sanctions for non-  
5 compliance with State requirements.

6 “(C) LICENSED FORMATION AGENT DU-  
7 TIES.—A licensed formation agent that receives  
8 beneficial ownership information under State  
9 law in accordance with this paragraph shall—

10 “(i) maintain the information in the  
11 State in which the corporation or limited  
12 liability company is being or has been  
13 formed in the same manner as required for  
14 States under paragraph (1)(C);

15 “(ii) provide the information under  
16 the same circumstances as required for  
17 States under paragraph (1)(D); and

18 “(iii) perform the duties of a forma-  
19 tion agent under paragraph (3).

20 “(D) TERMINATION OF RELATIONSHIP.—

21 “(i) IN GENERAL.—Except as pro-  
22 vided in clause (ii), a licensed formation  
23 agent that receives beneficial ownership in-  
24 formation relating to a corporation or lim-  
25 ited liability company under State law in

1 accordance with this paragraph and that  
2 resigns, dissolves, or otherwise ends a rela-  
3 tionship with the corporation or limited li-  
4 ability company shall promptly—

5 “(I) notify the State in writing  
6 that the licensed formation agent has  
7 resigned or ended the relationship;  
8 and

9 “(II) transmit all beneficial own-  
10 ership information relating to the cor-  
11 poration or limited liability company  
12 in the possession of the licensed for-  
13 mation agent to the licensing State.

14 “(ii) EXCEPTION.—If a licensed for-  
15 mation agent receives written instructions  
16 from a corporation or limited liability com-  
17 pany, the licensed formation agent may  
18 transmit the beneficial ownership informa-  
19 tion relating to the corporation or limited  
20 liability company to another licensed for-  
21 mation agent that is within the same State  
22 and has agreed to maintain the informa-  
23 tion in accordance with this section.

24 “(iii) NOTICE TO STATE.—If a li-  
25 censed formation agent provides beneficial

1 ownership information to another licensed  
2 formation agent under clause (ii), the li-  
3 censed formation agent providing the infor-  
4 mation shall promptly notify in writing the  
5 State under the laws of which the corpora-  
6 tion or limited liability company is formed  
7 of the identity of the licensed formation  
8 agent receiving the information.

9 “(3) CERTAIN BENEFICIAL OWNERS.—If an ap-  
10 plicant to form a corporation or limited liability com-  
11 pany or a beneficial owner, officer, director, or simi-  
12 lar agent of a corporation or limited liability com-  
13 pany who is required to provide identification infor-  
14 mation under this subsection does not have a non-  
15 expired passport issued by the United States or a  
16 nonexpired drivers license or identification card  
17 issued by a State, each application described in  
18 paragraph (1)(A) and each update described in  
19 paragraph (1)(B) shall include a certification by a  
20 formation agent residing in the State that the for-  
21 mation agent—

22 “(A) has obtained for each such person a  
23 current residential or business street address  
24 and a legible and credible copy of the pages of  
25 a nonexpired passport issued by the government

1 of a foreign country bearing a photograph, date  
2 of birth, and unique identifying information for  
3 the person;

4 “(B) has verified the name, address, and  
5 identity of each such person;

6 “(C) will provide the information described  
7 in subparagraph (A) and the proof of  
8 verification described in subparagraph (B) upon  
9 request under the same circumstances as re-  
10 quired for States under paragraph (1)(D); and

11 “(D) will retain the information and proof  
12 of verification under this paragraph in the  
13 State in which the corporation or limited liabil-  
14 ity company is being or has been formed until  
15 the end of the 5-year period beginning on the  
16 date that the corporation or limited liability  
17 company terminates under the laws of the  
18 State.

19 “(4) EXEMPT ENTITIES.—

20 “(A) IN GENERAL.—A formation system  
21 described in paragraph (1) shall require that an  
22 application for an entity described in subpara-  
23 graph (C) or (D) of subsection (d)(2) that is  
24 proposed to be formed under the laws of a  
25 State and that will be exempt from the bene-

1           ficial ownership disclosure requirements under  
2           this subsection shall include in the application  
3           a certification by the applicant, or a prospective  
4           officer, director, or similar agent of the entity—

5                   “(i) identifying the specific provision  
6                   of subsection (d)(2) under which the entity  
7                   proposed to be formed would be exempt  
8                   from the beneficial ownership disclosure re-  
9                   quirements under paragraphs (1), (2), and  
10                  (3);

11                  “(ii) stating that the entity proposed  
12                  to be formed meets the requirements for  
13                  an entity described under such provision of  
14                  subsection (d)(2); and

15                  “(iii) providing identification informa-  
16                  tion for the applicant or prospective offi-  
17                  cer, director, or similar agent making the  
18                  certification in the same manner as pro-  
19                  vided under paragraph (1) or (3).

