BANK POLICY INSTITUTE

February 7, 2022

Via Electronic Mail

Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Request for Comments Regarding Beneficial Ownership Information Reporting Requirements (Docket No. FINCEN-2021-0027; RIN 1506-AB49)

To Whom It May Concern:

The Bank Policy Institute[1] appreciates the opportunity to comment on the Financial Crimes Enforcement Network's notice of proposed rulemaking to implement the beneficial ownership information reporting provisions of the Corporate Transparency Act (the "CTA").[2] BPI has been and remains a strong supporter of ending the use of anonymous shell companies and modernizing the U.S. anti-money laundering/countering the financing of terrorism ("AML/CFT") regime. BPI appreciates FinCEN's efforts to implement the CTA and the Anti-Money Laundering Act of 2020 (the "AML Act") in a manner that maximizes efficiency and effectiveness while minimizing unnecessary burdens on impacted entities. BPI also appreciates FinCEN's continued devotion of significant time and resources to carefully considering the many issues raised by the CTA and the AML Act and FinCEN's transparency with regard to the rulemaking process. BPI has a keen interest in the complex issues associated with accessing the beneficial ownership information collected by FinCEN under the authority of the CTA and in potential

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1 The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost two million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

2 Financial Crimes Enforcement Network, Beneficial Ownership Information Reporting Requirements, Notice of Proposed Rulemaking, 86 Fed. Reg. 69920 (Dec. 8, 2021) (the "NPRM").

future related revisions to FinCEN's Customer Due Diligence Rule ("CDD Rule").[3] Accordingly, BPI looks forward to continued engagement with FinCEN as efforts to implement the CTA and the AML Act advance, and supports direct and transparent engagement between FinCEN and financial institutions and their trade associations, including on the uniquely complex issue of financial institution access to the information reported to FinCEN.

This letter addresses elements of the proposed rule that are of particular importance to BPI members, bearing in mind the existing CDD Rule, banks' experiences complying with that rule, and potential revisions to that rule. Although FinCEN intends to undertake separate rulemakings both for CDD Rule revisions and for regulations governing access to and disclosure of beneficial ownership information reported to FinCEN,[4] the final rule that results from this NPRM will necessarily have a substantive impact on the nature and content of those future rulemakings. As such, we address in this letter the importance of harmonizing reporting requirements under the CTA with financial institutions' obligations under the CDD Rule and future revisions to that rule. BPI is concerned that significant disparities between beneficial ownership reporting under the CTA and the requirements of the CDD Rule may undermine the ability of FinCEN's new beneficial ownership registry to serve as an "accurate, complete, and highly useful" registry of beneficial ownership information.[5] We believe that, if the registry does not serve this function, it would frustrate congressional intent not only with respect to the registry but also with respect to revisions to the CDD Rule, which are supposed to bring that rule "into conformance with [the AML Act] and the amendments made by [the AML Act]."[6] At the same time, BPI strongly encourages FinCEN to balance data accuracy, reliability, and utility with compliance burdens.[7] Indeed, the CTA mandates that FinCEN, in revising the CDD Rule, "reduce any burdens on financial institutions . . . that are, in light of the enactment of [the AML Act] and the amendments made by [the AML Act], unnecessary or duplicative."[8]

For these reasons, BPI continues to believe that (i) the beneficial ownership registry mandated by the CTA, which FinCEN proposes to implement as the "Beneficial Ownership Secure System" (the "FinCEN Registry" or the "registry"), should serve as a centralized source of beneficial ownership

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3 31 C.F.R. § 1010.230; *see* Financial Crimes Enforcement Network, Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398 (May 11, 2016).

4 William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021("NDAA 2021"), § 6403(d), Pub. L. No. 116-283, 134 Stat. 3388, 4624.

5 31 U.S.C. § 5336(b)(4)(B)(ii).

6 NDAA 2021, § 6403(d)(1)(A).

7 For additional information, *see* BPI's Comment Letter, dated May 5, 2021, in response to FinCEN's April 5, 2021 Advance Notice of Proposed Rulemaking (the "ANPRM") regarding beneficial ownership information reporting requirements *available at* https://bpi.com/wp-content/uploads/2021/05/BPI-Comment-Letter-to-FinCEN-re-Beneficial-Ownership-Reporting-Requirements-ANPR-2021.05.05.pdf.

