Statement of Senator Carl Levin (D-Mich)

On Introduction of the

Incorporation Transparency and Law Enforcement Assistance Act

August1, 2013

Today, along with my colleagues, Senator Grassley, Senator Feinstein, and Senator Harkin, I am re-introducing the Incorporation Transparency and Law Enforcement Assistance Act, a bill designed to combat terrorism, money laundering, tax evasion, and other wrongdoing facilitated by U.S. corporations with hidden owners. This common sense bill would end the practice of our States forming about 2 million new corporations each year for unidentified persons, and instead require a list of the real owners to be submitted so that, if misconduct later occurred, law enforcement would have a trail to chase, instead of confronting what has all too often been a dead end.

Our bill is supported by key law enforcement organizations, including the Federal Law Enforcement Officers Association, the Fraternal Order of Police, the National Association of Assistant United States Attorneys, and the Society of Former Special Agents of the Federal Bureau of Investigation, as well as by Manhattan District Attorney Cyrus Vance. It is also endorsed by a number of small business, public interest, and good government groups, including the Main Street Alliance, American Sustainable Business Council, National Money Transmitters Association, AFL-CIO, SEIU, Global Financial Integrity, Global Witness, U.S. Public Interest Research Group, Transparency International, Public Citizen, Project on Government Oversight, Jubilee USA Network, Tax Justice Network USA, Human Rights Watch, Friends of the Earth, Open Society Policy Center, Revenue Watch Institute, the FACT Coalition, and more.

This is the fourth Congress in which this bill has been introduced to provide a solution to a problem that has gained only more urgency with time. In 2008, when the bill was first introduced, President Obama was a member of the U.S. Senate and an original cosponsor. In 2013, President Obama stood with other international leaders at a G8 summit in June to condemn corporations with hidden owners who commit crimes, tax evasion, and other wrongdoing. The G8 leaders made a joint commitment to combat that problem. President Obama immediately responded with a U.S. action plan that, among other measures, calls for enacting legislation to end the shameful practice in this country of forming U.S. corporations with unnamed owners and unleashing them on, not only our own communities, but the international community as well.

A World Bank study found that the United States forms more corporations per year than all the rest of the countries in the world put together. Under current law, those U.S. corporations can be established anonymously, by hidden owners who don't reveal their identity. According to another recent study by Griffith University examining multiple jurisdictions, it is easier to obtain an anonymous shell company in the United States than almost anywhere else in the world. That

study also found that "only a tiny portion of U.S. providers of any kind met the international standard of requiring notarized identity documents."

Right now, in the United States, it takes more information to get a driver's license or to open a U.S. bank account than to form a U.S. corporation. Our bill would change that by requiring any State that accepts crime-fighting grants from the Department of Justice to add one new question to their existing incorporation forms asking applicants to identify the company's true owners.

That's it. One new question on an existing form. It's not a complicated question, yet the answer could play a key role in helping law enforcement do their jobs. Our bill would not require States to verify the information, but penalties would apply to persons who submit false information. States, or licensed formation agents if a State has delegated the task to them, would supply the ownership information to law enforcement upon receipt of a subpoena or summons.

The Problem. We've all seen the news reports about U.S. corporations involved in wrongdoing – from facilitating terrorism to money laundering, financial fraud, tax evasion, corruption, and more. Let me give you a few examples that indicate the scope of the problem.

We now know that some terrorists use U.S. corporations to carry out their activities. Viktor Bout, an arms dealer who was found guilty in November 2011 of conspiring to kill U.S. nationals and selling weapons to a terrorist organization, used corporations around the world in his work, including a dozen formed in Texas, Delaware, and Florida. At the time of Mr. Bout's extradition to face justice here in America, Attorney General Eric Holder stated: "Long considered one of the world's most prolific arms traffickers, Mr. Bout will now appear in federal court in Manhattan to answer to charges of conspiring to sell millions of dollars worth of weapons to a terrorist organization for use in trying to kill Americans." It is unacceptable that Mr. Bout was able to set up corporations in three of our States and use them in illicit activities without ever being asked for the names of the corporate owners.

In another case, a New York company called the Assa Corporation owned a Manhattan skyscraper and, in 2007, wire transferred about $4.5 million in rental payments to a bank in Iran. U.S. law enforcement tracking the funds had no idea who was behind that corporation, until another government disclosed that it was owned by the Alavi Foundation which had known ties to the Iranian military. In other words, a New York corporation was being used to ship millions of U.S. dollars to Iran, a notorious supporter of terrorism.