20                  “(B) EXISTING ENTITIES.—On and after  
21                  the date that is 2 years after the effective date  
22                  of the amendments to the formation system of  
23                  a State made to comply with this section, an  
24                  entity formed under the laws of the State be-  
25                  fore such effective date shall be considered to



1 be a corporation or limited liability company for  
2 purposes of, and shall be subject to the require-  
3 ments of, this subsection unless an officer, di-  
4 rector, or similar agent of the entity submits to  
5 the State a certification—

6 “(i) identifying the specific provision  
7 of subsection (d)(2) under which the entity  
8 is exempt from the requirements under  
9 paragraphs (1), (2), and (3);

10 “(ii) stating that the entity meets the  
11 requirements for an entity described under  
12 such provision of subsection (d)(2); and

13 “(iii) providing identification informa-  
14 tion for the officer, director, or similar  
15 agent making the certification in the same  
16 manner as provided under paragraph (1)  
17 or (3).

18 “(C) EXEMPT ENTITIES HAVING OWNER-  
19 SHIP INTEREST.—If an entity described in sub-  
20 paragraph (C) or (D) of subsection (d)(2) has  
21 or will have an ownership interest in a corpora-  
22 tion or limited liability company formed or to be  
23 formed under the laws of a State, the applicant,  
24 corporation, or limited liability company in  
25 which the entity has or will have the ownership

1 interest shall provide the information required  
2 under this subsection relating to the entity, ex-  
3 cept that the entity shall not be required to pro-  
4 vide information regarding any natural person  
5 who has an ownership interest in, exercises sub-  
6 stantial control over, or receives substantial eco-  
7 nomic benefits from the entity.

8 “(c) PENALTIES.—

9 “(1) IN GENERAL.—It shall be unlawful for—

10 “(A) any person to affect interstate or for-  
11 eign commerce by—

12 “(i) knowingly providing, or attempt-  
13 ing to provide, false or fraudulent bene-  
14 ficial ownership information, including a  
15 false or fraudulent identifying photograph,  
16 to a State or licensed formation agent  
17 under State law in accordance with this  
18 section;

19 “(ii) willfully failing to provide com-  
20 plete or updated beneficial ownership infor-  
21 mation to a State or licensed formation  
22 agent under State law in accordance with  
23 this section; or

24 “(iii) knowingly disclosing the exist-  
25 ence of a subpoena, summons, or other re-

1           quest for beneficial ownership information,  
2           except—

3                   “(I) to the extent necessary to  
4                   fulfill the authorized request; or

5                   “(II) as authorized by the entity  
6                   that issued the subpoena, summons,  
7                   or other request; or

8                   “(B) in the case of a formation agent,  
9                   knowingly failing to obtain or maintain credible,  
10                  legible, and updated beneficial ownership infor-  
11                  mation, including any required identifying pho-  
12                  tograph.

13                  “(2) CIVIL AND CRIMINAL PENALTIES.—In ad-  
14                  dition to any civil or criminal penalty that may be  
15                  imposed by a State, any person who violates para-  
16                  graph (1)—

17                   “(A) shall be liable to the United States  
18                   for a civil penalty of not more than \$10,000;  
19                   and

20                   “(B) may be fined under title 18, United  
21                   States Code, imprisoned for not more than 3  
22                   years, or both.

23                  “(d) DEFINITIONS.—For the purposes of this section:

24                   “(1) BENEFICIAL OWNER.—

1           “(A) IN GENERAL.—Except as provided in  
2           subparagraph (B), with respect to a corporation  
3           or limited liability company, the term ‘beneficial  
4           owner’ means a natural person who—

5                   “(i) directly or indirectly, has at least  
6                   as great an ownership interest in the cor-  
7                   poration or limited liability company as  
8                   any other natural person; or

9                   “(ii) has responsibility for directing  
10                  the regular operations of the corporation  
11                  or limited liability company.