8 NDAA 2021, § 6403(d)(1)(C); *see also* NPRM at 69929.

information about reporting companies that is designed to provide highly useful information to all authorized users of the registry, (ii) banks should be able to rely on information in the registry to facilitate compliance with applicable customer due diligence requirements, and (iii) banks should not be subject to a duplicative requirement to separately collect and verify beneficial ownership information from customers who are also required to report to FinCEN under the CTA.

With the foregoing objectives in mind, and as detailed in the sections that follow, BPI's recommendations in this letter address four principal topics: (i) encouraging harmonization between a final beneficial ownership information rule and the CDD Rule, principally by modifying aspects of the proposal in the NPRM to align with the CDD Rule; (ii) modifying the proposed rule to provide clarity to reporting companies and reduce unnecessary or duplicative burdens on those companies and banks; (iii) structuring the registry to promote its usefulness to authorized users; and (iv) establishing processes for verifying reported beneficial ownership information and permitting authorized users of the registry, including banks, to rely on that information.

Ultimately, our recommendations are intended to improve the usefulness of reported beneficial ownership information for all authorized registry users, including law enforcement, intelligence and national security agencies, banks, and federal functional regulators.[9] Simultaneously, as contemplated by the CTA, our recommendations are aimed at reducing unnecessary or duplicative burdens on reporting companies and banks.[10] As the registry continues to take shape, BPI looks forward to working with FinCEN to facilitate a design that achieves the CTA's goals and observes the CTA's mandates.

I. FinCEN should encourage harmonization between a final beneficial ownership information rule and the CDD Rule, principally by modifying aspects of the proposal in the NPRM to align with the CDD Rule.

As FinCEN crafts a final beneficial ownership reporting rule under the CTA, we believe that FinCEN should harmonize, to the greatest extent possible, that rule with the CDD Rule, including future revisions to the CDD Rule. Harmonization, including consistent requirements under the two inarguably related rules, will create a clear, coherent framework for mitigating relevant illicit finance risks. Consistency is also important to prevent reporting companies and banks from facing unnecessary and duplicative burdens. We appreciate that complete harmonization between the rules may not be appropriate in all contexts, but believe that FinCEN should not create divergence between the two rules except where necessary to promote a risk-based approach to beneficial ownership information reporting and customer due diligence,[11] provide clarity, and reduce unnecessary burdens. Below, we

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9 *See* 31 U.S.C. § 5336(b)(1)(F)(iv)(I)–(II).

10 *Id*. § 5336(b)(1)(F)(iii), (b)(4)(B)(i); NDAA 2021, § 6403(d)(1)(C).

11 *See* NDAA 2021, §§ 6002(4), 6403(d)(3)(A).

address the importance of aligning specific provisions in the CTA beneficial ownership reporting rule with the CDD Rule, including future modifications to that rule.

A. FinCEN should align the definition of beneficial owner with the definition in the existing CDD Rule.

Definitional inconsistencies between the rule resulting from this NPRM and the CDD Rule, including any revised CDD Rule, have the potential to significantly increase burdens on reporting companies and compliance burdens for banks. Inconsistencies may result in reporting companies being required to report different information to FinCEN under the former rule than is collected from those same companies by a bank pursuant to the latter rule; this would necessarily lead to discrepancies in beneficial ownership information that may need to be understood and explained. Accordingly, FinCEN should use consistent definitions and apply consistent requirements across the two rules.

Further, the substantial control and ownership elements of the beneficial ownership definition proposed in the NPRM would themselves impose significant unnecessary burdens on reporting companies and banks. The elements FinCEN has proposed are complex. Applying those elements would require a level of sophistication that many front-line employees and reporting companies would not, without substantial training or education, possess. These complex elements are likely to create confusion and uncertainty, and potentially divergent interpretations and approaches to compliance, making it challenging to collect consistent, accurate, complete, and reliable information.

Given the complexity of the proposed elements and the civil and criminal penalties for reporting violations,[12] reporting companies—even those with simple structures—may conclude they need to hire attorneys or other third-party advisors to assist with beneficial ownership information reporting. In addition, the potential that a large number of persons meet the standards for substantial control and ownership interest would likely result in more frequent changes to an entity's beneficial owners than under the current CDD Rule. The applicability of a number of the exemptions to any given entity would also necessarily vary from year to year, including the exemption for large operating companies. We submit that, in light of the complexity of the proposed elements and the need that many reporting companies will have to monitor for and report changes, FinCEN's estimates in the NPRM that each reporting company will expend $45 and 70 minutes to prepare and submit its initial report and $19 and 30 minutes to prepare and submit updates are substantially too low.