U.S. corporations with hidden owners have also been involved in financial crimes. In 2011, a former Russian military officer, Victor Kaganov, pled guilty to operating an illegal money transmitter business from his home in Oregon, and using Oregon shell corporations to wire more than $150 million around the world on behalf of Russian clients. U.S. Attorney Dwight Holton of the District of Oregon used stark language when describing the case: "When shell corporations are illegally manipulated in the shadows to hide the flow of tens of millions of dollars overseas, it threatens the integrity of our financial system."

Another financial fraud case involves Florida attorney Scott Rothstein who, in 2010, pled guilty to fraud and money laundering in connection with a $1.2 billion Ponzi investment scheme, in which he used 85 U.S. limited liability companies to conceal his participation and ownership stake in various business ventures. In still another case earlier this year, the Securities and Exchange Commission (SEC) suspended trading in 61 shell corporations suspected of being misused to defraud investors.

Shell corporations are also notorious for their role in health care fraud. One example involves an individual named Michel Huarte who formed 29 shell companies in several states including Florida, Louisiana, and North Carolina, used them to make fraudulent health care claims, and bilked Medicare out of more than $50 million. In 2010, he was sentenced to 22 years in prison. He is one in a long line of fraudsters who have hidden behind U.S. corporations to defraud Medicare and Medicaid.

Tax evasion is another type of misconduct which all too often involves the use of U.S. corporations with hidden owners. One Subcommittee investigation showed, for example, how Kurt Greaves, a Michigan businessman, worked with Terry Neal, an offshore promoter, to form shell corporations in Nevada, Canada, and offshore secrecy jurisdictions, to hide more than $400,000 in untaxed business income. Both Mr. Greaves and Mr. Neal later pled guilty to federal tax evasion. The Subcommittee also showed how two brothers from Texas, Sam and Charles Wyly, created a network of 58 trusts and shell corporations to dodge the payment of U.S. taxes, including using a set of Nevada corporations to move offshore over $190 million in stock options without paying taxes on that compensation.

Still another area of abuse involves corrupt foreign officials using U.S. corporations to hide and spend their illicit funds. One example involves Teodoro Obiang, who is the son of the President of Equatorial Guinea, holds office in that country, and has purchased luxury homes, cars, and even a personal jet here in the United States. A Subcommittee investigation disclosed that, as part of his actions, Mr. Obiang used U.S. lawyers to form several California shell corporations with names like Beautiful Vision, Unlimited Horizon, and Sweet Pink to open bank accounts in the names of those corporations, move millions of dollars in suspect funds into the United States, and use those funds to support an affluent lifestyle. The Department of Justice has since filed suit to seize his U.S. property, alleging that Mr. Obiang acquired it through corruption and money laundering.

One last example involves 800 U.S. corporations whose hidden owners have stumped U.S. law enforcement trying to investigate their suspect conduct. In October 2004, the Homeland Security Department's division of Immigration and Customs Enforcement or ICE identified a single Utah corporation that had engaged in $150 million in suspicious transactions. ICE found that the corporation had been formed in Utah and was owned by two Panamanian entities which, in turn, were owned by a group of Panamanian holding corporations, all located at the same Panama City office. By 2005, ICE had located 800 U.S. corporations in nearly all 50 states associated with the same shadowy group in Panama, but was unable to obtain the name of a single natural person who owned any one of the corporations. ICE had learned that the 800 corporations were associated with multiple U.S. investigations into tax fraud and other wrongdoing, but no one had been able to find the corporate owners. The trail went cold, and ICE

closed the case. Yet it may be that many of those U.S. corporations are still enaged in wrongdoing.

Need for Legislation. These examples of U.S. corporations with hidden owners facilitating terrorism, financial crime, health care fraud, tax evasion, corruption, and other misconduct provide ample evidence of the need for legislation to find out who is behind the mayhem. That's why law enforcement officials are among the bill's strongest supporters.

The Federal Law Enforcement Officers Association or FLEOA, which represents more than 26,000 federal law enforcement officers, has explained its strong support for the bill as follows:

> "Suspected terrorists, drug trafficking organizations and other criminal enterprises continue to exploit the anonymity afforded to them through the current corporate filing process in a few states. Hiding behind a registered agent, these criminals are able to incorporate without disclosing who the beneficial owners are for their company(s). This enables them to establish corporate flow-through entities, otherwise known as 'shell companies,' to facilitate money laundering and narcoterrorist financing.
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> Even through the due process of proper service of a court order, law enforcement officers are unable to determine who the beneficial owners are of these entities. This has to stop. While we fully recognize and respect the privacy concerns of law abiding citizens, we need to install a baseline of checks and balances to deter the criminal exploitation of our corporate filing process."