12           “(B) EXCEPTIONS.—The term ‘beneficial  
13           owner’ does not include—

14                   “(i) a minor child; or

15                   “(ii) a person acting as a nominee,  
16                  intermediary, custodian, or agent on behalf  
17                  of another person.

18           “(C) APPLICABILITY OF EXCEPTIONS.—  
19           The exceptions under subparagraph (B) shall  
20           not apply if used for the purpose of evading or  
21           circumventing the provisions of subparagraph  
22           (A) or subsection (a).

23           “(2) CORPORATION; LIMITED LIABILITY COM-  
24           PANY.—The terms ‘corporation’ and ‘limited liability  
25           company’—

1           “(A) have the meanings given such terms  
2 under the laws of the applicable State;

3           “(B) include any non-United States entity  
4 eligible for registration or registered to do busi-  
5 ness as a corporation or limited liability com-  
6 pany under the laws of the applicable State;

7           “(C) do not include any entity that is, and  
8 discloses in the application by the entity to  
9 form under the laws of the State or, if the enti-  
10 ty was formed before the date of the enactment  
11 of this section, in a filing with the State under  
12 State law—

13           “(i) a business concern that is an  
14 issuer of a class of securities registered  
15 under section 12 of the Securities Ex-  
16 change Act of 1934 (15 U.S.C. 781) or  
17 that is required to file reports under sec-  
18 tion 15(d) of that Act (15 U.S.C. 78o(d));

19           “(ii) a business concern constituted or  
20 sponsored by a State, a political subdivi-  
21 sion of a State, under an interstate com-  
22 pact between 2 or more States, by a de-  
23 partment or agency of the United States,  
24 or under the laws of the United States;

1 “(iii) a depository institution (as de-  
2 fined in section 3 of the Federal Deposit  
3 Insurance Act (12 U.S.C. 1813));

4 “(iv) a credit union (as defined in sec-  
5 tion 101 of the Federal Credit Union Act  
6 (12 U.S.C. 1752));

7 “(v) a bank holding company (as de-  
8 fined in section 2 of the Bank Holding  
9 Company Act of 1956 (12 U.S.C. 1841));

10 “(vi) a broker or dealer (as defined in  
11 section 3 of the Securities Exchange Act of  
12 1934 (15 U.S.C. 78c)) that is registered  
13 under section 15 of the Securities and Ex-  
14 change Act of 1934 (15 U.S.C. 78o);

15 “(vii) an exchange or clearing agency  
16 (as defined in section 3 of the Securities  
17 Exchange Act of 1934 (15 U.S.C. 78c))  
18 that is registered under section 6 or 17A  
19 of the Securities Exchange Act of 1934  
20 (15 U.S.C. 78f and 78q-1);

21 “(viii) an investment company (as de-  
22 fined in section 3 of the Investment Com-  
23 pany Act of 1940 (15 U.S.C. 80a-3)) or  
24 an investment advisor (as defined in sec-  
25 tion 202(11) of the Investment Advisors

1 Act of 1940 (15 U.S.C. 80b–2(11)), if the  
2 company or adviser is registered with the  
3 Securities and Exchange Commission, or  
4 has filed an application for registration  
5 which has not been denied, under the In-  
6 vestment Company Act of 1940 (15 U.S.C.  
7 80a–1 et seq.) or the Investment Advisor  
8 Act of 1940 (15 U.S.C. 80b–1 et seq.);

9 “(ix) an insurance company (as de-  
10 fined in section 2 of the Investment Com-  
11 pany Act of 1940 (15 U.S.C. 80a–2));

12 “(x) a registered entity (as defined in  
13 section 1a of the Commodity Exchange Act  
14 (7 U.S.C. 1a)), or a futures commission  
15 merchant, introducing broker, commodity  
16 pool operator, or commodity trading advi-  
17 sor (as defined in section 1a of the Com-  
18modity Exchange Act (7 U.S.C. 1a)) that  
19 is registered with the Commodity Futures  
20 Trading Commission;

