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.

IN THE SENATE OF THE UNITED STATES
JUNE 26, 2019
Mr. WYDEN (for himself, Mr. RUBIO, and Mr. WHITEHOUSE) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL
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.
Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Corporate Trans-
parency Act of 2019”.

SEC. 2. TRANSPARENT INCORPORATION PRACTICES.

(a) In General.—

(1) Amendment to the bank secrecy
act.—Chapter 53 of title 31, United States Code, is
amended by inserting after section 5332 the fol-
lowing new section:

“§ 5333. Transparent incorporation practices

“(a) Reporting Requirements.—

“(1) Beneficial ownership reporting.—

“(A) In general.—Each applicant to
form a corporation or limited liability company
under the laws of a State or Indian Tribe shall
file a report with FinCEN containing a list of
the beneficial owners of the corporation or lim-
ited liability company that—

“(i) except as provided in paragraph
(3), and subject to paragraph (2), identi-
ﬁes each beneﬁcial owner by—

“(I) full legal name;

“(II) date of birth;
“(III) current residential or business street address; and

“(IV) a unique identifying number from a non-expired passport issued by the United States, a non-expired personal identification card, or a non-expired driver’s license issued by a State; and

“(ii) if the applicant is not a beneficial owner, also provides the identification information described in clause (i) relating to such applicant.

“(B) UPDATED INFORMATION.—Each corporation or limited liability company formed under the laws of a State or Indian Tribe shall—

“(i) submit to FinCEN an annual filing containing a list of—

“(I) the current beneficial owners of the corporation or limited liability company and the information described in subparagraph (A) for each such beneficial owner; and

“(II) any changes in the beneficial owners of the corporation or lim-
limited liability company during the previous year; and

“(ii) pursuant to any rule issued by the Secretary of the Treasury under subparagraph (C), update the list of the beneficial owners of the corporation or limited liability company within the time period prescribed by such rule.

“(C) RULEMAKING ON UPDATING INFORMATION.—Not later than 9 months after the completion of the study required under section 3(a)(1) of the Corporate Transparency Act of 2019, the Secretary of the Treasury shall consider the findings of such study and, if the Secretary determines it to be necessary or appropriate, issue a rule requiring corporations and limited liability companies to update the list of the beneficial owners of the corporation or limited liability company within a specified amount of time after the date of any change in the list of beneficial owners or the information required to be provided relating to each beneficial owner.

“(D) STATE NOTIFICATION.—Each State in which a corporation or limited liability company is being formed shall notify each applicant
of the requirements listed in subparagraphs (A) and (B).

“(2) CERTAIN BENEFICIAL OWNERS.—If an applicant to form a corporation or limited liability company or a beneficial owner, or similar agent of a corporation or limited liability company who is required to provide identification information under this subsection, does not have a non-expired passport issued by the United States, a non-expired personal identification card, or a non-expired driver’s license issued by a State, each such person shall provide to FinCEN the full legal name, current residential or business street address, a unique identifying number from a non-expired passport issued by a foreign government, and a legible and credible copy of the pages of a non-expired passport issued by the government of a foreign country bearing a photograph, date of birth, and unique identifying information for each beneficial owner, and each application described in paragraph (1)(A) and each update described in paragraph (1)(B) shall include a written certification by a person residing in the State or Indian country under the jurisdiction of the Indian Tribe forming the entity that the applicant, corporation, or limited liability company—
“(A) has obtained for each such beneficial owner, a current residential or business street address and a legible and credible copy of the pages of a non-expired passport issued by the government of a foreign country bearing a photograph, date of birth, and unique identifying information for the person;

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

“(C) will provide the information described in subparagraph (A) and the proof of verification described in subparagraph (B) upon request of FinCEN; and

“(D) will retain the information and proof of verification under this paragraph 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 or Indian Tribe.

“(3) EXEMPT ENTITIES.—

“(A) IN GENERAL.—With respect to an applicant to form a corporation or limited liability company under the laws of a State or Indian Tribe, if such entity is described in subparagraph (C) or (D) of subsection (d)(4) and will
be exempt from the beneficial ownership disclosure requirements under this subsection, such applicant, or a prospective officer, director, or similar agent of the applicant, shall file a written certification with FinCEN—

“(i) identifying the specific provision of subsection (d)(4) under which the entity proposed to be formed would be exempt from the beneficial ownership disclosure requirements under paragraphs (1) and (2);

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

“(iii) providing identification information for the applicant or prospective officer, director, or similar agent making the certification in the same manner as provided under paragraph (1) or (2).