The Fraternal Order of Police, which has 330,000 members across the country, offers a similar explanation for its support of the bill:

> "For years corporations have been used as front organizations by criminals conducting illegal activity such as money laundering, fraud, and tax evasion. … This bill is critical to our work because, all too often, investigations are stymied when we encounter a company with hidden ownership. … [T]he sharing of beneficial ownership information with law enforcement will greatly assist our investigations. When we are able to expose the link between shell companies and drug trafficking, corruption, organized crime and terrorist finance, the law enforcement community is better able to keep America safe from these illegal activities and keep the proceeds of these crimes out of the U.S. financial system."

The National Association of Assistant United States Attorneys, which represents more than 1,500 federal prosecutors, has urged Congress to take legislative action to strengthen inadequate state incorporation practices: "Mindful of the ease with which criminals establish 'front organizations' to assist in money laundering, terrorist financing, tax evasion and other misconduct, it is shocking and unacceptable that many state laws permit the creation of corporations without asking for the identity of the corporation's beneficial owners. The legislation will guard against that, and no longer permit criminals to exploit the lack of transparency in the registration of corporations."

Manhattan District Attorney Cyrus Vance Jr. has publicly urged Congress to enact this bill. He wrote: "I have spoken with many colleagues in the law enforcement community, and every one of us supports the bill as a simple and common sense movement to help prevent white collar crime. … Because there is no national standard requiring disclosure of beneficial ownership, criminals can set up U.S. corporations anonymously and use them as fronts for all kinds of illicit activity without having to identify who actually controls and profits from the activity. In a simple stroke, the proposed bill would eliminate this needless barrier to the detection and prosecution of financial crimes."

Some members of the U.S. financial industry with obligations under U.S. anti-money laundering laws to know their customers, including when doing business with a shell corporation, support the legislation because it will help them know who is behind U.S. corporations seeking to open accounts with them. The National Money Transmitters Association (NMTA), for example, which represents state-licensed money transmitters, has written in support of the bill, explaining: "The NMTA urges you to give us the KYC [know-your-customer] tools we need to do our job efficiently and make sure that our nation's standards are brought up to a level equal to that of other advanced countries."

We need legislation not only to stop the abuses being committed by U.S. corporations with hidden owners, but also to meet our international commitments. In 2006, the leading international anti-money laundering body in the world, the Financial Action Task Force on Money Laundering – known as FATF – issued a report criticizing the United States for its failure to comply with a FATF standard requiring countries to obtain beneficial ownership information for the corporations formed under their laws. This standard is one of 40 FATF standards that this country has publicly committed itself to implementing as part of its efforts to promote strong anti-money laundering laws around the world.

FATF gave the United States two years, until 2008, to make progress toward complying with the FATF standard on beneficial ownership information. But that deadline passed five years ago, with no real progress. Enacting the bill we are introducing today would help bring the United States into compliance with the FATF standard by requiring the States to obtain beneficial ownership information for the corporations formed under their laws. It would help ensure that the United States meets its international anti-money laundering commitments.

A Global Priority. Combating the misuse of corporations with hidden owners has increasingly become a global priority. In a letter to President Obama earlier this year, prominent prosecutors and corruption hunters from across the globe urged the United States to collect company beneficial ownership information to fight wrongdoing. According to the letter: "Grand corruption would not be possible without the help of the global financing system – in particular, banks that accept corrupt assets and secrecy rules that allow money launderers to disguise their activity. … We believe that part of the solution is for governments to require existing company registers to collect information on the ultimate owners of companies."

As I mentioned earlier, countries around the world have begun to take action to tackle the problem. Just last month, during the G8 summit in Northern Ireland, leaders announced their

commitment to ending the practice of establishing anonymous shell companies and declared: "Companies should know who really owns them and tax collectors and law enforcers should be able to obtain this information easily." To implement that principle, the G8 leaders pledged to publish national Action Plans outlining the concrete steps each country will take to ensure that law enforcement and tax authorities have ready access to information on who owns and controls the companies formed under their laws.

