

111TH CONGRESS
2^D SESSION

H. R. 6098

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

IN THE HOUSE OF REPRESENTATIVES

AUGUST 10, 2010

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

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,*

1 **SECTION 1. SHORT TITLE.**

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

4 **SEC. 2. FINDINGS.**

5 Congress finds the following:

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

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

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

19 (4) Criminals have exploited the weaknesses in
20 State formation procedures to conceal their identi-
21 ties when forming corporations or limited liability
22 companies in the United States, and have then used
23 the newly created entities to commit crimes affecting
24 interstate and international commerce such as ter-
25 rorism, drug trafficking, money laundering, tax eva-

1 sion, securities fraud, financial fraud, and acts of
2 foreign corruption.

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

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

22 (7) In response to the FATF report, the United
23 States has repeatedly urged the States to strengthen
24 their incorporation practices by obtaining beneficial
25 ownership information for the corporations and lim-

1 ited liability companies formed under the laws of
2 such States.

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

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

20 (10) In contrast to practices in the United
21 States, all 27 countries in the European Union are
22 required to have formation agents identify the bene-
23 ficial owners of the corporations formed under the
24 laws of the country.

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

16 **SEC. 3. TRANSPARENT INCORPORATION PRACTICES.**

17 (a) TRANSPARENT INCORPORATION PRACTICES.—

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

21 **“§ 5333. Transparent incorporation practices**

22 “(a) REPORTING REQUIREMENTS.—

23 “(1) IN GENERAL.—Not later than October 1,
24 2012, the Secretary of the Treasury shall issue regu-
25 lations requiring each corporation and limited liabil-

1 ity company formed in a State that does not have
2 an incorporation system described under subsection
3 (b) to file with the Secretary such information as the
4 corporation or limited liability company would be re-
5 quired to provide the State if such State had an in-
6 corporation system described under subsection (b).

7 “(2) DISCLOSURE OF BENEFICIAL OWNERSHIP
8 INFORMATION.—Beneficial ownership information
9 reported to the Secretary of the Treasury pursuant
10 to paragraph (1) shall be provided by the Secretary
11 of the Treasury upon receipt of—

12 “(A) a civil or criminal subpoena or sum-
13 mons from a State agency, Federal agency, or
14 congressional committee or subcommittee re-
15 questing such information; or

16 “(B) a written request made by a Federal
17 agency on behalf of another country under an
18 international treaty, agreement, or convention,
19 or section 1782 of title 28, United States Code.

20 “(b) INCORPORATION SYSTEM.—With respect to a
21 State, an incorporation system is described under this sub-
22 section if it meets the following requirements:

23 “(1) Each applicant to form a corporation or
24 limited liability company under the laws of the State
25 is required to provide to the State during the forma-

1 tion process a list of the beneficial owners of the cor-
2 poration or limited liability company that—

3 “(A) except as provided in paragraph (6),
4 identifies each beneficial owner by—

5 “(i) name;

6 “(ii) current address; and

7 “(iii) non-expired passport issued by
8 the United States or a non-expired drivers
9 license issued by a State; and

10 “(B) if any beneficial owner exercises con-
11 trol over the corporation or limited liability
12 company through another legal entity, such as
13 a corporation, partnership, or trust, identifies
14 each such legal entity and each such beneficial
15 owner who will use that entity to exercise con-
16 trol over the corporation or limited liability
17 company.

18 “(2) Each corporation or limited liability com-
19 pany formed under the laws of the State is required
20 by the State to update the list of the beneficial own-
21 ers of the corporation or limited liability company by
22 providing the information described in paragraph (1)
23 to the State not later than 60 days after the date
24 of any change in the list of beneficial owners or the

1 information required to be provided relating to each
2 beneficial owner.

3 “(3) Beneficial ownership information relating
4 to each corporation or limited liability company
5 formed under the laws of the State is required to be
6 maintained by the State until the end of the 5-year
7 period beginning on the date that the corporation or
8 limited liability company terminates under the laws
9 of the State.

10 “(4) Beneficial ownership information relating
11 to each corporation or limited liability company
12 formed under the laws of the State shall be provided
13 by the State upon receipt of—

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

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

22 “(5) A corporation or limited liability company
23 formed under the laws of the State may not issue
24 a certificate in bearer form evidencing either a whole

1 or fractional interest in the corporation or limited li-
2 ability company.