The proposed substantial control and ownership elements would also impose significant unnecessary costs on banks, especially if there is a lack of alignment between the rule resulting from this NPRM and the CDD Rule, including any revised CDD Rule. For example, banks would need to create new due diligence and screening measures to address the increased complexity, which may divert resources

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12 *See* 31 U.S.C. § 5336(h)(1).

that could be more effectively deployed elsewhere in a bank's BSA/AML program. In a similar vein, banks would also need to make significant updates to policies and procedures, including developing and implementing substantial training for front-line employees. In addition, a variety of technological changes, which typically have even longer timelines to complete than other changes, would be necessary to accommodate the greatly expanded number of individuals meeting the definition of beneficial owner. Not all technology is bank-owned and on occasion vendors may be unable to complete updates in required timeframes. In the experience of BPI members, when technological changes have been dependent on vendors, banks have had to institute temporary processes when delays occur. Finally, banks would inevitably face challenges and associated unnecessary burdens that stem from the difference in timing between when a reporting company must report beneficial ownership information to FinCEN (within 14 calendar days of entity creation or registration and within 30 calendar days of an exemption ceasing to apply or a change in reported information) and when such information is provided to a bank for CDD Rule purposes. These challenges will likely be exacerbated if FinCEN adopts the more complex ownership and substantial control standards proposed in the NPRM, including because they would result in more frequent changes to beneficial ownership information.

Accordingly, FinCEN should not compound the unnecessary burdens that will likely result from misalignment with the CDD Rule by adopting in any final rule the substantial control and ownership elements proposed in the NPRM. Importantly, even if FinCEN believes that there is a need for the definitions of beneficial owner in the two rules to diverge, we do not believe that the elements proposed in the NPRM would result in "highly useful" information; rather, in our view, as described below, they would impose unnecessary burdens that are disproportionate to the potential benefits.

- *Substantial control*. As proposed in the NPRM, reporting companies would be required to identify as beneficial owners all individuals who exercise substantial control directly or indirectly over the entity.[13] Indicators of substantial control would include: (i) service as a senior officer of a reporting company; (ii) authority over the appointment or removal of any senior officer or dominant majority of the board of directors (or similar body) of a reporting company; and (iii) direction, determination, or decision of, or substantial influence over, important matters of a reporting company.[14] Critically, the proposed substantial control element is not limited to a single individual. Rather, as proposed, many entities would likely have multiple individuals who exercise substantial control. This contrasts with the existing CDD Rule, which defines beneficial owner to include "a single individual" with significant

[13] NPRM, Proposed 31 C.F.R. § 1010.380(d).

[14] *Id*. § 1010.380(d)(1).

responsibility to control, manage, or direct the entity.[15]

In the experience of BPI members, even the current, less complex control prong of the CDD Rule has presented significant implementation challenges and required clarifications through FinCEN answers to frequently asked questions and other guidance. Adopting an even more complex substantial control element that would likely require in many cases the identification of multiple individuals would, as described above, inevitably result in additional uncertainty and unnecessary burden for both reporting companies and banks. The proposed NPRM would also impose more stringent requirements than the recommendations of the Financial Action Task Force ("FATF"), which provide for "cascading measures, with each to be used where the previous measure has been applied and has not identified *a* beneficial owner."[16] Under those recommendations, a legal entity's beneficial owners should be determined, in the first instance, by identifying the individual or individuals holding controlling ownership interests in the entity.[17] If no such person is identified, FATF recommends identifying a beneficial owner on the basis of his or her exercise of control or, if that fails, identifying a senior managing official as beneficial owner.[18] Further, as FinCEN described in the preamble for the final CDD Rule, requiring the identification of a single individual as a beneficial owner on the basis of control "ensures that financial institutions will have a record of at least one natural person associated with the legal entity, which will benefit law enforcement and regulatory investigations" and "that the challenges associated with identifying and verifying additional natural persons outweigh any incremental benefit of the information."[19] We therefore encourage FinCEN to adopt a definition that aligns with the control prong of the CDD Rule, which we believe would be consistent with the language of the CTA.[20]

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15 *Compare* 31 U.S.C. § 5336(a)(3)(A)(i) (''The term beneficial owner means, with respect to an entity, an individual who . . . exercises substantial control over the entity.'') *with* 31 C.F.R. § 1010.230(d)(2) (defining ''beneficial owner'' to include ''a single individual with significant responsibility to control, manage or direct a legal entity customer'').