In announcing the U.S. Action Plan, the White House expressed its commitment to ensuring that law enforcement and tax authorities have access to ownership information for companies formed within U.S. borders. The Plan explicitly calls for enactment of legislation that meets certain principles, all of which are met by the bill introduced today. Those principles are the following:

- "Requirements for covered legal entities to disclose beneficial ownership to states or regulated corporate formation agents at the time of company formation.
- Requirements for verification of the identity of the beneficial owner.
- Options for covering legal entities depending on whether the applicant forms the legal entity directly or uses a regulated company formation agent.
- Requirements for law enforcement authorities, including tax authorities, to be able to access beneficial ownership information upon appropriate request through a central registry at the state level.
- An extension of anti-money laundering obligations to company formation agents, including an obligation to identify and verify beneficial ownership information.
- A mandate that entities provide updated information when changes of beneficial ownership occur within 60 days; and
- The imposition of civil and criminal penalties for knowingly providing false information."

The White House and the international community have made the collection of beneficial ownership information for corporations a global priority this year. It is time for Congress to step up to the plate and take the necessary action.

Product of Years of Work. The bill introduced today is the product of years of work by the Senate Permanent Subcommittee on Investigations, which I chair. Over twelve years ago, in 2000, the Government Accountability Office, at my request, conducted an investigation and released a report entitled, "Suspicious Banking Activities: Possible Money Laundering by U.S. Corporations Formed for Russian Entities." That report revealed that one person was able to set up more than 2,000 Delaware shell corporations and, without disclosing the identity of any of the beneficial owners, open U.S. bank accounts for those corporations, which then collectively moved about $1.4 billion through the accounts. It is one of the earliest government reports to give some sense of the law enforcement problems caused by U.S. corporations with hidden owners. The alarm it sounded years ago is still ringing.

In April 2006, in response to a second Subcommittee request, GAO released a report entitled, "Corporation Formations: Minimal Ownership Information Is Collected and Available," which reviewed the corporate formation laws in all 50 States. GAO disclosed that the vast

majority of the States do not collect any information at all on the beneficial owners of the corporations and limited liability companies, or LLCs, formed under their laws. The report also found that several States had established automated procedures that allow a person to form a new corporation or LLC in the State within 24 hours of filing an online application without any prior review of that application by State personnel. In exchange for a substantial fee, at least two States will form a corporation or LLC within one hour of a request. After examining these State incorporation practices, the GAO report described the problems that the lack of beneficial ownership information caused for a range of law enforcement investigations.

In November 2006, our Subcommittee held a hearing on the problem. At that hearing, representatives of the U.S. Department of Justice, the Internal Revenue Service, and the Department of Treasury's Financial Crimes Enforcement Network or FinCEN testified that the failure of States to collect adequate information on the beneficial owners of the legal entities they form had impeded federal efforts to investigate and prosecute criminal acts such as terrorism, money laundering, securities fraud, and tax evasion. At the hearing, the Justice Department testified: "We had allegations of corrupt foreign officials using these [U.S.] shell accounts to launder money, but were unable - due to lack of identifying information in the corporate records - to fully investigate this area." The IRS testified: "Within our own borders, the laws of some states regarding the formation of legal entities have significant transparency gaps which may even rival the secrecy afforded in the most attractive tax havens." As part of its testimony, FinCEN described identifying 768 incidents of suspicious international wire transfer activity involving U.S. shell corporations.

The next year, in 2007, in a "Dirty Dozen" list of tax scams active that year, the IRS highlighted shell corporations with hidden owners as number four on the list. It wrote:

> "**4. Disguised Corporate Ownership:** Domestic shell corporations and other entities are being formed and operated in certain states for the purpose of disguising the ownership of the business or financial activity. Once formed, these anonymous entities can be, and are being, used to facilitate underreporting of income, non-filing of tax returns, listed transactions, money laundering, financial crimes and possibly terrorist financing. The IRS is working with state authorities to identify these entities and to bring their owners into compliance."

In 2008, we first introduced our bipartisan legislation to stop the formation of U.S. corporations with hidden owners. It was a Levin-Coleman-Obama bill, S. 2956, back then. When asked about the bill in 2008, then DHS Secretary Michael Chertoff wrote: "In countless investigations, where the criminal targets utilize shell corporations, the lack of law enforcement's ability to gain access to true beneficial ownership information slows, confuses or impedes the efforts by investigators to follow criminal proceeds."