21 “(xi) a public accounting firm reg-  
22 istered in accordance with section 102 of  
23 the Sarbanes–Oxley Act (15 U.S.C. 7212);

24 “(xii) a public utility that provides  
25 telecommunications service, electrical

1 power, natural gas, or water and sewer  
2 services, within the United States;

3 “(xiii) a charity or nonprofit entity  
4 that is described in section 501(c), 527, or  
5 4947(a)(1) of the Internal Revenue Code  
6 of 1986, has not been denied tax exempt  
7 status, and has filed the most recently due  
8 annual information return with the Inter-  
9 nal Revenue Service, if required to file  
10 such a return;

11 “(xiv) any business concern that—

12 “(I) employs more than 20 em-  
13 ployees on a full time basis in the  
14 United States;

15 “(II) files income tax returns in  
16 the United States demonstrating more  
17 than \$10,000,000 in gross receipts or  
18 sales; and

19 “(III) has an operating presence  
20 at a physical office within the United  
21 States; or

22 “(xv) any corporation or limited liabil-  
23 ity company formed and owned by an enti-  
24 ty described in clause (i), (ii), (iii), (iv),



1 (v), (vi), (vii), (viii), (ix), (x), (xi), (xii),  
2 (xiii), or (xiv); and

3 “(D) do not include any individual busi-  
4 ness concern or class of business concerns  
5 which the Secretary of the Treasury, with the  
6 written concurrence of the Attorney General of  
7 the United States, has determined in writing  
8 should be exempt from the requirements of sub-  
9 section (a), because requiring beneficial owner-  
10 ship information from the business concern  
11 would not serve the public interest and would  
12 not assist law enforcement efforts to detect,  
13 prevent, or punish terrorism, money laundering,  
14 tax evasion, or other misconduct.

15 “(3) FORMATION AGENT.—The term ‘formation  
16 agent’ means a person who, for compensation—

17 “(A) acts on behalf of another person to  
18 assist in the formation of a corporation or lim-  
19 ited liability company under the laws of a State;  
20 or

21 “(B) purchases, sells, or transfers the pub-  
22 lic records that form a corporation or limited li-  
23 ability company.”.

24 (2) RULEMAKING.—To carry out this Act and  
25 the amendments made by this Act, the Secretary of

1 the Treasury, in consultation with the Secretary of  
2 Homeland Security and the Attorney General of the  
3 United States, may issue guidance or a rule to—

4 (A) clarify the definitions under section  
5 5333(d) of title 31, United States Code, as  
6 added by paragraph (1); and

7 (B) specify how to verify beneficial owner-  
8 ship information or other identification infor-  
9 mation for purposes of such section 5333, in-  
10 cluding whether the verification procedures  
11 specified in section 5333(b)(3) should apply to  
12 all applicants under section 5333(b)(1) or  
13 whether such verification process should require  
14 the notarization of signatures.

15 (3) CONFORMING AMENDMENTS.—Title 31,  
16 United States Code, is amended—

17 (A) in section 5321(a)—

18 (i) in paragraph (1), by striking “sec-  
19 tions 5314 and 5315” each place it ap-  
20 pears and inserting “sections 5314, 5315,  
21 and 5333”; and

22 (ii) in paragraph (6), by inserting  
23 “(except section 5333)” after “sub-  
24 chapter” each place it appears; and

1 (B) in section 5322, by striking “section  
2 5315 or 5324” each place it appears and insert-  
3 ing “section 5315, 5324, or 5333”.

4 (4) TABLE OF CONTENTS.—The table of con-  
5 tents of chapter 53 of title 31, United States Code,  
6 is amended by inserting after the item relating to  
7 section 5332 the following:

“Sec. 5333. Transparent incorporation practices.”.

8 (5) RESTRICTIONS ON PUBLIC ACCESS.—A  
9 State may—

10 (A) restrict public access to all or any por-  
11 tion of the beneficial ownership information  
12 provided to the State as described under section  
13 5332 of title 31, United States Code, as added  
14 by this Act; and

15 (B) by statute, regulation, order, or inter-  
16 pretation adopted or issued by the State after  
17 the date of enactment of this Act, provide for  
18 public access to all or any portion of such infor-  
19 mation.

