

116TH CONGRESS
1ST SESSION

S. 1889

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent the formation of corporations with hidden owners, stop the misuse of United States corporations by wrongdoers, and assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, tax evasion, and other criminal and civil misconduct involving United States corporations, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 18, 2019

Mr. WHITEHOUSE (for himself and Mr. GRASSLEY) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To ensure that persons who form corporations in the United States disclose the beneficial owners of those corporations, in order to prevent the formation of corporations with hidden owners, stop the misuse of United States corporations by wrongdoers, and assist law enforcement in detecting, preventing, and punishing terrorism, money laundering, tax evasion, and other criminal and civil misconduct involving United States corporations, and for other purposes.

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

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “True Incorporation
3 Transparency for Law Enforcement Act” or the “TITLE
4 Act”.

5 **SEC. 2. FINDINGS.**

6 Congress finds the following:

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

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

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

20 (4) Terrorists and other criminals have ex-
21 ploited the weaknesses in State formation proce-
22 dures to conceal their identities when forming cor-
23 porations or limited liability companies in the United
24 States, and have then used the newly created enti-
25 ties to support terrorist organizations, drug traf-
26 ficking organizations, and international organized

1 crime groups, as well as commit misconduct affect-
2 ing interstate and international commerce such as
3 trafficking in illicit drugs, illegal arms trafficking,
4 sex trafficking, money laundering, tax evasion,
5 health care fraud, Internet-based fraud, securities
6 fraud, financial fraud, intellectual property crimes,
7 and acts of corruption.

8 (5) Among those who have abused State incor-
9 poration procedures is Victor Bout, a Russian arms
10 dealer who used at least 12 companies incorporated
11 in Texas, Florida, and Delaware to carry out his ac-
12 tivities, and has been convicted, in part, for con-
13 spiring to sell weapons to a terrorist organization
14 trying to kill citizens of the United States and Fed-
15 eral officers and employees. In addition, Iranian in-
16 terests used a shell company formed in New York to
17 purchase a 36-story building on Fifth Avenue in
18 Manhattan and forwarded millions of dollars in rent
19 each year to Iran until authorities in the United
20 States learned of the transfers and seized the build-
21 ing.

22 (6) Law enforcement efforts to investigate cor-
23 porations and limited liability companies suspected
24 of wrongdoing have been impeded by the lack of
25 available beneficial ownership information, as docu-

1 mented in reports and testimony by officials from
2 the Department of Justice, the Department of
3 Homeland Security, the Financial Crimes Enforce-
4 ment Network of the Department of the Treasury,
5 the Internal Revenue Service, the Government Ac-
6 countability Office, and others.

7 (7) In December 2016, a leading international
8 anti-money laundering and anti-terrorist financing
9 organization, the Financial Action Task Force on
10 Money Laundering (in this section referred to as
11 “FATF”), of which the United States is a member,
12 issued a report that criticized the United States for
13 failing to comply with a FATF standard on the need
14 to collect beneficial ownership information. The re-
15 port called the United States framework in this area
16 “seriously deficient” and urged the United States to
17 correct this deficiency.

18 (8) In response to the FATF report and to
19 strengthen measures to protect homeland security,
20 Federal officials have repeatedly urged the States to
21 improve their formation practices by obtaining bene-
22 ficial ownership information for the corporations and
23 limited liability companies formed under the laws of
24 such States. But the States continue to form mil-
25 lions of corporations with hidden owners.

1 (9) Many States have established automated
2 procedures that allow a person to form a new cor-
3 poration or limited liability company within the
4 State within 24 hours of filing an online application,
5 without any prior review of the application by a
6 State official.

7 (10) Dozens of Internet websites highlight the
8 anonymity of beneficial owners allowed under the
9 formation practices of some States, point to those
10 practices as a reason to incorporate in those States,
11 and list those States together with offshore jurisdic-
12 tions as preferred locations for the formation of new
13 corporations, essentially inviting terrorists and other
14 wrongdoers to form entities within the United
15 States.

