H. R. __________

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 HOUSE OF REPRESENTATIVES

MRS. CAROLYN B. MALONEY of New York introduced the following bill; which was referred to the Committee on ______________________

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. FINDINGS.

Congress finds the following:

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

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

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

    (4) Criminals have exploited the weaknesses in
    State formation procedures to conceal their identi-
    ties when forming corporations or limited liability
    companies in the United States, and have then used
    the newly created entities to commit crimes affecting
interstate and international commerce such as terrorism, drug trafficking, money laundering, tax evasion, securities fraud, financial fraud, and acts of foreign corruption.

(5) Law enforcement efforts to investigate corporations and limited liability companies suspected of committing crimes have been impeded by the lack of available beneficial ownership information, as documented in reports and testimony by officials from the Department of Justice, the Department of Homeland Security, the Financial Crimes Enforcement Network of the Department of the Treasury, the Internal Revenue Service, and the Government Accountability Office, and others.

(6) In July 2006, a leading international antimony laundering organization, the Financial Action Task Force on Money Laundering (in this section referred to as the “FATF”), of which the United States is a member, issued a report that criticizes the United States for failing to comply with a FATF standard on the need to collect beneficial ownership information and urged the United States to correct this deficiency by July 2008. In December 2016, FATF issued another evaluation of the United States, which found that little progress
has been made over the last ten years to address this problem. It identified the “lack of timely access to adequate, accurate and current beneficial ownership information” as a fundamental gap in United States efforts to combat money laundering and terrorist finance.

(7) In response to the 2006 FATF report, the United States has repeatedly urged the States to strengthen their incorporation practices by obtaining beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.

(8) Many States have established automated procedures that allow a person to form a new corporation or limited liability company within the State within 24 hours of filing an online application, without any prior review of the application by a State official. In exchange for a substantial fee, 2 States will form a corporation within 1 hour of a request.

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

(10) In contrast to practices in the United States, all 28 countries in the European Union are required to have formation agents identify the beneficial owners of the corporations formed under the laws of the country.

(11) To reduce the vulnerability of the United States to wrongdoing by United States corporations and limited liability companies with hidden owners, to protect interstate and international commerce from criminals misusing United States corporations and limited liability companies, to strengthen law enforcement investigations of suspect corporations and limited liability companies, to set minimum standards for and level the playing field among State incorporation practices, and to bring the United States into compliance with its international anti-money laundering standards, Federal legislation is needed to require the collection of beneficial ownership information for the corporations and limited liability companies formed under the laws of such States.
SEC. 3. 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 following 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 shall file a report with FinCEN containing a list of the beneficial owners of the corporation or limited liability company that—

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

“(I) full legal name;

“(II) current residential or business street address; and

“(III) 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 benefi-
cial owner, provides the identification in-
formation described in clause (i) relating
to such applicant.
“(B) UPDATED INFORMATION.—Each cor-
poration or limited liability company formed
under the laws of a State shall—
“(i) update the list of the beneficial
owners of the corporation or limited lia-
ibility company by providing the information
described in subparagraph (A) to FinCEN
not later than 60 days after the date of
any change in the list of beneficial owners
or the information required to be provided
relating to each beneficial owner; and
“(ii) submit to FinCEN an annual fil-
ing containing the list of the beneficial
owners of the corporation or limited lia-
ibility company and the information described
in subparagraph (A) for each such bene-
cicial owner.
“(2) CERTAIN BENEFICIAL OWNERS.—If an ap-
plicant to form a corporation or limited liability com-
pany or a beneficial owner, officer, director, or simi-
lar agent of a corporation or limited liability com-
pany who is required to provide identification infor-
mation 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 applicant
shall provide to FinCEN the full legal name, current
residential or business street address, a unique iden-
tifying 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 in-
formation for each beneficial owner, and each appli-
cation described in paragraph (1)(A) and each up-
date described in paragraph (1)(B) shall include a
certification by an applicant residing in the State
that the applicant—

“(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 pho-
toograph, 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 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.—With respect to an applicant to form a corporation or limited liability company under the laws of a State, 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 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 re-
quirements 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 informa-
tion for the applicant or prospective offi-
cer, director, or similar agent making the
certification in the same manner as pro-
vided under paragraph (1) or (2).