20 (6) NO DUTY OF VERIFICATION.—This Act and  
21 the amendments made by this Act do not impose  
22 any obligation on a State to verify the name, ad-  
23 dress, or identity of a beneficial owner whose infor-  
24 mation is submitted to such State under section

1 5333 of title 31, United States Code, as added by  
2 this Act.

3 (b) FUNDING AUTHORIZATION.—

4 (1) IN GENERAL.—To carry out section 5333 of  
5 title 31, United States Code, during the 3-year pe-  
6 riod beginning on the date of enactment of this Act,  
7 funds shall be made available to each State to pay  
8 reasonable costs relating to compliance with the re-  
9 quirements of such section.

10 (2) FUNDING SOURCES.—To protect the United  
11 States against the misuse of United States corpora-  
12 tions and limited liability companies with hidden  
13 owners, funds shall be provided to each State to  
14 carry out the purposes described in paragraph (1)  
15 from one or more of the following sources:

16 (A) Upon application by a State, and with-  
17 out further appropriation, the Secretary of the  
18 Treasury may make available to the State un-  
19 obligated balances described in section  
20 9703(g)(4)(B) of title 31, United States Code,  
21 in the Department of the Treasury Forfeiture  
22 Fund established under section 9703(a) of title  
23 31, United States Code.

24 (B) Upon application by a State, after con-  
25 sultation with the Secretary of the Treasury,

1 and without further appropriation, the Attorney  
2 General of the United States may make avail-  
3 able to the State excess unobligated balances  
4 (as defined in section 524(c)(8)(D) of title 28,  
5 United States Code) in the Department of Jus-  
6 tice Assets Forfeiture Fund established under  
7 section 524(c) of title 28, United States Code.

8 (3) MAXIMUM AMOUNTS.—

9 (A) DEPARTMENT OF THE TREASURY.—

10 The Secretary of the Treasury may not make  
11 available to States a total of more than  
12 \$20,000,000 under paragraph (2)(A).

13 (B) DEPARTMENT OF JUSTICE.—The At-

14 torney General of the United States may not  
15 make available to States a total of more than  
16 \$10,000,000 under paragraph (2)(B).

17 (4) RULEMAKING.—Not later than the end of

18 the 180-day period beginning on the date of the en-  
19 actment of this Act, the Secretary of the Treasury  
20 and the Attorney General shall, jointly, issue regula-  
21 tions setting forth the procedures for States to apply  
22 for funds under this subsection, including deter-  
23 mining which State measures should be funded to  
24 assess, plan, develop, test, or implement relevant  
25 policies, procedures, or system modifications.

1 (c) COMPLIANCE REPORT.—Nothing in this section  
2 or the amendments made by this section authorizes the  
3 Secretary of the Treasury to withhold from a State any  
4 funding otherwise available to the State because of a fail-  
5 ure by that State to comply with section 5333 of title 31,  
6 United States Code. Not later than June 1, 2014, the  
7 Comptroller General of the United States shall submit to  
8 the Committee on Financial Services of the House of Rep-  
9 resentatives and the Committee on Homeland Security  
10 and Governmental Affairs of the Senate a report—

11 (1) identifying which States obtain beneficial  
12 ownership information as described in such section  
13 5333;

14 (2) with respect to each State that does not ob-  
15 tain such information, whether corporations and lim-  
16 ited liability companies formed under the laws of  
17 such State are in compliance with such section 5333  
18 and providing the specified beneficial ownership in-  
19 formation to the Secretary of the Treasury; and

20 (3) whether the Department of the Treasury is  
21 in compliance with such section 5333 and, if not,  
22 what steps it must take to come into compliance  
23 with this section.

24 (d) FEDERAL CONTRACTORS.—Not later than the be-  
25 ginning of fiscal year 2014, the Administrator for Federal

1 Procurement Policy shall revise the Federal Acquisition  
2 Regulation maintained under section 1303(a)(1) of title  
3 41, United States Code, to require any contractor who is  
4 subject to the requirement to disclose beneficial ownership  
5 information under section 5333 of title 31, United States  
6 Code, to provide the information required to be disclosed  
7 under such section to the Federal Government as part of  
8 any bid or proposal for a contract with a value threshold  
9 in excess of the simplified acquisition threshold under sec-  
10 tion 134 of title 41, United States Code.