16 (11) In contrast to practices in the United
17 States, countries around the world are working to
18 collect beneficial ownership information. The United
19 Kingdom now collects beneficial ownership informa-
20 tion for all companies formed under its laws and
21 makes the information available to the public. All 28
22 countries in the European Union are required to cre-
23 ate, maintain, and update registries of the beneficial
24 ownership information of the corporations formed
25 under the laws of those countries. The information

1 must be freely available to law enforcement agencies,
2 financial institutions, and third parties that can
3 demonstrate a legitimate interest in the information.
4 Afghanistan, Ghana, Kenya, Nigeria, South Africa,
5 the Ukraine, and many other countries are in the
6 process of establishing mechanisms to collect bene-
7 ficial ownership information for the companies cre-
8 ated under their laws.

9 (12) To reduce the vulnerability of the United
10 States to wrongdoing by United States corporations
11 and limited liability companies with hidden owners,
12 protect interstate and international commerce from
13 terrorists and other criminals misusing United
14 States corporations and limited liability companies,
15 strengthen law enforcement investigations of suspect
16 corporations and limited liability companies, set min-
17 imum standards for and level the playing field
18 among State formation practices, and bring the
19 United States into compliance with international
20 anti-money laundering and anti-terrorist financing
21 standards, Federal legislation is needed to require
22 the States to obtain beneficial ownership information
23 for the corporations and limited liability companies
24 formed under the laws of such States.

1 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

2 (a) TRANSPARENT INCORPORATION PRACTICES.—

3 Part E of title I of the Omnibus Crime Control and Safe
4 Streets Act of 1968 (34 U.S.C. 10151 et seq.) is amended
5 by adding at the end the following:

6 **“Subpart 4—Transparent Incorporation Practices**

7 **“SEC. 531. TRANSPARENT INCORPORATION PRACTICES.**

8 “(a) INCORPORATION SYSTEMS.—

9 “(1) IN GENERAL.—To protect the United
10 States from the misuse affecting interstate or for-
11 eign commerce of corporations and limited liability
12 companies with hidden owners, each State that re-
13 ceives funding under subpart 1 shall, not later than
14 3 years after the date of enactment of this subpart,
15 use an incorporation system that meets the following
16 requirements:

17 “(A) IDENTIFICATION OF BENEFICIAL
18 OWNERS.—Except as provided in paragraph
19 (3), each applicant to form a corporation or
20 limited liability company under the laws of the
21 State is required to provide to the State during
22 the formation process information on the bene-
23 ficial owners of the corporation or limited liabil-
24 ity company that—

25 “(i) identifies each beneficial owner by
26 name, current residential or business street

1 address, date of birth, and a unique identi-
2 fying number from a nonexpired passport
3 issued by the United States or a non-
4 expired drivers license or identification
5 card issued by a State;

6 “(ii) if any beneficial owner exercises
7 control over the corporation or limited li-
8 ability company through another legal enti-
9 ty, such as a corporation, partnership, or
10 trust, identifies each such legal entity and
11 each such beneficial owner who will use
12 that entity to exercise control over the cor-
13 poration or limited liability company; and

14 “(iii) if the applicant is not a bene-
15 ficial owner, provides the identification in-
16 formation described in clause (i) relating
17 to the applicant.