3 “(6) If any beneficial owner of a corporation or
4 limited liability company formed under the laws of
5 the State is not a United States citizen or a lawful
6 permanent resident of the United States, each appli-
7 cation described in paragraph (1) and each update
8 described in paragraph (2) shall include a written
9 certification by a formation agent residing in the
10 State that the formation agent—

11 “(A) has verified the name, address, and
12 identity of each beneficial owner that is not a
13 United States citizen or a lawful permanent
14 resident of the United States;

15 “(B) has obtained for each beneficial
16 owner that is not a United States citizen or a
17 lawful permanent resident of the United States
18 a legible and credible copy of the pages of a
19 government-issued passport bearing a photo-
20 graph and unique identifying information for
21 the beneficial owner;

22 “(C) will provide proof of the verification
23 described in subparagraph (A) and the photo-
24 graph described in subparagraph (B) upon re-
25 quest; and

1 “(D) will retain information and docu-
2 ments relating to the verification described in
3 subparagraph (A) and the photograph described
4 in subparagraph (B) until the end of the 5-year
5 period beginning on the date that the corpora-
6 tion or limited liability company terminates,
7 under the laws of the State.

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 from a law enforcement agency under
3 State law in accordance with this section
4 without written authorization from the law
5 enforcement agency; or

6 “(B) any licensed formation agent to affect
7 interstate or foreign commerce by willfully fail-
8 ing to obtain or maintain credible and legible
9 beneficial ownership information, including any
10 required identifying photograph, under State
11 law in accordance with this section, or willfully
12 failing to provide beneficial ownership informa-
13 tion in response to a subpoena, summons, or
14 other request from a law enforcement agency in
15 accordance with this section.

16 “(2) CIVIL AND CRIMINAL PENALTIES.—In ad-
17 dition to any civil or criminal penalty that may be
18 imposed by a State, any person who violates para-
19 graph (1) shall be liable to the United States for a
20 civil penalty of not more than \$10,000.

21 “(d) FUNDING AUTHORIZATION.—To carry out this
22 section, during the 3-year period beginning on the date
23 of enactment of this section, upon application by a State,
24 the Secretary shall make available to such State a reason-
25 able amount of funding from the Department of the

1 Treasury Forfeiture Fund established under section
2 9703(a) of title 31, United States Code.

3 “(e) COMPLIANCE REPORT.—Nothing in this section
4 authorizes the Secretary to withhold from a State any
5 funding otherwise available to the State because of a fail-
6 ure by that State to comply with this section. Not later
7 than June 1, 2014, the Comptroller General of the United
8 States shall submit to the Committee on Financial Serv-
9 ices of the House of Representatives and the Committee
10 on Homeland Security and Governmental Affairs of the
11 Senate a report—

12 “(1) identifying which States obtain beneficial
13 ownership information as described in this section;

14 “(2) with respect to each State that does not
15 obtain such information, whether corporations and
16 limited liability companies formed under the laws of
17 such State are in compliance with this section and
18 providing the specified beneficial ownership informa-
19 tion to the Secretary; and

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

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

25 “(1) BENEFICIAL OWNER.—

1 “(A) IN GENERAL.—Except as provided in
2 subparagraph (B), the term ‘beneficial owner’
3 means a natural person who, directly or indi-
4 rectly—

5 “(i) exercises substantial control over
6 a corporation or limited liability company;
7 or

8 “(ii) has a substantial interest in or
9 receives substantial economic benefits from
10 the assets of the corporation or limited li-
11 ability company described in clause (i).

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

14 “(i) a minor child;

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

18 “(iii) a person acting solely as an em-
19 ployee of a corporation or limited liability
20 company, and whose control over or eco-
21 nomic benefits from the corporation or lim-
22 ited liability company derive solely from
23 the employment status of the individual;

24 “(iv) a person whose only interest in
25 the corporation or limited liability company

1 is through a right of inheritance, unless
2 the individual also meets the requirements
3 of subparagraph (A); or

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

8 “(C) LIMITATION.—A beneficial owner
9 meeting the requirements for an entity under
10 paragraph (2)(B) may provide the name of the
11 entity instead of the name of a natural person.