16 Financial Action Task Force, International Standards on Combating Money Laundering and the Financing of Terrorism & Proliferation, The FATF Recommendations, at 65-66, n. 34 (updated Oct. 2021) (emphasis added), *available at* https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF%20Recommendations%202012.pdf.

17 *Id*.

18 *Id*. at 66.

19 81 Fed. Reg. at 29411-12.

20 The CTA defines "beneficial owner" as meaning, with respect to an entity "*an* individual who . . . exercises substantial control over the entity" (emphasis added). 31 U.S.C. § 5336(a)(3)(A)(i). We submit that the

- *Ownership*. As proposed in the NPRM, in accordance with the requirements of the CTA,[21] reporting companies would also be required to identify all individuals who directly or indirectly own or control 25 percent of a reporting company's ownership interests.[22] The NPRM would define "ownership interest," a term not defined in the CTA, to include both equity in the reporting company and other types of interests, such as capital or profit interests (including partnership interests) or convertible instruments, warrants or rights, or other options or privileges to acquire equity, capital, or other interests in a reporting company.[23] Certain debt instruments would also be included.[24] This complex standard contrasts with the comparatively straightforward ownership prong in the CDD Rule.[25] Although markedly more straightforward, the CDD Rule's ownership prong has nevertheless presented implementation challenges for banks and legal entities and required numerous clarifications through FinCEN answers to frequently asked questions and other guidance. The substantially more complex standard proposed in the NPRM would only markedly increase those challenges and the need for FinCEN guidance. Given those challenges and the additional uncertainty and unnecessary burden that would likely inure to both reporting companies and banks, we recommend that FinCEN interpret the term "ownership interest" in the CTA to incorporate a definition of ownership that aligns with the ownership prong of the existing CDD Rule.

For these reasons, we recommend that FinCEN adopt less complex standards than those proposed in the NPRM for determining substantial control and ownership. More specifically, we believe that FinCEN should align the standards for substantial control and ownership interests to their equivalents in the existing CDD Rule. We would also ask FinCEN to remain cognizant of the resource demands potential updates, technological changes, and change management challenges may present, not only if the two rules are not harmonized, but also if the standards proposed in the NPRM carry the day.[26]

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reference to "an" individual provides FinCEN to adopt a substantial control element that would identify only one individual.

21 *Id.* § 5336(a)(3)(A)(ii).

22 NPRM, Proposed 31 C.F.R. § 1010.380(d).

23 *Id.* § 1010.380(d)(3)(i).

24 *Id.*

25 31 C.F.R. § 1010.230(d)(1) (defining beneficial owner as an individual who directly or indirectly "owns 25 percent or more of the equity interests of a legal entity customer").

26 Ultimately, the full impact to banks from the proposed definitions in the NPRM and/or a lack of alignment between the final beneficial ownership reporting rule and the CDD Rule is unknown given the potential technological, logistical, and privacy concerns associated with accessing FinCEN's registry.

B. FinCEN should align the addresses that must be reported to FinCEN with those required under existing Customer Identification Program requirements.

As with the standards for substantial control and ownership, we recommend that FinCEN modify the addresses that beneficial owners (and certain company applicants) and reporting companies must report to FinCEN in order to align with the address requirements of the existing CDD Rule, which incorporate by reference the requirements of the Customer Identification Program Rule (the "CIP Rule"). We believe that these modifications to the proposed rule would reduce unnecessary burdens; improve the ability of reporting companies to understand the scope of reporting requirements; foster harmony between the beneficial ownership reporting rule and the CDD Rule; and, ultimately, enable authorized users of the registry to better verify reported information.