“(B) EXISTING CORPORATIONS OR LIMITED LIABILITY COMPANIES.—On and after the date that is 2 years after the final regulations are issued to carry out this section, a corporation or limited liability company formed under the laws of the State or Indian Tribe before
such date shall be subject to the requirements of this subsection unless an officer, director, or similar agent of the entity submits to FinCEN a written certification—

“(i) identifying the specific provision of subsection (d)(4) under which the entity is exempt from the requirements under paragraphs (1) and (2);

“(ii) stating that the entity meets the requirements for an entity described under such provision of subsection (d)(4); and

“(iii) providing identification information for the officer, director, or similar agent making the certification in the same manner as provided under paragraph (1) or (2).

“(C) EXEMPT ENTITIES HAVING OWNERSHIP INTEREST.—If an entity described in sub-paragraph (C) or (D) of subsection (d)(4) has or will have an ownership interest in a corporation or limited liability company formed or to be formed under the laws of a State or Indian Tribe, the applicant, corporation, or limited liability company in which the entity has or will have the ownership interest shall provide the in-
formation required under this subsection relating to the entity, except that the entity shall not be required to provide information regarding any natural person who has an ownership interest in, exercises substantial control over, or receives substantial economic benefits from the entity.

“(4) RETENTION AND DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION BY FINCEN.—

“(A) RETENTION OF INFORMATION.—Beneficial ownership information relating to each corporation or limited liability company formed under the laws of the State or Indian Tribe shall be maintained by FinCEN until the end of the 5-year period (or such other period of time as the Secretary of the Treasury may, by rule, determine) beginning on the date that the corporation or limited liability company terminates.

“(B) DISCLOSURE OF INFORMATION.—Beneficial ownership information reported to FinCEN pursuant to this section shall be provided by FinCEN only upon receipt of—

“(i) subject to subparagraph (C), a request, through appropriate protocols, by
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a local, Tribal, State, or Federal law en-
forcement agency;

“(ii) a request made by a Federal
agency on behalf of a law enforcement
agency of another country under an inter-
national treaty, agreement, or convention,
or an order under section 3512 of title 18
or section 1782 of title 28; or

“(iii) a request made by a financial
institution, with customer consent, as part
of the institution’s compliance with due
diligence requirements imposed under the
Bank Secrecy Act, the USA PATRIOT
Act, or other applicable Federal, State, or
Tribal law.

“(C) APPROPRIATE PROTOCOLS.—

“(i) PRIVACY.—The protocols de-
dscribed in subparagraph (B)(i) shall pro-
tect the privacy of any beneficial ownership
information provided by FinCEN to a
local, Tribal, State, or Federal law enforce-
ment agency.

“(ii) LIMITATION ON USE.—Beneficial
ownership information provided to a local,
Tribal, State, or Federal law enforcement
agency under this paragraph may only be used for law enforcement, national security, or intelligence purposes.

“(b) No Bearer Share Corporations or Limited Liability Companies.—A corporation or limited liability company formed under the laws of a State or Indian Tribe may not issue a certificate in bearer form evidencing either a whole or fractional interest in the corporation or limited liability company.

“(c) Penalties.—

“(1) In general.—It shall be unlawful for any person to affect interstate or foreign commerce by—

“(A) knowingly providing, or attempting to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph, to FinCEN in accordance with this section;

“(B) willfully failing to provide complete or updated beneficial ownership information to FinCEN in accordance with this section; or