12 “(2) CORPORATION; LIMITED LIABILITY COM-
13 PANY.—The terms ‘corporation’ and ‘limited liability
14 company’—

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

17 “(B) do not include any entity that is, and
18 discloses in the application by the entity to
19 form under the laws of the State or, if the enti-
20 ty was formed before the date of the enactment
21 of this section, in a filing with the State under
22 State law—

23 “(i) a business concern that is an
24 issuer of a class of securities registered
25 under section 12 of the Securities Ex-

1 change Act of 1934 (15 U.S.C. 781) or
2 that is required to file reports under sec-
3 tion 15(d) of that Act (15 U.S.C. 78o(d));

4 “(ii) a business concern formed by a
5 State, a political subdivision of a State,
6 under an interstate compact between 2 or
7 more States, by a department or agency of
8 the United States, or under the laws of the
9 United States;

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

13 “(iv) a credit union (as defined in sec-
14 tion 101 of the Federal Credit Union Act
15 (12 U.S.C. 1752));

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

19 “(vi) a broker or dealer (as defined in
20 section 3 of the Securities Exchange Act of
21 1934 (15 U.S.C. 78c)) that is registered
22 under section 15 of the Securities and Ex-
23 change Act of 1934 (15 U.S.C. 78o);

24 “(vii) an exchange or clearing agency
25 (as defined in section 3 of the Securities

1 Exchange Act of 1934 (15 U.S.C. 78c))
2 that is registered under section 6 or 17A
3 of the Securities Exchange Act of 1934
4 (15 U.S.C. 78f and 78q-1);

5 “(viii) an investment company (as de-
6 fined in section 3 of the Investment Com-
7 pany Act of 1940 (15 U.S.C. 80a-3)) or
8 an investment advisor (as defined in sec-
9 tion 202(11) of the Investment Advisors
10 Act of 1940 (15 U.S.C. 80b-2(11)), if the
11 company or adviser is registered with the
12 Securities and Exchange Commission, or
13 has filed an application for registration
14 which has not been denied, under the In-
15 vestment Company Act of 1940 (15 U.S.C.
16 80a-1 et seq.) or the Investment Advisor
17 Act of 1940 (15 U.S.C. 80b-1 et seq.);

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

21 “(x) a registered entity (as defined in
22 section 1a of the Commodity Exchange Act
23 (7 U.S.C. 1a)), or a futures commission
24 merchant, introducing broker, commodity
25 pool operator, or commodity trading advi-

1 sor (as defined in section 1a of the Com-
2 modity Exchange Act (7 U.S.C. 1a)) that
3 is registered with the Commodity Futures
4 Trading Commission;

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

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

12 “(xiii) a charity or nonprofit entity
13 that is described in section 501(c), 527, or
14 4947(a)(1) of the Internal Revenue Code
15 of 1986, has not been denied tax exempt
16 status, and has filed the most recently due
17 annual information return with the Inter-
18 nal Revenue Service, if required to file
19 such a return;

20 “(xiv) any business concern that—

21 “(I) employs more than 20 em-
22 ployees on a full time basis in the
23 United States;

24 “(II) files income tax returns in
25 the United States demonstrating more

1 than \$10,000,000 in gross receipts or
2 sales; and

3 “(III) has an operating presence
4 at a physical office within the United
5 States; or

6 “(xv) any corporation or limited liabil-
7 ity company formed and owned by an enti-
8 ty described in clause (i), (ii), (iii), (iv),
9 (v), (vi), (vii), (viii), (ix), (x), (xi), (xii),
10 (xiii), or (xiv); and

11 “(C) do not include any individual business
12 concern or class of business concerns which the
13 Secretary of the Treasury, with the written con-
14 currence of the Attorney General of the United
15 States, has determined in writing should be ex-
16 empt from the requirements of subsection (a),
17 because requiring beneficial ownership informa-
18 tion from the business concern would not serve
19 the public interest and would not assist law en-
20 forcement efforts to detect, prevent, or punish
21 terrorism, money laundering, tax evasion, or
22 other misconduct.

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

1 tion of a corporation or limited liability company
2 under the laws of a State.”.