- *Addresses of beneficial owners*. As proposed in the NPRM, FinCEN would require reporting companies to report, with respect to each beneficial owner (and certain company applicants), an address that is the individual's "residential street address . . . for tax residency purposes."[27] In contrast, the existing CDD Rule, by reference to the CIP Rule, permits beneficial owners to provide "a residential or business street address."[28] The CTA employs the CIP Rule's language in requiring reporting companies to identify beneficial owners by their "residential or business street address."[29]

  Based on the experience of BPI members, any potential law enforcement benefit of knowing a beneficial owner's residential street address for tax residency purposes is, we believe, outweighed by the complexities and unnecessary burdens that would result from requiring that specific address. As an initial matter, an individual's residential street address for tax residency purposes may not be reflected in a driver's license or passport. To verify that address, whether under a revised CDD Rule or otherwise, a bank may need to undertake a time-consuming collection and review of tax documentation, raising not only burden-related concerns for both banks and reporting companies, but also privacy concerns. Further, the individual providing reporting to FinCEN may not have ready access to a beneficial owner's residential street address for tax residency purposes. The related burden may be compounded if the reporting entity must provide for each beneficial owner not only a correct residential or business street address, as required under the existing CDD Rule, but also a residential street address for tax residency purposes. The absence of symmetry

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27 NPRM, Proposed 31 C.F.R. § 1010.380(b)(1)(ii)(C)(2).

28 *E.g.*, 31 C.F.R. § 1010.230(b)(2); 31 C.F.R. § 1020.220(a)(2)(i)(A)(3)(i).

29 31 U.S.C. § 5336(b)(2)(A)(iii).

between the rules may also create confusion and inconsistencies in compliance.[30] For these reasons, we recommend that FinCEN modify the proposed rule so that individuals are generally required to report a residential or business street address, in line with the existing requirement under the CDD Rule and CIP Rule.

Indeed, requiring reporting companies to report to FinCEN each beneficial owner's residential street address for tax residency purposes, as proposed, would create a dissymmetry with the beneficial ownership information that banks have collected for years. To address this inconsistency, if FinCEN proceeds with the address requirement as proposed in the NPRM, there should be no expectation that banks afforded access to the registry will address discrepancies between a beneficial owner's address reported to FinCEN and the address in the bank's records. Instead, beneficial owner address information in bank records compiled in compliance with the existing CDD Rule should be grandfathered.

- *Address of reporting companies*. As proposed in the NPRM, FinCEN would require reporting companies to report their "business street address."[31] We believe this formulation is subject to a variety of interpretations, with some reporting companies treating a Post Office box or registered agent address as their business street address. Such addresses would not be as useful for law enforcement and national security purposes as a physical street address. We recommend FinCEN clarify in the final rule that such addresses may not be reported. Further, we recommend that FinCEN require reporting companies to provide an address for "a principal place of business, local office, or other physical location," as required under the CIP Rule.[32] We believe the CIP Rule's formulation would provide more clarity to reporting companies on the address that must be provided.

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30 This confusion will likely be compounded where an individual has to provide different addresses to satisfy similar requirements. If, for example, an individual has a personal account at a bank, is the beneficial owner of a reporting company that also has an account at the bank, and is the company applicant with respect to that reporting company, under FinCEN's proposal, that individual may be required to provide: (i) to the bank, the individual's residential or business street address for CIP Rule purposes; (ii) to FinCEN, the residential street address the individual uses for tax residency purposes; and (iii) to FinCEN, the business street address of the business. In addition to potential confusion for individuals, banks may be subject to compliance risk if auditors and examiners identify differences in the information a bank has in its records and the information reported to FinCEN.

31 NPRM, Proposed 31 C.F.R. § 1010.380(b)(1)(i)(C).

32 *E.g.*, 31 C.F.R. § 1020.220(a)(2)(i)(A)(3)(iii).

C. FinCEN should align the identification numbers that must be reported to FinCEN and the identification numbers that must be collected under the CDD Rule.

The proposal in the NPRM would require each reporting company to report to FinCEN one of certain types of identification numbers and would require each individual beneficial owner to provide a unique identifying number from one of certain documents. BPI recommends that FinCEN harmonize the identification numbers that must be collected under a rule resulting from this NPRM and the CDD Rule (the relevant requirements of which generally apply by reference to the CIP Rule), including to address situations that may arise where identification numbers are not available.

- *Reporting companies*. The NPRM proposes that each reporting company would have to report to FinCEN its Taxpayer Identification Number ("TIN") or, if a TIN has not yet been issued for the entity, a separate Dun & Bradstreet Data Universal Numbering System ("DUNS") number or a Legal Entity Identification ("LEI").[33] FinCEN acknowledges in the NPRM that during the 14-day period in which an entity is required to provide an initial report to FinCEN, it may not yet have received a TIN, DUNS or LEI.[34] Accordingly, we recommend that FinCEN make any final rule consistent with the CIP Rule, and therefore the CDD Rule; that is, if a legal entity has applied for a TIN, evidence of that application should be provided.[35] Further, even if a TIN (or evidence of application for a TIN) is submitted, a DUNS or LEI could also provide useful information for authorized users of the registry, and we recommend that FinCEN permit reporting companies to provide these identifiers on a voluntary basis.