18 “(B) UPDATED INFORMATION.—For each
19 corporation or limited liability company formed
20 under the laws of the State—

21 “(i) the corporation or limited liability
22 company is required by the State to submit
23 to the State an updated list of the bene-
24 ficial owners of the corporation or limited
25 liability company and the information de-

1 scribed in subparagraph (A) for each such
2 beneficial owner not later than 60 days
3 after the date of any change in the bene-
4 ficial owners of the corporation or limited
5 liability company;

6 “(ii) in the case of a corporation or
7 limited liability company formed or ac-
8 quired by a formation agent and retained
9 by the formation agent as a beneficial
10 owner for transfer to another person, the
11 formation agent is required by the State to
12 submit to the State an updated list of the
13 beneficial owners and the information de-
14 scribed in subparagraph (A) for each such
15 beneficial owner not later than 10 days
16 after the date on which the formation
17 agent transfers the corporation or limited
18 liability company to another person; and

19 “(iii) the corporation or limited liabil-
20 ity company is required by the State to
21 submit to the State an annual filing con-
22 taining the list of the beneficial owners of
23 the corporation or limited liability company
24 and the information described in subpara-
25 graph (A) for each such beneficial owner.

1 “(C) RETENTION OF INFORMATION.—Ben-
2 eficial ownership information relating to each
3 corporation or limited liability company formed
4 under the laws of the State is required to be
5 maintained by the State until the end of the 5-
6 year period beginning on the date that the cor-
7 poration or limited liability company terminates
8 under the laws of the State.

9 “(D) INFORMATION REQUESTS.—Bene-
10 ficial ownership information relating to each
11 corporation or limited liability company formed
12 under the laws of the State shall be provided by
13 the State not later than 30 days after receipt
14 of—

15 “(i) a civil, criminal, or administrative
16 subpoena or a summons, or an equivalent
17 of such a subpoena or summons, from a
18 local, State, or Federal agency or a con-
19 gressional committee or subcommittee;

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

1 Code, issued in response to a request for
2 assistance from a foreign country;

3 “(iii) a written request made by the
4 Financial Crimes Enforcement Network of
5 the Department of the Treasury; or

6 “(iv) a written request made by a fi-
7 nancial institution, with the consent of the
8 customer, for purposes of compliance by
9 the financial institution with customer due
10 diligence requirements under subsections
11 (a)(2) and (h)(2) of section 5318 of title
12 31, United States Code, which the request-
13 ing financial institution shall maintain and
14 safeguard in accordance with all applicable
15 Federal and State laws related to bank
16 records, and destroy upon satisfaction of
17 those due diligence requirements, con-
18 sistent with all applicable Federal and
19 State laws related to bank records.

20 “(E) NO BEARER SHARE CORPORA-
21 TIONS.—A corporation or limited liability com-
22 pany formed under the laws of the State may
23 not issue a certificate in bearer form evidencing
24 either a whole or fractional interest in the cor-
25 poration or limited liability company.

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

14 “(A) has obtained for each such person a
15 current residential or business street address
16 and a legible and credible copy of the pages of
17 a nonexpired passport issued by the government
18 of a foreign country bearing a photograph, date
19 of birth, and unique identifying information for
20 the person;

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

23 “(C) will provide the information described
24 in subparagraph (A) and the proof of
25 verification described in subparagraph (B) upon

request under the same circumstances as required for States under paragraph (1)(D); and

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

“(3) EXEMPT ENTITIES.—

“(A) IN GENERAL.—An incorporation system described in paragraph (1) shall require that an application for an entity described in clause (i) or (ii) of subsection (d)(2)(B) that is proposed to be formed under the laws of a State and that will be exempt from the beneficial ownership disclosure requirements under this section shall include in the application a certification by the applicant, or a prospective officer, director, or similar agent of the entity—

“(i) identifying the specific provision of subsection (d)(2)(B) under which the entity proposed to be formed would be exempt from the beneficial ownership disclo-

1 sure requirements under paragraphs (1)
2 and (2);

3 “(ii) stating that the entity proposed
4 to be formed meets the requirements for
5 an entity described under such provision of
6 subsection (d)(2)(B); and

7 “(iii) providing identification informa-
8 tion for the applicant or prospective offi-
9 cer, director, or similar agent making the
10 certification in the same manner as pro-
11 vided under paragraph (1).