3 (2) RULEMAKING.—To carry out this Act and
4 the amendments made by this Act, the Secretary of
5 the Treasury, in consultation with the Secretary of
6 Homeland Security and the Attorney General of the
7 United States, may issue guidance or a rule to clar-
8 ify application of the definitions added by this Act,
9 or to specify how to verify beneficial ownership infor-
10 mation.

11 (3) CONFORMING AMENDMENTS.—Title 31,
12 United States Code, is amended—

13 (A) in section 5321(a)—

14 (i) in paragraph (1), by striking “sec-
15 tions 5314 and 5315” each place it ap-
16 pears and inserting “sections 5314, 5315,
17 and 5333”; and

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

21 (B) in section 5322, by striking “section
22 5315 or 5324” each place it appears and insert-
23 ing “section 5315, 5324, or 5333”.

24 (4) TABLE OF CONTENTS.—The table of con-
25 tents of Chapter 53 of title 31, United States Code,

1 is amended by inserting after the item relating to
2 section 5332 the following:

“Sec. 5333. Transparent incorporation practices.”.

3 (5) RESTRICTIONS ON PUBLIC ACCESS.—A
4 State may—

5 (A) restrict public access to all or any por-
6 tion of the beneficial ownership information
7 provided to the State as described under section
8 5332 of title 31, United States Code, as added
9 by this Act; and

10 (B) by statute, regulation, order, or inter-
11 pretation adopted or issued by the State after
12 the date of enactment of this Act, provide for
13 public access to all or any portion of such infor-
14 mation.

15 (6) NO DUTY OF VERIFICATION.—This Act and
16 the amendments made by this Act do not impose
17 any obligation on a State to verify the name, ad-
18 dress, or identity of a beneficial owner whose infor-
19 mation is submitted to such State under section
20 5332 of title 31, United States Code, as added by
21 this Act.

22 (b) ANTI-MONEY LAUNDERING OBLIGATIONS OF
23 FORMATION AGENTS.—

24 (1) IN GENERAL.—Section 5312(a)(2) of title
25 31, United States Code, is amended—

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

3 (B) by redesignating subparagraph (Z) as
4 subparagraph (AA); and

5 (C) by inserting after subparagraph (Y)
6 the following:

7 “(Z) any person involved in forming a cor-
8 poration or limited liability company; or”.

9 (2) DEADLINE FOR ANTI-MONEY LAUNDERING
10 RULE FOR FORMATION AGENTS.—

11 (A) PROPOSED RULE.—Not later than 90
12 days after the date of enactment of this Act,
13 the Secretary of the Treasury, in consultation
14 with the Attorney General of the United States
15 and the Commissioner of the Internal Revenue
16 Service, shall publish a proposed rule in the
17 Federal Register requiring persons described in
18 section 5312(a)(2)(Z) of title 31, United States
19 Code, as amended by this subsection, to estab-
20 lish anti-money laundering programs under sub-
21 section (h) of section 5318 of that title.

22 (B) FINAL RULE.—Not later than 270
23 days after the date of enactment of this Act,
24 the Secretary of the Treasury shall publish the

1 rule described in this subsection in final form in
2 the Federal Register.

3 (C) EXCLUSIONS.—Any rule promulgated
4 under this subsection shall exclude from the
5 category of persons involved in forming a cor-
6 poration or limited liability company—

7 (i) any government agency; and

8 (ii) any attorney or law firm that uses
9 a paid formation agent operating within
10 the United States to form the corporation
11 or limited liability company.

12 **SEC. 4. STUDY AND REPORT BY GOVERNMENT ACCOUNT-**
13 **ABILITY OFFICE.**

14 Not later than 1 year after the date of enactment
15 of this Act, the Comptroller General of the United States
16 shall conduct a study and submit to the Congress a re-
17 port—

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

22 (2) identifying each State that requires persons
23 seeking to form or register partnerships, trusts, or
24 other legal entities under the laws of the State to
25 provide information about the beneficial owners (as

1 that term is defined in section 5333(d)(1) of title
2 31, United States Code, as added by this Act) or
3 beneficiaries of such entities, and the nature of the
4 required information;

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

8 (A) raises concerns about the involvement
9 of such entities in terrorism, money laundering,
10 tax evasion, securities fraud, or other mis-
11 conduct; and

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

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

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