- *Beneficial owners without an acceptable identification document*. Under the proposed rule in the NPRM, each individual beneficial owner (and company applicant) of a reporting company would be required to provide a unique identifying number for that individual that is from (i) a non-expired U.S. passport; (ii) a non-expired identification document issued by a state, local government, or Indian tribe; (iii) a non-expired driver's license issued by a state; or (iv) if the individual does not possess any of the foregoing documents, a non-expired foreign passport.[36] However, certain beneficial owners, especially those located outside the United States, may not possess any of the required identifying documents. FinCEN should

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33 NPRM, Proposed 31 C.F.R. § 1010.380(b)(1)(i)(E).

34 NPRM at 69932. In the experience of BPI members, it can take up to 30 days to receive a TIN or a DUNS, and obtaining an LEI is contingent upon verification with a local source.

35 *See* Financial Crimes Enforcement Network, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, U.S. Department of the Treasury, FAQs: Final CIP Rule 9 (Apr. 28, 2005), *available at* https://www.fincen.gov/sites/default/files/guidance/faqsfinalciprule.pdf.

36 NPRM, Proposed 31 C.F.R. § 1010.380(b)(1)(ii)(D).

exercise its interpretive authority under the CTA or its exceptive authority to address situations where an individual is a beneficial owner, but does not have one of the listed identifying documents. For example, for a non-U.S person that does not have one of these documents, FinCEN should accept one of the identification numbers permitted under the CIP Rule, including another form of government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.[37]

- *Beneficial owner Social Security number reporting*. As described in the previous bullet, FinCEN does not propose in the NPRM that the unique identifying number that a beneficial owner (and company applicant) must provide is a TIN, which for many individuals is their Social Security number ("SSN"). Instead, FinCEN proposes that reporting companies may *voluntarily* report the TINs of their beneficial owners (and company applicants) to FinCEN, provided that the reporting company has the consent of the relevant individual.[38] In contrast, under the CDD Rule, by incorporation of the requirements of the CIP Rule, a bank generally *must* obtain the TIN for each U.S. person that is a beneficial owner of a legal entity customer.[39] The requirement that banks collect TINs, especially full TINs (as opposed to only the last four digits of an SSN), from individuals for CDD Rule and CIP Rule purposes imposes substantial burdens, including due to consumer privacy and data security concerns.[40] Based on Congress's apparent determination in the CTA that reporting a TIN as a unique identifying number for individuals is not necessary to address relevant illicit finance risks,[41] we believe that collecting a full TIN should not be required under the CDD Rule or CIP Rule.[42] We therefore recommend that FinCEN, in revisions to the CDD Rule and/or through the issuance of exceptive relief, align the requirements of the CDD Rule and CIP Rule with those

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37 *See* 31 C.F.R. § 1020.220(a)(2)(i)(A)(4)(ii).

38 NPRM, Proposed 31 C.F.R. § 1010.380(b)(2).

39 *See* 31 C.F.R. § 1010.230(b)(2) (incorporating, for example, the requirements of 31 C.F.R. § 1020.220(a)(2)(i)(A)(4)(i)). A TIN is among several specified identification numbers that can be obtained for a non-U.S. person. *See id.* (incorporating, e.g., 31 C.F.R. § 1020.220(a)(2)(i)(A)(4)(ii)).

40 These concerns have been raised consistently with respect to the requirements in the CIP Rule that banks collect full SSNs, including in connection with the initial promulgation of the CIP Rule in 2003. *See, e.g.*, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network, National Credit Union Administration, Office of the Comptroller of the Currency, Office of Thrift Supervision, Customer Identification Programs for Banks, Savings Associations, Credit Unions and Certain Non-Federally Regulated Banks, 68 Fed. Reg. 25090, 25091, 25098 (May 9, 2003).

41 *See* 31 U.S.C. § 5336(a)(13) (defining "unique identifying number"); *see also id.* § 5336(a)(1) (defining "acceptable identification document").