In 2009, the Senate Homeland Security and Governmental Affairs Committee held two hearings which examined not only the problem, but also possible solutions, including our revised bill, S. 569. At the first hearing entitled, "Examining State Business Incorporation Practices: A Discussion of the Incorporation Transparency and Law Enforcement Assistance Act," held in June 2009, DHS testified that "shell corporations established in the United States have been

utilized to commit crimes against individuals around the world." The Manhattan District Attorney's office testified: "For those of us in law enforcement, these issues with shell corporations are not some abstract idea. This is what we do and deal with every day. We see these shell corporations being used by criminal organizations, and the record is replete with examples of their use for money laundering, for their use in tax evasion, and for their use in securities fraud."

At the second hearing, "Business Formation and Financial Crime: Finding a Legislative Solution," held in November 2009, the Justice Department again testified about criminals using U.S. shell corporations. It noted that "each of these examples involves the relatively rare instance in which law enforcement was able to identify the perpetrator misusing U.S. shell corporations. Far too often, we are unable to do so." The Treasury Department testified that "the ability of illicit actors to form corporations in the United States without disclosing their true identity presents a serious vulnerability and there is ample evidence that criminal organizations and others who threaten our national security exploit this vulnerability."

The 2009 hearings also presented evidence of dozens of Internet websites advertising corporate formation services that highlighted the ability of corporations to be formed in the United States without asking for the identity of the beneficial owners. Those websites explicitly pointed to anonymous ownership as a reason to incorporate within the United States, and often listed certain States alongside notorious offshore jurisdictions as preferred locations in which to form new corporations, essentially providing an open invitation for wrongdoers to form entities within the United States.

One website, for example, set up by an international incorporation firm, advocated setting up corporations in Delaware by saying: "DELAWARE - An Offshore Tax Haven for Non US Residents." It cited as one of Delaware's advantages that: "Owners' names are not disclosed to the state." Another website, from a U.K. firm called "formacorporation-offshore.com," listed the advantages to incorporating in Nevada. Those advantages included: "Stockholders are not on Public Record allowing complete anonymity."

During the 2009 hearings, I presented evidence of how one Wyoming outfit was selling so-called shelf corporations – corporations formed and then left "on the shelf" for later sale to purchasers who could then pretend the corporations had been in operation for years. A June 2011 Reuters news article wrote a detailed expose of how that same outfit, Wyoming Corporate Services, had formed thousands of U.S. corporations all across the country, all with hidden owners. The article quoted the website as follows: "A corporation is a legal person created by state statute that can be used as a fall guy, a servant, a good friend or a decoy. A person you control ... yet cannot be held accountable for its actions. Imagine the possibilities!"

The article described a small house in Cheyenne, Wyoming, which Wyoming Corporate Services used to provide a U.S. address for more than 2,000 corporations that it had helped to form. The article described "the walls of the main room" as "covered floor to ceiling with numbered mailboxes labeled as corporate 'suites.'" The article reported that among the corporations using the address was a shell corporation controlled by a former Ukranian prime minister who had been convicted of money laundering and extortion; a corporation indicted for

helping online-poker operators evade a U.S. ban on Internet gambling; and two corporations barred from U.S. federal contracting for selling counterfeit truck parts to the Pentagon. The article observed that Wyoming Corporate Services continued to sell shelf corporations that existed solely on paper but could show a history of regulatory and tax filings, despite having had no real U.S. operations. That's the type of deceptive conduct going on right now, here in our own backyard, with respect to U.S. corporations with hidden owners.

State Inaction. Despite the evidence of U.S. corporations being misused by organized crime, terrorists, tax evaders, and other wrongdoers, and despite years of law enforcement complaints, many of our States are reluctant to admit there is a problem in establishing U.S. corporations and LLCs with hidden owners. Too many of our States are eager to explain how quick and easy it is to set up corporations within their borders, without acknowledging that those same quick and easy procedures enable wrongdoers to utilize U.S. corporations in a variety of crimes and tax dodges both here and abroad.

Beginning in 2006, the Subcommittee worked with the States to encourage them to recognize the law enforcement and national security problem they'd created and to come up with their own solution. After the Subcommittee's 2006 hearing on this issue, for example, the National Association of Secretaries of State or NASS convened a 2007 task force to examine state incorporation practices. At the request of NASS and several States, I delayed introducing legislation while they worked on a proposal to require the collection of beneficial ownership information. My Subcommittee staff participated in multiple conferences, telephone calls, and meetings on the issue.