“(B) EXISTING CORPORATIONS OR LIM-
ited LIABILITY COMPANIES.—On and after the
date that is 2 years after the final regulations
are issued to carry out this section, a corpora-
tion or limited liability company formed under
the laws of the State 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 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)(2); 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 subparagraph (C) or (D) of subsection (d)(2) 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, the applicant, corporation, or limited liability company in which the entity has or will have the ownership interest shall provide the information 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 sub-
substantial control over, or receives substantial eco-
monic 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 shall be maintained
by FinCEN until the end of the 5-year period 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 pro-
vided by FinCEN upon receipt of—

“(i) a request, through appropriate
protocols, by a local, Tribal, State, or Fed-
eral 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 or State law.

“(b) No Bearer Share Corporations or Limited Liability Companies.—A corporation or limited liability company formed under the laws of a State 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; or

“(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, United States Code, imprisoned for not more than 3 years, or both.

“(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.

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

“(A) section 21 of the Federal Deposit Insurance Act;
“(B) chapter 2 of title I of Public Law 91–508; 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 indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

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

or

“(ii) has a substantial interest in or 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 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; or

“(v) a creditor of a corporation or limited liability company, unless the creditor also meets the requirements of subparagraph (A).

“(C) SUBSTANTIAL ECONOMIC BENEFITS DEFINED.—For purposes of subparagraph (A)(ii), a natural person receives substantial economic benefits from the assets of a corporation or limited liability company if the person has an entitlement to the funds or assets of the corporation or limited liability company that, as a practical matter, enables the person, directly or indirectly, to control, manage, or direct the 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;

“(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;

“(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 or sponsored by a State, a political subdivision of a State, 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));


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

“(viii) an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) or an investment adviser (as defined in section 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 Investment Company Act of 1940 (15 U.S.C.
80a–1 et seq.) or the Investment Adviser Act of 1940 (15 U.S.C. 80b–1 et seq.);

“(ix) an insurance company (as defined in section 2 of the Investment Company 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);

“(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-

eue Service, if required to file such a re-

turn;

“(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, with the
written concurrence of the Attorney General of
the United States, has determined in writing
should be exempt from the requirements of sub-
section (a), because requiring beneficial owner-
ship information from the business concern
would not serve the public interest and would
not assist law enforcement efforts to detect,
prevent, or punish 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) Personal identification card.—The
term ‘personal identification card’ means an identi-
fication document issued by a State, local govern-
ment, or federally recognized Indian Tribe to an in-
dividual solely for the purpose of identification of
that individual.

“(7) 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.—Not later than the begin-
ing of fiscal year 2021, the Secretary of the Treas-
ury shall issue regulations to carry out this Act and
the amendments made by this Act.

(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 ap-
pears and inserting "sections 5314, 5315, and 5333"; and

(ii) in paragraph (6), by inserting
"(except section 5333)" after "sub-
chapter" 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 con-
tents 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), during the 3-year period beginning on the date
of enactment of this Act, 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 9703(g)(4)(B) of title 31, United States Code, in the Department of the Treasury Forfeiture Fund established under section 9703(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(c)(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).

(e) FEDERAL CONTRACTORS.—Not later than the first day of the first full fiscal year beginning at least 1 year after the date of the 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, 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. 4. STUDIES AND REPORTS.

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

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

(2) identifying each State that requires persons seeking to form or register partnerships, trusts, or other legal entities under the laws of the State 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 this Act) 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.

(b) Effectiveness of Incorporation Practices.—Not later than 5 years after the date of enact-
ment of this Act, the Comptroller General of the United
States shall conduct a study and submit to the Congress
a report assessing the effectiveness of incorporation prac-
tices 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.