42 This is especially so as various non-bank financial services companies have developed processes to obtain only the final four digits of an SSN from a customer, and obtain the remainder from other trusted and secure sources.

of the CTA and eliminate the unnecessarily burdensome requirement under those rules that TINs, especially full SSNs, be collected from individuals.

D. FinCEN should align the reporting company exemptions with exemptions under the CDD Rule.

It is also important that the exemptions from the definition of "reporting company" for purposes of beneficial ownership reporting to FinCEN be harmonized with the exemptions from the definition of "legal entity customer" in the CDD Rule, including any revisions to that rule.[43] Such harmonization would minimize unnecessary burdens on reporting companies and banks and further the AML Act's requirement that, in prescribing minimum standards for BSA/AML programs, FinCEN consider that such programs should be "risk-based, including ensuring that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower risk customers and activities."[44] If the exemptions under the two rules are not aligned, an entity that is expressly determined to be sufficiently low risk that it is not required to provide beneficial ownership information to a bank under the CDD Rule, for example, could nonetheless be subject to the burdens associated with collecting and providing that information to FinCEN under the reporting rule.[45]

With a view to alignment, we recommend that FinCEN make the following revisions to the proposed rule and to the CDD Rule, respectively.

- *State-chartered banks*. Under the CDD Rule, a "legal entity customer" does not include any bank regulated by a state bank regulator.[46] In contrast, under the CTA and the proposal in the NPRM, a state-chartered bank or trust company could be a reporting company if it does not engage in certain activities, including taking deposits or exercising fiduciary powers, that would make it a "bank" for purposes of the CTA.[47] We respectfully submit that, because all state-chartered banks "are generally subject to substantial Federal or state regulation under which their beneficial ownership may be known,"[48] they should be exempted by regulation

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43 *See* 31 C.F.R. § 1010.230(e)(2).

44 31 U.S.C. § 5318(h)(2)(B)(iv)(II).

45 The converse is equally true.

46 31 C.F.R. § 1010.230(e)(2)(i).

47 *See* 31 U.S.C. § 5336(a)(11)(B)(iii) (defining a "bank" as a bank as defined in Section 3 of the Federal Deposit Insurance Act, Section 2(a) of the Investment Company Act of 1940 or Section 202(a) of the Investment Advisers Act of 1940); NPRM, Proposed 31 C.F.R. § 1010.380(c)(2)(iii) (same).

48 NPRM at 69939.

in FinCEN's final beneficial ownership reporting rule.[49]

- *Large operating companies.* The CTA reflects Congress's determination that large operating companies—generally, companies that employ more than 20 employees on a full-time basis in the United States, generate more than $5 million in annual gross receipts or sales, and have an operating presence at a physical location in the United States—do not present the kind of illicit finance risk that merits requiring the collection of beneficial ownership information. In revisions to the CDD Rule or through the exercise of FinCEN's exceptive authority, FinCEN should similarly exclude such large operating companies from the definition of "legal entity customer." They would, as a result, not be subject to the burdensome requirement that banks "identify and verify [their] beneficial owners."[50]

II. FinCEN should modify certain provisions in the proposed rule to provide clarity to reporting companies and reduce unnecessary burdens.

Based on their experiences in implementing the CDD Rule with respect to legal entity customers, BPI members believe that several of the provisions proposed in the NPRM could be difficult for reporting companies to apply or otherwise impose unnecessary burdens on those companies and banks. Accordingly, we recommend that FinCEN modify these provisions in the final rule resulting from the NPRM. In the following subsections, we address recommendations with respect to (i) adding an exemption from the definition of "reporting company"; (ii) reporting by terminated reporting companies and exempt companies; (iii) reporting of identification numbers; and (iv) applying beneficial ownership reporting requirements to trusts.

A. Recommendation with respect to an additional "reporting company" exemption

Under the CTA, the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, may exempt certain classes of entities for which requiring beneficial ownership information reporting "would not serve the public interest" and "would not be highly useful" for national security and law enforcement agencies. We recommend that FinCEN coordinate with the Treasury Secretary and other applicable officials to adopt such an exemption for pension plans established under the Employee Retirement Income Security Act of 1974 ("ERISA"). An account opened for the purpose of participating in such a plan is excluded from the definition of "account" for purposes of the CDD Rule.[51] Indeed, FinCEN has determined that "accounts established to

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[49] Given the supervision of these banks and trust companies by a state regulator and the requirements under which their beneficial ownership may be known, an exemption would be consistent with the authority in the CTA to grant exemptions from the term "reporting company," which is described further in Section II.A. *See* 31 U.S.C. § 5336(a)(11)(B)(xxiv).