12 “(B) EXISTING ENTITIES.—On and after
13 the date that is 2 years after the date on which
14 a State begins requiring beneficial ownership
15 information in compliance with this section, an
16 entity formed under the laws of the State be-
17 fore such effective date shall be considered to
18 be a corporation or limited liability company for
19 purposes of this subsection unless an officer, di-
20 rector, or similar agent of the entity submits to
21 the State a certification—

22 “(i) identifying the specific provision
23 of subsection (d)(2)(B) under which the
24 entity is exempt from the requirements
25 under paragraphs (1) and (2);

1 “(ii) stating that the entity meets the
 2 requirements for an entity described under
 3 such provision of subsection (d)(2)(B); and

4 “(iii) providing identification informa-
 5 tion for the officer, director, or similar
 6 agent making the certification in the same
 7 manner as provided under paragraph (1).

8 “(C) EXEMPT ENTITIES WITH AN OWNER-
 9 SHIP INTEREST.—As part of the beneficial own-
 10 ership information required under subsection
 11 (a)(1), neither an applicant seeking to form a
 12 corporation or limited liability company nor a
 13 corporation or limited liability company pro-
 14 viding updated information is required to iden-
 15 tify the beneficial owners of any entity that
 16 qualifies as an exempt entity under subsection
 17 (d)(2)(B).

18 “(b) PENALTIES.—

19 “(1) IN GENERAL.—It shall be unlawful for any
 20 person to affect interstate or foreign commerce by
 21 failing to comply with this subpart by—

22 “(A) knowingly providing, or attempting to
 23 provide, false or fraudulent beneficial ownership
 24 information, including a false or fraudulent

1 identifying photograph, to a State or formation
2 agent;

3 “(B) willfully failing to provide complete or
4 updated beneficial ownership information to a
5 State or formation agent;

6 “(C) knowingly disclosing the existence of
7 a subpoena or summons (or the equivalent of a
8 subpoena or summons) or a request for bene-
9 ficial ownership information described in sub-
10 section (a)(1)(D), except—

11 “(i) to the extent necessary to fulfill
12 the authorized request; or

13 “(ii) as authorized by the entity that
14 issued the request described in subsection
15 (a)(1)(D); or

16 “(D) in the case of a formation agent,
17 knowingly failing to obtain or maintain credible,
18 legible, and updated beneficial ownership infor-
19 mation, including any required identifying pho-
20 tograph.

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

1 “(A) shall be liable to the United States
2 for a civil penalty of not more than \$1,000,000;
3 and

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

7 “(c) RULES.—

8 “(1) IN GENERAL.—To carry out this subpart,
9 the Attorney General, the Secretary of Homeland
10 Security, and the Secretary of the Treasury may
11 issue joint guidance or a joint rule to specify how to
12 verify beneficial ownership or other identification in-
13 formation provided under this section, including
14 under subsection (a)(2).

15 “(2) LIMITATION.—Any guidance or rule issued
16 under paragraph (1)—

17 “(A) may explain and clarify the definition
18 of the term ‘beneficial owner’; but

19 “(B) may not amend or alter the definition
20 of the term ‘beneficial owner’ through changes
21 to the definition directly or through the manner
22 of implementation.

23 “(3) NO GUIDANCE.—A failure to issue guid-
24 ance or a rule under paragraph (1) shall not delay

1 the effective date of the requirements under this
 2 subpart.

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

4 “(1) BENEFICIAL OWNER.—

5 “(A) IN GENERAL.—Except as provided in
 6 subparagraph (B), the term ‘beneficial owner’
 7 means each natural person who, directly or in-
 8 directly—

9 “(i) exercises substantial control over
 10 a corporation or limited liability company
 11 through ownership interests, voting rights,
 12 agreement, or otherwise; or

13 “(ii) has a substantial interest in or
 14 receives substantial economic benefits from
 15 the assets of a corporation or the assets of
 16 a limited liability company.