11 (e) ANTI-MONEY LAUNDERING OBLIGATIONS OF  
12 FORMATION AGENTS.—

13 (1) IN GENERAL.—Section 5312(a)(2) of title  
14 31, United States Code, is amended—

15 (A) in subparagraph (Y), by striking “or”  
16 at the end;

17 (B) by redesignating subparagraph (Z) as  
18 subparagraph (AA); and

19 (C) by inserting after subparagraph (Y)  
20 the following:

21 “(Z) any person who, for compensation—

22 “(i) acts on behalf of another person  
23 to form, or assist in formation of, a cor-  
24 poration or limited liability company under  
25 the laws of a State; or

1                   “(ii) purchases, sells, or transfers the  
2                   public records that form a corporation or  
3                   limited liability company; or”.

4                   (2) DEADLINE FOR ANTI-MONEY LAUNDERING  
5                   RULE FOR FORMATION AGENTS.—

6                   (A) PROPOSED RULE.—Not later than 120  
7                   days after the date of enactment of this Act,  
8                   the Secretary of the Treasury, in consultation  
9                   with the Attorney General of the United States  
10                  and the Commissioner of the Internal Revenue  
11                  Service, shall publish a proposed rule in the  
12                  Federal Register requiring persons described in  
13                  section 5312(a)(2)(Z) of title 31, United States  
14                  Code, as amended by this subsection, to estab-  
15                  lish anti-money laundering programs under sub-  
16                  section (h) of section 5318 of that title.

17                  (B) FINAL RULE.—Not later than 270  
18                  days after the date of enactment of this Act,  
19                  the Secretary of the Treasury shall publish the  
20                  rule described in this subsection in final form in  
21                  the Federal Register.

22                  (C) EXCLUSIONS.—Any rule promulgated  
23                  under this subsection shall exclude from the  
24                  category of persons involved in forming a cor-  
25                  poration or limited liability company—



- 1 (i) any government agency; and  
2 (ii) any attorney or law firm that uses  
3 a paid formation agent operating within  
4 the United States to form the corporation  
5 or limited liability company.

6 **SEC. 4. STUDIES AND REPORTS.**

7 (a) OTHER LEGAL ENTITIES.—Not later than 2  
8 years after the date of enactment of this Act, the Comp-  
9 troller General of the United States shall conduct a study  
10 and submit to the Congress a report—

11 (1) identifying each State that has procedures  
12 that enable persons to form or register under the  
13 laws of the State partnerships, trusts, or other legal  
14 entities, and the nature of those procedures;

15 (2) identifying each State that requires persons  
16 seeking to form or register partnerships, trusts, or  
17 other legal entities under the laws of the State to  
18 provide information about the beneficial owners (as  
19 that term is defined in section 5333(d)(1) of title  
20 31, United States Code, as added by this Act) or  
21 beneficiaries of such entities, and the nature of the  
22 required information;

23 (3) evaluating whether the lack of available  
24 beneficial ownership information for partnerships,  
25 trusts, or other legal entities—

1 (A) raises concerns about the involvement  
2 of such entities in terrorism, money laundering,  
3 tax evasion, securities fraud, or other mis-  
4 conduct; and

5 (B) has impeded investigations into enti-  
6 ties suspected of such misconduct; and

7 (4) evaluating whether the failure of the United  
8 States to require beneficial ownership information  
9 for partnerships and trusts formed or registered in  
10 the United States has elicited international criticism  
11 and what steps, if any, the United States has taken  
12 or is planning to take in response.

13 (b) EFFECTIVENESS OF INCORPORATION PRAC-  
14 TICES.—Not later than 5 years after the date of enact-  
15 ment of this Act, the Comptroller General of the United  
16 States shall conduct a study and submit to the Congress  
17 a report assessing the effectiveness of incorporation prac-  
18 tices implemented under this Act and the amendments  
19 made by this Act in—

20 (1) providing law enforcement agencies with  
21 prompt access to reliable, useful, and complete bene-  
22 ficial ownership information; and

23 (2) strengthening the capability of law enforce-  
24 ment agencies to combat incorporation abuses, civil  
25 and criminal misconduct, and detect, prevent, or

- 1 punish terrorism, money laundering, tax evasion, or
- 2 other misconduct.

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