“(C) knowingly disclosing the existence of a subpoena or other request for beneficial ownership information reported pursuant to this section, except—
“(i) to the extent necessary to fulfill
the authorized request; or
“(ii) as authorized by the entity that
issued the subpoena, or other request.
“(2) CIVIL AND CRIMINAL PENALTIES.—Any
person who violates paragraph (1)—
“(A) shall be liable to the United States
for a civil penalty of not more than $10,000;
and
“(B) may be fined under title 18, impris-
oned for not more than 3 years, or both.
“(3) LIMITATION.—Any person who negligently
violates paragraph (1) shall not be subject to civil or
criminal penalties under paragraph (2).
“(4) WAIVER.—The Secretary of the Treasury
may waive the penalty for violating paragraph (1) if
the Secretary determines that the violation was due
to reasonable cause and was not due to willful ne-
glect.
“(5) CRIMINAL PENALTY FOR THE MISUSE OR
UNAUTHORIZED DISCLOSURE OF BENEFICIAL OWN-
ERSHIP INFORMATION.—The criminal penalties pro-
vided for under section 5322 shall apply to a viola-
tion of this section to the same extent as such crimi-
nal penalties apply to a violation described in section
5322, if the violation of this section consists of the
misuse or unauthorized disclosure of beneficial own-
ership information.

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

“(1) APPLICANT.—The term ‘applicant’ means
any natural person who files an application to form
a corporation or limited liability company under the
laws of a State or Indian Tribe.

“(2) BANK SECRECY ACT.—The term ‘Bank Se-
crecy Act’ means—

“(A) section 21 of the Federal Deposit In-
surance Act (12 U.S.C. 1829b);

“(B) chapter 2 of title I of Public Law 91–
508 (12 U.S.C. 1951 et seq.); and

“(C) this subchapter.

“(3) BENEFICIAL OWNER.—

“(A) IN GENERAL.—Except as provided in
subparagraph (B), the term ‘beneficial owner’
means a natural person who, directly or indi-
rectly, through any contract, arrangement, un-
derstanding, relationship, or otherwise—

“(i) exercises substantial control over
a corporation or limited liability company;
“(ii) owns 25 percent or more of the equity interests of a corporation or limited liability company; or

“(iii) receives substantial economic benefits from the assets of a corporation or limited liability company.

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

“(i) a minor child, as defined in the State or Indian Tribe in which the entity is formed;

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

“(iii) a person acting solely as an employee of a corporation or limited liability company and whose control over or economic benefits from the corporation or limited liability company derives solely from the employment status of the person;

“(iv) a person whose only interest in a corporation or limited liability company is through a right of inheritance;

“(v) a creditor of a corporation or limited liability company, unless the cred-
itor also meets the requirements of sub-
paragraph (A); or

“(vi) a person whose ownership inter-
est is below a de minimis threshold that
the Secretary of the Treasury shall, by
rule, establish.

“(C) SUBSTANTIAL ECONOMIC BENEFITS
DEFINED.—

“(i) IN GENERAL.—For purposes of
subparagraph (A)(iii), a natural person re-
ceives substantial economic benefits from
the assets of a corporation or limited liabil-
ity company if the person has an entitle-
ment to more than a specified percentage
of the funds or assets of the corporation or
limited liability company, which the Sec-
retary of the Treasury shall, by rule, estab-
lish.

“(ii) RULEMAKING CRITERIA.—In es-
establishing the percentage under clause (i),
the Secretary of the Treasury shall seek
to—

“(I) provide clarity to corpora-
tions and limited liability companies
with respect to the identification and
disclosure of a natural person who receives substantial economic benefits from the assets of a corporation or limited liability company; and

“(II) identify those natural persons who, as a result of the substantial economic benefits they receive from the assets of a corporation or limited liability company, exercise a dominant influence over such corporation or limited liability company.

“(4) CORPORATION; LIMITED LIABILITY COMPANY.—The terms ‘corporation’ and ‘limited liability company’—

“(A) have the meanings given such terms under the laws of the applicable State or Indian Tribe;

“(B) include any non-United States entity eligible for registration or registered to do business as a corporation or limited liability company under the laws of the applicable State or Indian Tribe;

“(C) do not include any entity that is—

“(i) a business concern that is an issuer of a class of securities registered
under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781) or that is required to file reports under section 15(d) of that Act (15 U.S.C. 78o(d));

“(ii) a business concern constituted, sponsored, or chartered by a State or Indian Tribe, a political subdivision of a State or Indian Tribe, under an interstate compact between two or more States, by a department or agency of the United States, or under the laws of the United States;

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

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

“(v) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841));

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

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

“(viii) an investment company (as de-
defined in section 3 of the Investment Com-
pany Act of 1940 (15 U.S.C. 80a–3)) or
an investment adviser (as defined in sec-
tion 202(11) of the Investment Advisers
Act of 1940 (15 U.S.C. 80b–2(11))), if the
company or adviser is registered with the
Securities and Exchange Commission, or
has filed an application for registration
which has not been denied, under the In-
vestment Company Act of 1940 (15 U.S.C.
80a–1 et seq.) or the Investment Advisers
Act of 1940 (15 U.S.C. 80b–1 et seq.);