17 “(B) EXCEPTIONS.—The term ‘beneficial
 18 owner’ shall not include—

19 “(i) a minor child;

20 “(ii) a person acting as a nominee,
 21 intermediary, custodian, or agent on behalf
 22 of another person;

23 “(iii) a person acting solely as an em-
 24 ployee of a corporation or limited liability
 25 company and whose control over or eco-

1 nomic benefits from the corporation or lim-
 2 ited liability company derives solely from
 3 the employment status of the person; or

4 “(iv) a creditor of a corporation or
 5 limited liability company, unless the cred-
 6 itor also meets the requirements of sub-
 7 paragraph (A).

8 “(C) ANTI-ABUSE RULE.—The exceptions
 9 under subparagraph (B) shall not apply if used
 10 for the purpose of evading, circumventing, or
 11 abusing the provisions of subparagraph (A) or
 12 subsection (a).

13 “(2) CORPORATION; LIMITED LIABILITY COM-
 14 PANY.—

15 “(A) IN GENERAL.—Subject to subpara-
 16 graph (B), the terms ‘corporation’ and ‘limited
 17 liability company’—

18 “(i) have the meanings given such
 19 terms under the laws of the applicable
 20 State; and

21 “(ii) include any non-United States
 22 entity eligible for registration or registered
 23 to do business as a corporation or limited
 24 liability company under the laws of the ap-
 25 plicable State.

1 “(B) EXEMPT ENTITIES.—Subject to sub-
2 section (a)(3), the terms ‘corporation’ and ‘lim-
3 ited liability company’ do not include an entity
4 that—

5 “(i) is—

6 “(I) a business concern that is an
7 issuer of a class of securities reg-
8 istered under section 12 of the Securi-
9 ties Exchange Act of 1934 (15 U.S.C.
10 781) or that is required to file reports
11 under section 15(d) of that Act (15
12 U.S.C. 78o(d));

13 “(II) a business concern con-
14 stituted or sponsored by a State, a po-
15 litical subdivision of a State, under an
16 interstate compact between two or
17 more States, by a department or
18 agency of the United States, under
19 the laws of the United States, or by
20 an international organization of which
21 the United States is a member;

22 “(III) a depository institution (as
23 defined in section 3 of the Federal
24 Deposit Insurance Act (12 U.S.C.
25 1813));

1 “(IV) a credit union (as defined
2 in section 101 of the Federal Credit
3 Union Act (12 U.S.C. 1752));

4 “(V) a bank holding company (as
5 defined in section 2 of the Bank Hold-
6 ing Company Act of 1956 (12 U.S.C.
7 1841));

8 “(VI) a broker or dealer (as de-
9 fined in section 3 of the Securities
10 Exchange Act of 1934 (15 U.S.C.
11 78c)) that is registered under section
12 15 of the Securities Exchange Act of
13 1934 (15 U.S.C. 78o);

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

21 “(VIII) an investment company
22 (as defined in section 3 of the Invest-
23 ment Company Act of 1940 (15
24 U.S.C. 80a-3)) or an investment advi-
25 sor (as defined in section 202(11) of

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

11 “(IX) an insurance company (as
12 defined in section 2 of the Investment
13 Company Act of 1940 (15 U.S.C.
14 80a–2)) which is formed under the
15 laws of and regulated by a State;

16 “(X) a registered entity (as de-
17 fined in section 1a of the Commodity
18 Exchange Act (7 U.S.C. 1a)), or a fu-
19 tures commission merchant, intro-
20 ducing broker, commodity pool oper-
21 ator, or commodity trading advisor
22 (as defined in section 1a of the Com-
23modity Exchange Act (7 U.S.C. 1a))
24 that is registered with the Commodity
25 Futures Trading Commission;

1 “(XI) a public accounting firm
2 registered in accordance with section
3 102 of the Sarbanes-Oxley Act (15
4 U.S.C. 7212);

5 “(XII) a public utility that pro-
6 vides telecommunications service, elec-
7 trical power, natural gas, or water
8 and sewer services within the United
9 States;

