

Congress Is About to Kick Small Businesses While They're Down

Diego Zuluaga
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Most members of Congress, regardless of party, agree that small businesses are crucial to American prosperity. This rare consensus was behind the decision to authorize \$659 billion worth of forgivable loans through Small Business Administration's Paycheck Protection Program in a bid to limit business failures and layoffs as a result of the COVID-19 pandemic.

So far, the PPP seems to have achieved its short-term goal of keeping small businesses alive. Almost 75 percent of small businesses with employees got a loan by early June and were thus able to keep their workers on the payroll. But the crisis is not yet over, with many businesses still far from healthy. And now Congress seems poised to sneak an amendment that has nothing to do with COVID-19 into legislation on which it will vote this week. By imposing a new burden that could cost each small business thousands of dollars to comply with, Congress may push many over the brink just as they're starting over.

The amendment in question would require most small businesses with fewer than 20 employees and less than \$5 million in annual sales — about 12 million firms — to file information about their owners with the federal government. It is the product of heavy lobbying by bankers, who since 2018 have had to collect this information on behalf of their business customers and include it in their reports to FinCEN, the Treasury's financial crimes watchdog. But extending banks' reporting burden to other businesses is unlikely to benefit the public. Instead, by subjecting these businesses to extra costs they can ill-afford, the amendment is likely to do far more harm than good.

Bankers calling for the change argue that extending the obligation to small businesses would improve the accuracy of reporting and reduce total compliance costs. It's true that bank regulations ostensibly aimed at uncovering financial crime are extremely costly, accounting for more than 25 percent of community bank compliance expenses. But the amendment wouldn't reduce the reporting burden on banks. Instead it states that it will help "confirm beneficial ownership information . . . to facilitate [banks'] compliance" with existing requirements. The bankers evidently hope that this will make their own lives easier. But they offer no proof that it will.

History suggests that the burden of financial crime reporting on the private sector, instead of ever declining, tends to increase and encompass a wider array of firms over time. Normally, one might expect small-business advocates in Congress to worry about the impact of such a large body of regulations on U.S. economic vibrancy. Yet because their goal is to fend off genuine threats to national security, such as terrorism and money-laundering, questioning the usefulness of any government efforts against these threats can make one look weak on crime. But good

intentions are no guarantee of efficacy: while reports of suspicious financial activity have grown 42 percent in six years, the annual number of prosecutions has stayed the same or declined, and assessments of how valuable such reports are to law enforcement are hard to come by.

At any rate, Congress can increase the information available to FinCEN in a less burdensome way by requiring the IRS to share beneficial ownership information it regularly collects. Nor would this set a precedent, since the tax code already mandates information-sharing for other government programs such as federal student loans. Creating yet another reporting obligation on hard-pressed small businesses amounts to an unjustifiable overreach. If FinCEN's estimate of the compliance burden on banks from current reporting rules is anything to go by, this new obligation could cost the average small business anywhere between \$125 and more than \$1,000. And that's without the \$500-per-day fine for non-compliance, however unwitting.

Then there's the privacy risk. Although the amendment says that FinCEN's beneficial ownership database would only be accessible to law enforcement, it also offers the European regime as a model. Yet European authorities now require beneficial ownership databases to be public. The United Kingdom, for example, has had a public database since 2016, but experts regard the information it contains as largely useless, riddled with inaccuracies, and ineffective. Law-abiding businesses go through the pains of reporting, while those with criminal intent have little incentive to do so. The database's accessibility also means third parties can use the information for illicit ends, such as extortion and smear campaigns. Does Congress really want to expose small businesses to such abuse?

The fight against financial crime by increasingly sophisticated international actors is no doubt a duty of government most of us can agree on. But rushing through legislation of questionable value during a recession, with many businesses struggling to survive, is the wrong way to pursue this fight. Let's put economic recovery first so America can confront future national security threats from a position of strength.

Diego Zuluaga is associate director of financial regulation studies at Cato Institute's Center for Monetary and Financial Alternatives.