“(ix) an insurance company (as de-
defined in section 2 of the Investment Com-
pany Act of 1940 (15 U.S.C. 80a–2));
“(x) a registered entity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)), or a futures commission merchant, introducing broker, commodity pool operator, or commodity trading advisor (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)) that is registered with the Commodity Futures Trading Commission;

“(xi) a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act (15 U.S.C. 7212) or an entity controlling, controlled by, or under common control of such a firm;

“(xii) a public utility that provides telecommunications service, electrical power, natural gas, or water and sewer services, within the United States;

“(xiii) a church, charity, nonprofit entity, or other organization that is described in section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code of 1986, that has not been denied tax exempt status, and that has filed the most recently due annual information return with the Internal Rev-
enue Service, if required to file such a re-

“(xiv) any business concern that—

“(I) employs more than 20 em-

ployees on a full-time basis in the

United States;

“(II) files income tax returns in

the United States demonstrating more

than $5,000,000 in gross receipts or

sales; and

“(III) has an operating presence

at a physical office within the United

States; or

“(xv) any corporation or limited liabil-

ity company formed and owned by an enti-

ty described in clause (i), (ii), (iii), (iv),

(v), (vi), (vii), (viii), (ix), (x), (xi), (xii),

(xiii), or (xiv); and

“(D) do not include any individual busi-

ness concern or class of business concerns

which the Secretary of the Treasury and the

Attorney General of the United States have

jointly determined, by rule of otherwise, to be

exempt from the requirements of subsection (a),

if the Secretary and the Attorney General joint-
ly determine that requiring beneficial ownership
information from the business concern would
not serve the public interest and would not as-
sist law enforcement efforts to detect, prevent,
or prosecute terrorism, money laundering, tax
evasion, or other misconduct.

“(5) FINCEN.—The term ‘FinCEN’ means the
Financial Crimes Enforcement Network of the De-
partment of the Treasury.

“(6) INDIAN COUNTRY.—The term ‘Indian
country’ has the meaning given that term in section
1151 of title 18.

“(7) INDIAN TRIBE.—The term ‘Indian Tribe’
has the meaning given that term under section 102
of the Federally Recognized Indian Tribe List Act of

“(8) PERSONAL IDENTIFICATION CARD.—The
term ‘personal identification card’ means an identi-
fication document issued by a State, Indian Tribe,
or local government to an individual solely for the
purpose of identification of that individual.

“(9) STATE.—The term ‘State’ means any
State, commonwealth, territory, or possession of the
United States, the District of Columbia, the Com-
monwealth of Puerto Rico, the Commonwealth of the
Northern Mariana Islands, American Samoa, Guam, or the United States Virgin Islands.’’.

(2) Rulemaking.—

(A) In general.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall issue regulations to carry out this Act and the amendments made by this Act, including, to the extent necessary, to clarify the definitions in section 5333(d) of title 31, United States Code.

(B) Revision of final rule.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall revise the final rule titled “Customer Due Diligence Requirements for Financial Institutions” (May 11, 2016; 81 Fed. Reg. 29397) to—

(i) bring the rule into conformance with this Act and the amendments made by this Act;

(ii) account for financial institutions’ access to comprehensive beneficial ownership information filed by corporations and limited liability companies, under threat of civil and criminal penalties, under this Act.
and the amendments made by this Act; and

(iii) reduce any burdens on financial institutions that are, in light of the enactment of this Act and the amendments made by this Act, unnecessary or duplicative.

(3) Conforming amendments.—Title 31, United States Code, is amended—

(A) in section 5321(a)—

(i) in paragraph (1), by striking “sections 5314 and 5315” each place it appears and inserting “sections 5314, 5315, and 5333”; and

(ii) in paragraph (6), by inserting “(except section 5333)” after “subchapter” each place it appears; and

(B) in section 5322, by striking “section 5315 or 5324” each place it appears and inserting “section 5315, 5324, or 5333”.

(4) Table of contents.—The table of contents of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5332 the following:

“Sec. 5333. Transparent incorporation practices.”.