In July 2007, the NASS task force issued a proposal. Rather than cure the problem, however, the proposal had multiple serious deficiencies, leading the Treasury Department to state in a letter that the NASS proposal "falls short" and "does not fully address the problem of legal entities masking the identity of criminals."

Among other shortcomings, the NASS proposal would not require States to obtain the names of the natural individuals who would be the beneficial owners of a U.S. corporation or LLC. Instead, it would allow States to obtain a list of a corporation's "owners of record" who can be, and often are, offshore corporations or trusts with their own hidden owners. The NASS proposal also did not require the States to maintain the beneficial ownership information, or to supply it to law enforcement upon receipt of a subpoena or summons. Instead, law enforcement would have to get the information from the suspect corporation or one of its agents, thereby tipping off the corporation to the investigation. The proposal also failed to require the beneficial ownership information to be updated over time. These and other flaws in the proposal were identified by the Treasury Department, the Department of Justice, and others, but NASS continued on the same course**.**

NASS enlisted the help of the National Conference of Commissioners on Uniform State Laws or NCCUSL, which produced a proposed model law for States that wanted to adopt the NASS approach. NCCUSL presented its proposal at the Homeland Security and Governmental Affairs Committee's June 2009 hearing, where it was subjected to significant criticism. The Manhattan District Attorney's office, for example, testified: "I say without hesitation or

reservation – that from a law enforcement perspective, the bill proposed by NCCUSL would be worse than no bill at all. And there are two very basic reasons for this. It eliminates the ability of law enforcement to get corporate information without alerting the target of the investigation that the investigation is ongoing. That is the primary reason. It also sets up a system that is time-consuming and complicated."

The Department of Justice testified: "Senator, I would submit to you that in a criminal organization everyone knows who is in control and this will not be an issue of determining who is in control. What we are concerned about here from the law enforcement perspective are the criminals and the criminal organizations and so what we are asking is that when criminals use shell companies, they provide the name of the beneficial owner. That is the person who is in control, the criminal in control, as opposed to the NCCUSL proposal where they are suggesting that instead two nominees are provided – two nominees between law enforcement and the criminal in control."

Despite these criticisms, NCCUSL finalized its model law in July 2009, issuing it under the title, "Uniform Law Enforcement Access to Entity Information Act." At the November 2009 hearing, law enforcement again criticized the NCCUSL model for failing to provide the names of the true owners of the corporations being formed. The Justice Department testified: "To allow companies to provide anything less than the beneficial owner information merely provides criminals with an opportunity to evade responsibility and put nominees between themselves and the true perpetrator." With regard to NCCUSL's proposal, Treasury testified: "[T]here is not an obligation for that live person to not be a nominee. And what I think is important in the legislation is that we get at the true beneficial owner and not someone who may be a nominee."

In addition to its flaws, the NCCUSL model law has proven unpopular with the States for whom it was written. Despite the effort and fanfare attached to the uniform model, after four years of sitting on the books, not a single State has adopted it or given any indication of doing so.

It is deeply disappointing that the States, despite the passage of many years, have been unable to devise an effective proposal to stop the formation of corporations with hidden owners. One key difficulty is that the States are competing against each other to attract persons who want to set up U.S. corporations. That competition creates pressure for each individual State to favor procedures that allow quick and easy incorporations, with no questions asked. It's a classic case of competition causing a race to the bottom, making it difficult for any one State to do the right thing and ask for the identity of the persons behind the corporations being formed.

Bill Provisions. That is why federal legislation in this area is critical. Federal legislation is needed to level the playing field among the States, set minimum standards for obtaining beneficial ownership information, put an end to the practice of States forming millions of legal entities each year without knowing who is behind them, and bring the United States into compliance with its international commitments.

The bill's provisions would require the States to ask incorporation applicants for a list of the beneficial owners of each corporation or LLC formed under their laws, to maintain this information for a period of years after a corporation is terminated, and to provide the information

to law enforcement upon receipt of a subpoena or summons. The bill would also require corporations and LLCs to update their beneficial ownership information on a regular basis. The ownership information would be kept by the State or, if a State maintains a formation agent licensing system and delegates this task, by a State's licensed formation agents.

The particular information that would have to be provided for each beneficial owner is the owner's name, address, and a unique identifying number from a State driver's license or a U.S. passport. The bill would not require States to verify this information, but penalties would apply to persons who submit false information.

