

July 16, 2012

The Honorable Joseph Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

The Honorable Susan Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Lieberman and Ranking Member Collins:

The undersigned organizations represent millions of businesses and investors, small and large, from all sectors of the economy employing tens of millions of Americans. We share the commitment to fight money laundering; however, we write to you today to oppose S.1483, the “Incorporation Transparency and Law Enforcement Assistance Act (ITLEAA),” because this bill will not achieve its intended goal of fighting terrorism. Rather, the bill would place onerous complex regulatory burdens upon legitimate American businesses—especially small companies and start-ups. In fact, ITLEAA is at odds with the recent passage of the bipartisan JOBS Act designed to remove regulatory burdens that hamper economic growth and job creation. Most importantly, ITLEAA is unnecessary since the information needed to combat money laundering is already collected by the IRS and obtainable by law enforcement.

ITLEAA would also create new regulatory burdens on the 28 million existing businesses in the United States and the two million start-ups that are created each year without achieving its intended purpose.

ITLEAA proponents claim that the bill only requires new businesses to disclose the name of the one person who controls a business. This is not true. As introduced, the bill would actually require entrepreneurs starting a business to identify and disclose at the outset—and update on an ongoing basis—the name, address, and driver’s license or passport number of every “natural person” who is a “beneficial owner” of the business. A “beneficial owner” is defined as any individual who “directly or indirectly” “has a substantial interest in or receives substantial economic benefits from” or exercises “substantial control” over a business. ITLEAA would use this broad and vague definition of “beneficial owner” to ensnare individuals who have a direct or indirect economic interest in a company through related or affiliated entities, including but not limited to trusts, corporations, partnerships, venture capital firms, lenders, creditors, contractors and lien holders. This labyrinth of direct and indirect “beneficial owners” would have to be continuously updated and disclosed as a company’s financing structure and other basic relationships change and evolve.

Ascertaining the names of all such individuals would require considerable effort, exponentially increasing the cost of forming and operating a business. ITLEAA would also make State paperwork violations a new Federal crime punishable by a prison term and/or a fine. A small business owner who mistakenly failed to file or update their beneficial ownership

information within the required 60 days could become a federal felon. Likewise, a company's formation agent could be prosecuted federally if they received incomplete beneficial ownership information on a corporation they helped to establish—even if no violation of state law has occurred.

ITLEA would force states to collect information from *all* existing business entities “formed under the laws of [a] State before [the] effective date” of the legislation. Even long-established businesses considered exempt from the bill's disclosure requirements would need an officer or director to file an attestation explaining which of the bill's exemptions apply to it and why. Most businesses do not fall within these exemptions and would be subject to the ongoing beneficial owner disclosure obligations.

ITLEAA also fails to provide any privacy protections against the public disclosure of the personal information it requires states to collect since over two-thirds of U.S. states have “right to know” laws requiring business filings to be made public. The lack of privacy protections could also jeopardize early stage investments in many start-up businesses. Venture capital firms and other early investors in innovative start-up enterprises realize value by performing careful analysis and identifying promising ideas and business models before they are widely recognized. They often seek to keep their investments confidential so that others cannot “free-ride” off of the hard work they have invested to identify and nurture promising new companies. Passage of ITLEAA will endanger this important vehicle of capital formation for start-up companies, making the United States a far less attractive place for these investors to risk their capital on new companies and their ideas.

ITLEAA is unnecessary given changes made to other data collections since the bill was first introduced in 2008. For example, since January 1, 2010, the IRS Form SS-4, which the government receives from every business that obtains an Employer Identification Number, must include the name of a “responsible party.” The IRS generally defines a “responsible party” as a single individual “who has a level of control over, or entitlement to, the funds or assets that, as a practical matter, enables the individual, directly or indirectly, to control, manage, or direct the entity and the disposition of its funds and assets.” It is the person who has control of an entity. Under 26 U.S.C. §§6103(i)(1), 6103(i)(2), and 6103(i)(7), in terrorism and other criminal investigations federal law enforcement is already empowered to get and use “all tax information relating to a taxpayer which is contained within the files of the IRS”.¹ Therefore information already exists that can be accessed by law enforcement without having to create a new regulatory burden on businesses and the network of venture capitalists, lenders, creditors, and others who help entrepreneurs start a company.

The American business community stands ready to work with Congress to advance effective solutions, such as facilitating the use of existing information already available to law enforcement through the IRS, to stop money laundering that threatens national security. We cannot, however, support S. 1483 as proposed because it not only fails to achieve its intended purpose, but it also would place new, unnecessary regulatory burdens on American businesses that would have harmful consequences for job creation and economic growth.

¹ United States Attorney's Manual Criminal Resource Manual 502

Sincerely,

The American Institute of Certified Public Accountants
Association for Corporate Growth
CCIM Institute
Financial Services Institute
Institute of Real Estate Management
National Association of Manufacturers
National Association of Home Builders
National Federation of Independent Business
National Association of Realtors
National Venture Capital Association
National Association of Wholesaler-Distributors
Real Estate Roundtable
Realtors Land Institute
Society of Industrial and Office Realtor
The Latino Coalition
The Real Estate Board of New York
U.S. Chamber of Commerce