(b) Funding Authorization.—
(1) IN GENERAL.—To carry out section 5333 of title 31, United States Code, as added by subsection (a), funds shall be made available to the Financial Crimes Enforcement Network (in this subsection referred to as “FinCEN”) to pay reasonable costs relating to compliance with the requirements of such section.

(2) FUNDING SOURCES.—Funds shall be provided to FinCEN to carry out the purposes described in paragraph (1) from one or more of the following sources:

(A) Upon application by FinCEN, and without further appropriation, the Secretary of the Treasury shall make available to the FinCEN unobligated balances described in section 9705(g)(4)(B) of title 31, United States Code, in the Department of the Treasury Forfeiture Fund established under section 9705(a) of title 31, United States Code.

(B) Upon application by FinCEN, after consultation with the Secretary of the Treasury, and without further appropriation, the Attorney General of the United States shall make available to FinCEN excess unobligated balances (as defined in section 524(e)(8)(D) of title 28,
United States Code) in the Department of Justice Assets Forfeiture Fund established under section 524(c) of title 28, United States Code.

(3) MAXIMUM AMOUNTS.—

(A) DEPARTMENT OF THE TREASURY.—

The Secretary of the Treasury may not make available to FinCEN a total of more than $30,000,000 under paragraph (2)(A).

(B) DEPARTMENT OF JUSTICE.—The Attorney General of the United States may not make available to FinCEN a total of more than $10,000,000 under paragraph (2)(B).

(c) FEDERAL CONTRACTORS.—Not later than the first day of the first full fiscal year beginning at least 1 year after the date of enactment of this Act, the Administrator for Federal Procurement Policy shall revise the Federal Acquisition Regulation maintained under section 1303(a)(1) of title 41, United States Code, to require any contractor or subcontractor who is subject to the requirement to disclose beneficial ownership information under section 5333 of title 31, United States Code, as added by subsection (a), to provide the information required to be disclosed under such section to the Federal Government as part of any bid or proposal for a contract with a value
threshold in excess of the simplified acquisition threshold under section 134 of title 41, United States Code.

SEC. 3. STUDIES AND REPORTS.

(a) Updating of Beneficial Ownership Information.—

(1) Study.—The Secretary of the Treasury, in consultation with the Attorney General of the United States, shall conduct a study to evaluate—

(A) the necessity of a requirement for corporations and limited liability companies to update the list of their beneficial owners within a specified amount of time after the date of any change in the list of beneficial owners or the information required to be provided relating to each beneficial owner, taking into account the annual filings required under section 5333(a)(1)(B)(i) of title 31, United States Code, as added by section 2(a), and the information contained in such annual filings; and

(B) the burden that a requirement to update the list of beneficial owners within a specified period of time after a change in such list of beneficial owners would impose on corporations and limited liability companies.
(2) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall submit a report on the study required under paragraph (1) to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

(3) PUBLIC COMMENT.—The Secretary of the Treasury shall seek and consider public input, comments, and data in order to conduct the study required under paragraph (1).

(b) OTHER LEGAL ENTITIES.—Not later than 2 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to Congress a report—

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

(2) identifying each State or Indian Tribe that requires persons seeking to form or register partnerships, trusts, or other legal entities under the laws of the State or Indian Tribe to provide information about the beneficial owners (as that term is defined...
in section 5333(d)(1) of title 31, United States Code, as added by section 2(a)) or beneficiaries of such entities, and the nature of the required information;

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

(A) raises concerns about the involvement of such entities in terrorism, money laundering, tax evasion, securities fraud, or other misconduct; and

(B) has impeded investigations into entities suspected of such misconduct; and

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

(c) Effectiveness of Incorporation Practices.—Not later than 5 years after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study and submit to Congress a report assessing the effectiveness of incorporation prac-
ties implemented under this Act and the amendments
made by this Act in—

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

(2) strengthening the capability of law enforce-
ment agencies to combat incorporation abuses, civil
and criminal misconduct, and detect, prevent, or
punish terrorism, money laundering, tax evasion, or
other misconduct.

(d) DEFINITIONS.—In this section, the terms “bene-
ficial owner”, “corporation”, and “limited liability com-
pany” have the meanings given those terms under section
5333(d) of title 31, United States Code, as added by sec-
tion 2(a).