In the case of U.S. corporations formed by individuals who do not possess a driver's license or passport from the United States, the bill would permit them to submit their names, addresses, and identifying information from a non-U.S. passport to a formation agent residing within the State. They would have to include a copy of a passport photograph. The incorporation application would have to include a written certification that the formation agent had obtained the information and verified the identity of the non-U.S. corporate owners. The formation agent would have to retain the information in the State for a specified period of time and produce it upon receipt of a subpoena or summons from law enforcement.

To ensure that its provisions are tightly targeted, the bill would exempt a wide range of corporations from the disclosure obligation. It would exempt, for example, virtually all highly regulated corporations, because we already know who owns them. That includes all publicly-traded corporations, banks, broker-dealers, commodity brokers, registered investment funds, registered accounting firms, insurers, and utilities. The bill would also exempt corporations with a substantial U.S. presence, including at least 20 employees physically located in the United States, since those individuals could provide law enforcement with the leads needed to trace a corporation's true owners. In addition, the bill would exempt businesses set up by governments, churches, charities, and nonprofit corporations, since disclosure of their beneficial ownership information would not advance the public interest or assist law enforcement. These exemptions dramatically reduce the number of corporations who would actually have to file beneficial ownership information on state incorporation forms in order to ensure that the bill's disclosure obligations focus only on owners whose identities are currently hidden.

The bill does not take a position on the issue of whether the States should make beneficial ownership information available to the public. Instead, the bill leaves it entirely up to the States to decide whether, under what circumstances, and to what extent to make beneficial ownership information available to the public. The bill explicitly permits the States to place restrictions on providing beneficial ownership information to persons other than government officials. The bill focuses instead on ensuring that law enforcement with a subpoena or summons is given ready access to the beneficial ownership information.

Relative to the costs of compliance, the bill provides States with access to two separate funding sources, neither of which involves appropriated funds. For the first three years after the bill's enactment, the bill requires both the Justice and Treasury Departments to make funds available from their individual forfeiture programs to States incurring reasonable expenses to comply with the Act. These forfeiture funds do not contain taxpayer dollars; instead they contain

the proceeds of forfeiture actions taken against persons involved in money laundering, drug trafficking, or other wrongdoing. The bill would direct a total of $40 million over three years to be provided to the States from the two funds to carry out the Act. These provisions would ensure that States have adequate funds for the modest compliance costs involved with adding a new question to their incorporation forms requesting the names of the covered corporations' beneficial owners.

The compliance costs would be modest, because the bill does not require any State to change its laws, set up new forms, create new databases of information, or verify the information provided. To the contrary, the only steps that a State would need to take would be to add one question to its existing incorporation form asking for the corporation's beneficial owners, keep that incorporation application on file which all States do already, and make the ownership information available to law enforcement upon receipt of a subpoena or summons.

It is common for bills establishing minimum federal standards to seek to ensure State action by making some federal funding dependent upon a State's meeting the specified standards. Our bill, however, states explicitly that nothing in its provisions authorizes the withholding of federal funds from a State for failing to modify its incorporation practices to meet the beneficial ownership information requirements of the Act. Instead, the bill calls for a GAO report within five years of enactment to identify any States that had failed to strengthen their incorporation practices as required by the Act. After getting this status report, a future Congress can decide what steps to take in the event there are any noncompliant States.

The bill also contains a provision that would require corporations bidding on federal contracts to provide the same beneficial ownership information to the federal government as provided to the relevant State. The Subcommittee has become aware of instances in which the federal government has found itself doing business with U.S. corporations whose owners are hidden, including owners under investigation for suspect conduct. It's important that when the federal government contracts to do business with someone, it knows who it is dealing with.

Finally, the bill would require the Treasury Department to issue a rule requiring U.S. formation agents to establish anti-money laundering programs to ensure they are not forming U.S. corporations or LLCs for wrongdoers. The bill requires the programs to be risk based so that formation agents can target their preventative efforts toward persons who pose a high risk of being involved with wrongdoing. GAO would also be asked to conduct a study of existing State formation procedures for partnerships, trusts, and charitable organizations to see if additional ownership disclosure requirements are warranted.

We have worked with the Departments of Justice, Treasury, and Homeland Security to craft a bill that would address, in a fair and reasonable way, the significant law enforcement problems created by States allowing the formation of millions of U.S. corporations and LLCs with hidden owners. When those corporations commit crimes, they affect not only interstate commerce with U.S. victims, but also our relationships with other countries whose citizens may become victims of U.S. corporate wrongdoing. What the bill comes down to is a simple requirement that States strengthen their incorporation applications to add a single question requesting identifying information for the true owners of the corporations they form. That is not

too much to ask to protect this country and the international community from wrongdoers misusing U.S. corporations.