10 “(XIII) a religious institution or
11 nonprofit entity that is described in
12 section 501(c)(3) or 527 of the Inter-
13 nal Revenue Code of 1986;

14 “(XIV) any business concern
15 that—

16 “(aa) employs more than 20
17 employees on a full-time basis in
18 the United States;

19 “(bb) files income tax re-
20 turns in the United States dem-
21 onstrating more than \$5,000,000
22 in gross receipts or sales;

23 “(cc) has an operating pres-
24 ence at a physical location within
25 the United States; and

1 “(dd) has more than 100
2 shareholders; or

3 “(XV) any corporation or limited
4 liability company which is owned, in
5 whole or in substantial part, by an en-
6 tity described in subclause (I), (II),
7 (III), (IV), (V), (VI), (VII), (VIII),
8 (IX), (X), (XI), (XII), (XIII), or
9 (XIV); or

10 “(ii) is within any class of business
11 concerns which the Attorney General, the
12 Secretary of Homeland Security, and the
13 Secretary of the Treasury jointly determine
14 in writing, upon the request of a State,
15 and through an order, guidance, or rule
16 should be exempt from the requirements of
17 subsection (a), because requiring beneficial
18 ownership information from the business
19 concern would not serve the public interest
20 and would not assist law enforcement ef-
21 forts to detect, prevent, or punish criminal
22 or civil misconduct.

23 “(3) FORMATION AGENT.—The term ‘formation
24 agent’ means a person who, for compensation, acts
25 on behalf of another person to form, or assist in the

1 formation, of a corporation or limited liability com-
2 pany under the laws of a State.”.

3 (b) FUNDING AUTHORIZATION.—

4 (1) IN GENERAL.—To carry out section 531 of
5 title I of the Omnibus Crime Control and Safe
6 Streets Act of 1968, as added by this Act, and to
7 protect the United States against the misuse affect-
8 ing interstate or foreign commerce of corporations or
9 limited liability companies with hidden owners, dur-
10 ing the 3-year period beginning on the date of enact-
11 ment of this Act, funds shall be made available to
12 each State (as that term is defined under section
13 901(a)(2) of the Omnibus Crime Control and Safe
14 Streets Act of 1968 (34 U.S.C. 10251(a)(2))), to
15 pay reasonable costs to comply with the require-
16 ments of such section 531 from one or more of the
17 following sources:

18 (A) Upon written request by a State, and
19 without further appropriation, the Attorney
20 General shall make available or transfer to the
21 State funds from excess unobligated balances
22 (as defined in section 524(c)(8)(D) of title 28,
23 United States Code) in the Department of Jus-
24 tice Assets Forfeiture Fund established under
25 section 524(c) of title 28, United States Code.

1 (B) Upon written request by a State, after
2 consultation with the Attorney General, and
3 without further appropriation, the Secretary of
4 the Treasury shall make available or transfer to
5 the State funds from unobligated balances de-
6 scribed in section 9705(g)(4)(B) of title 31,
7 United States Code, in the Department of the
8 Treasury Forfeiture Fund.

9 (2) ELIGIBLE COSTS.—The Attorney General
10 and Secretary of the Treasury, in their sole discre-
11 tion, shall determine what costs are reasonable for
12 purposes of paragraph (1), taking into account the
13 maximum amount of funds available for distribution
14 to States under paragraph (3).

15 (3) MAXIMUM AMOUNTS.—

16 (A) DEPARTMENT OF JUSTICE.—The At-
17 torney General may not make available to
18 States a total of more than \$10,000,000 under
19 paragraph (1)(A).

20 (B) DEPARTMENT OF THE TREASURY.—
21 The Secretary of the Treasury may not make
22 available to States a total of more than
23 \$30,000,000 under paragraph (1)(B).