For those who say that, if the United States tightens its incorporation rules, new corporations will be formed elsewhere, it is appropriate to ask exactly where they will go. A recent report found that virtually every other country is already tougher than the United States in terms of demanding and verifying beneficial ownership information. Most offshore tax havens, for example, already require this information to be collected, including the Bahamas, Cayman Islands, and the Channel Islands. Countries around the world already request beneficial ownership information, in part because of their commitment to FATF's international anti-money laundering standards. Our 50 States should be meeting the same standards, but there is no indication that they will, unless required to do so.

I wish federal legislation weren't necessary. I wish the States could solve this law enforcement problem on their own, but ongoing competitive pressures make it unlikely that the States will do the right thing. It's been nearly seven years since our 2006 hearing on this issue and more than four years since the States came up with a model law on the subject, with no progress to speak of, despite repeated pleas from law enforcement.

Federal legislation is necessary to reduce the vulnerability of the United States to wrongdoing by U.S. corporations with hidden owners, to protect interstate and international commerce from criminals misusing U.S. corporations, to strengthen the ability of law enforcement to investigate suspect U.S. corporations, to level the playing field among the States, and to bring the United States into compliance with its international anti-money laundering obligations.

There is also an issue of consistency. For years, I have been fighting offshore corporate secrecy laws and practices that enable wrongdoers to secretly control offshore corporations involved in money laundering, tax evasion, and other misconduct. I have pointed out on more than one occasion that corporations were not created to hide ownership, but to protect owners from personal liability for corporate acts. Unfortunately, today, the corporate form has too often been corrupted into serving those who wish to conceal their identities. It is past time to stop this misuse of the corporate form. But if we want to stop inappropriate corporate secrecy offshore, we need to stop it here at home as well.

For these reasons, I urge my colleagues to join us in supporting this legislation and putting an end to incorporation practices that promote corporate secrecy and render the United States and other countries vulnerable to abuse by U.S. corporations with hidden owners.

I ask unanimous consent that a summary of the bill be included in the record following my remarks.

SUMMARY OF INCORPORATION TRANSPARENCY AND LAW ENFORCEMENT ASSISTANCE ACT

August 1, 2013

To protect the United States from U.S. corporations being misused to support terrorism, money laundering, tax evasion, and other misconduct, the Levin-Grassley-Feinstein-Harkin Incorporation Transparency and Law Enforcement Assistance Act would:

Beneficial Ownership Information. Require the States directly or through licensed formation agents to obtain the names of beneficial owners of the corporations or limited liability companies (LLCs) formed under State law, ensure this information is updated, and provide the information to law enforcement upon receipt of a subpoena or summons.

Shelf Corporations. Require formation agents who sell "shelf corporations" – corporations formed for later sale to third parties – to identify the beneficial owners who buy them.

Federal Contractors. Require corporations or LLCs bidding on federal contracts to provide beneficial ownership information to the federal government.

Identifying Information. Require the provision of beneficial owners' names, addresses, and a U.S. drivers license or passport number, or information from a non-U.S. passport.

Penalties for False Information. Establish penalties for persons who knowingly provide false information, or willfully fail to provide required information, on beneficial ownership.

Exemptions. Exempt from the disclosure obligation regulated corporations, including publicly traded companies, banks, broker-dealers, insurers, and accounting firms; corporations with a substantial U.S. presence; and corporations whose beneficial ownership information would not benefit the public interest or assist law enforcement.

Funding. Provide $40 million over three years to States from existing Justice and Treasury Department forfeiture funds to pay for the costs of complying with the Act.

State Compliance Report. Specify that funds may not be withheld from any State for failure to comply with the Act, but also require a GAO report in five years identifying any States not in compliance so a future Congress can determine if additional steps are needed.

Transition Period. Give the States two years to begin requiring existing corporations and LLCs to provide beneficial ownership information.

Anti-Money Laundering Safeguards. Require paid formation agents to establish anti-money laundering programs to guard against supplying U.S. corporations or LLCs to wrongdoers. Attorneys using paid formation agents would be exempt from this requirement.

GAO Study. Require GAO to complete a study of existing beneficial ownership information requirements for partnerships, charities, and trusts.