24 (4) FUNDING AVAILABILITY.—The amounts
25 available to be provided to, and any amounts pro-

1 vided to, a State under paragraph (1) shall be ex-
2 empt from, and shall not be reduced under, any
3 order under section 251A of the Balanced Budget
4 and Emergency Deficit Control Act of 1985 (2
5 U.S.C. 901a).

6 (c) STATE COMPLIANCE REPORT.—Nothing in this
7 Act or an amendment made by this Act authorizes the
8 Attorney General to withhold from a State any funding
9 otherwise available to the State under subpart 1 of part
10 E of title I of the Omnibus Crime Control and Safe Streets
11 Act of 1968 (34 U.S.C. 10151 et seq.) because of a failure
12 by that State to comply with subpart 4 of part E of title
13 I of the Omnibus Crime Control and Safe Streets Act of
14 1968, as added by this Act. Not later than 42 months
15 after the date of enactment of this Act, the Comptroller
16 General of the United States shall submit to the Com-
17 mittee on the Judiciary of the Senate and the Committee
18 on the Judiciary of the House of Representatives a report
19 identifying which States are in compliance with subpart
20 4 of part E of title I of the Omnibus Crime Control and
21 Safe Streets Act of 1968 and, for any State not in compli-
22 ance, what measures must be taken by that State to
23 achieve compliance with such subpart 4.

24 (d) EFFECT ON STATE LAW.—

1 (1) IN GENERAL.—This Act and the amend-
 2 ments made by this Act do not supersede, alter, or
 3 affect any statute, regulation, order, or interpreta-
 4 tion in effect in any State, except where a State has
 5 elected to receive funding from the Department of
 6 Justice under subpart 1 of part E of title I of the
 7 Omnibus Crime Control and Safe Streets Act of
 8 1968 (34 U.S.C. 10151 et seq.), and then only to
 9 the extent that such State statute, regulation, order,
 10 or interpretation is inconsistent with this Act or an
 11 amendment made by this Act.

12 (2) NOT INCONSISTENT.—A State statute, reg-
 13 ulation, order, or interpretation is not inconsistent
 14 with this Act or an amendment made by this Act if
 15 such statute, regulation, order, or interpretation—

16 (A) requires additional information, more
 17 frequently updated information, or additional
 18 measures to verify information related to a cor-
 19 poration, limited liability company, or beneficial
 20 owner, than is specified under this Act or an
 21 amendment made by this Act; or

22 (B) imposes additional limits on public ac-
 23 cess to the beneficial ownership information ob-
 24 tained by the State than is specified under this
 25 Act or an amendment made by this Act.

1 (3) STATE RECORDS.—Nothing in this Act or
2 the amendments made by this Act limits the author-
3 ity of a State, by statute or otherwise, to disclose or
4 to not disclose to the public all or any portion of the
5 beneficial ownership information provided to the
6 State under subpart 4 of part E of title I of the Om-
7 nibus Crime Control and Safe Streets Act of 1968,
8 as added by this Act.

9 (4) NO DUTY OF VERIFICATION.—This Act and
10 the amendments made by this Act do not impose
11 any obligation on a State to verify the name, ad-
12 dress, or identity of a beneficial owner whose infor-
13 mation is submitted to such State under subpart 4
14 of part E of title I of the Omnibus Crime Control
15 and Safe Streets Act of 1968, as added by this Act.

16 (e) FEDERAL CONTRACTORS.—Not later than the
17 first day of the first full fiscal year beginning at least 1
18 year after the date of enactment of this Act, the Adminis-
19 trator for Federal Procurement Policy shall revise the
20 Federal Acquisition Regulation maintained under section
21 1303(a)(1) of title 41, United States Code, to require any
22 bidder who is subject to the requirement to disclose bene-
23 ficial ownership information under subpart 4 of part E
24 of title I of the Omnibus Crime Control and Safe Streets
25 Act of 1968, as added by this Act, to provide the informa-

tion required to be disclosed under such subpart 4 to the Federal Government, or why it is exempt under section 531(d)(2)(B) of title I of the Omnibus Crime Control and Safe Streets Act of 1968, as added by this Act, as part of any bid or proposal for a contract.

SEC. 4. ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING OBLIGATIONS OF FORMATION AGENTS.

(a) ANTI-MONEY LAUNDERING AND ANTI-TERRORIST FINANCING OBLIGATIONS OF FORMATION AGENTS.—Section 5312(a)(2) of title 31, United States Code, is amended—

(1) in subparagraph (Y), by striking “or” at the end;

(2) by redesignating subparagraph (Z) as subparagraph (AA); and

(3) by inserting after subparagraph (Y) the following:

“(Z) any person engaged in the business of forming corporations or limited liability companies; or”.

(b) DEADLINE FOR IMPLEMENTING RULE FOR FORMATION AGENTS.—

(1) PROPOSED RULE.—Not later than 120 days after the date of enactment of this Act, the Sec-

1 retary of the Treasury, in consultation with the Sec-
 2 retary of Homeland Security and the Attorney Gen-
 3 eral, shall publish a proposed rule in the Federal
 4 Register requiring persons described in section
 5 5312(a)(2)(Z) of title 31, United States Code, as
 6 amended by this section, to establish anti-money
 7 laundering programs under subsection (h) of section
 8 5318 of that title.

9 (2) FINAL RULE.—Not later than 270 days
 10 after the date of enactment of this Act, the Sec-
 11 retary of the Treasury shall publish the rule de-
 12 scribed in this subsection in final form in the Fed-
 13 eral Register.

14 (3) EXCLUSIONS.—Any rule promulgated under
 15 this subsection shall exclude from the category of
 16 persons engaged in the business of forming a cor-
 17 poration or limited liability company—

18 (A) any government agency; and

19 (B) any attorney or law firm that uses a
 20 paid formation agent operating within the
 21 United States to form the corporation or lim-
 22 ited liability company.

23 **SEC. 5. STUDIES AND REPORTS.**

24 (a) OTHER LEGAL ENTITIES.—Not later than 2
 25 years after the date of enactment of this Act, the Comp-

1 troller General of the United States shall conduct a study
2 and submit to the Committee on the Judiciary of the Sen-
3 ate and the Committee on the Judiciary of the House of
4 Representatives a report—

5 (1) identifying each State that has procedures
6 that enable persons to form or register under the
7 laws of the State partnerships, trusts, charitable or-
8 ganizations, or other legal entities, and the nature of
9 those procedures;

10 (2) identifying each State that requires persons
11 seeking to form or register partnerships, trusts,
12 charitable organizations, or other legal entities under
13 the laws of the State to provide information about
14 the beneficial owners (as that term is defined in sec-
15 tion 531 of title I of the Omnibus Crime Control
16 and Safe Streets Act of 1968, as added by this Act)
17 or beneficiaries of such entities, and the nature of
18 the required information;

19 (3) evaluating whether the lack of available
20 beneficial ownership information for partnerships,
21 trusts, charitable organizations, or other legal enti-
22 ties—

23 (A) raises concerns about the involvement
24 of such entities in terrorism, money laundering,
25 tax evasion, securities fraud, trafficking in illicit

1 drugs, or other criminal or civil misconduct;
2 and

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

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

12 (b) EFFECTIVENESS OF INCORPORATION PRAC-
13 TICES.—Not later than 5 years after the date of enact-
14 ment of this Act, the Comptroller General of the United
15 States shall conduct a study and submit to the Committee
16 on the Judiciary of the Senate and the Committee on the
17 Judiciary of the House of Representatives a report assess-
18 ing the effectiveness of incorporation practices imple-
19 mented under this Act and the amendments made by this
20 Act in—

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

- 1 (2) strengthening the capability of law enforce-
- 2 ment agencies to combat incorporation abuses and
- 3 other civil and criminal misconduct.