[50] 31 C.F.R. § 1010.230(a).

[51] 31 C.F.R. § 1010.230(c) (incorporating by reference the meaning set forth in 31 C.F.R. § 1020.100(a)).

enable employees to participate in retirement plans established under ERISA are of extremely low money laundering risk."[52] For these reasons, ERISA pension plans would satisfy the requirements for granting an exemption under the CTA and should be exempt from the definition of reporting company.

B. Recommendations with respect to reporting by terminated and exempt entities

We believe that the usefulness of the registry would be significantly enhanced for authorized users if it contained information about entities that are no longer required to report beneficial ownership information and entities that are exempt from reporting such information. Accordingly, BPI strongly supports a requirement that reporting companies that have terminated their legal existence report the fact of their termination to FinCEN.[53] We also strongly support FinCEN's suggestion that exempt entities may be permitted to voluntarily file exemption certificates with FinCEN.[54]

C. Recommendations with respect to trusts

We appreciate FinCEN's consideration of the unique features of trusts in the NPRM.[55] We recommend that FinCEN modify certain aspects of the proposed rule to further address particular circumstances that can arise where a trust holds ownership interests in a company. These circumstances are particularly relevant to BPI members with corporate trust functions.

- *Trusts with an exempt entity as corporate trustee*. In accordance with the CTA,[56] the rule proposed in the NPRM would exempt from the definition of "reporting company" any entity the ownership interests of which are "controlled or wholly owned, directly or indirectly, by one or more entities" that are otherwise exempted (other than under certain specified exemptions).[57] Where an entity's ownership interests are controlled or wholly owned, directly or indirectly, by a single or multiple trusts, each of which has a bank (which is a category of exempted entity[58]) as the corporate trustee, the corporate trustee bank(s) play a control role with respect to that entity that is analogous to the role a parent entity plays with respect to its subsidiary. As a consequence, these entities may present lower illicit finance risk. For this reason, we request that FinCEN consider whether they, too, should be

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52 81 Fed. Reg. at 29413.

53 NPRM at 69947.

54 *Id.* at 69941.

55 NPRM, Proposed 31 C.F.R. § 1010.380(d)(3)(ii)(C); NPRM at 69935-36.

56 31 U.S.C. § 5336(a)(11)(B)(xxii).

57 NPRM, Proposed 31 C.F.R. § 1010.380(c)(2)(xxii).

58 31 U.S.C. § 5336(a)(11)(B)(iii); NPRM, Proposed 31 C.F.R. § 1010.380(c)(2)(iii).

treated as exempt.

- *Directed trusts*. In a directed trust, a third-party individual or entity (often referred to as the investment adviser) is authorized to direct a trustee in implementing actions for the trust. For example, an investment adviser may, in accordance with a trust instrument, direct a corporate trustee to form an entity to be owned by the trust, with the corporate trustee having no discretion as to the formation or activities of the newly formed entity. With respect to these trusts where a trustee lacks investment discretion, we recommend that FinCEN clarify in any final beneficial ownership reporting rule that the trustee should not be considered a "company applicant" solely by acting on the investment adviser's instruction to form, or cause to be formed, a new legal entity. Further, for these trusts, the trustee does not have "authority to dispose of trust assets."[59] Accordingly, we recommend that FinCEN also clarify that the investment adviser, and *not* the trustee, owns or controls any ownership interest that the trust holds, directly or indirectly, in a legal entity.

III. FinCEN should structure the registry and related processes to maximize usefulness to authorized users, including banks.

To maximize usefulness of the registry to authorized users, including banks, we offer several recommendations for FinCEN's consideration in structuring the registry and related processes. Although these recommendations may appear more relevant to FinCEN's future rulemakings related to accessing the registry and revising the CDD Rule, the final rule that results from this NPRM will necessarily have a substantive impact on the nature and content of those future rulemakings. Accordingly, we would encourage FinCEN to bear these recommendations in mind in formulating a final beneficial ownership reporting rule.

A. FinCEN should afford banks access on receipt of customer consent and flexibility in obtaining that consent.

The CTA provides that a bank may access beneficial ownership information in the FinCEN Registry only by making a request to FinCEN "with the consent of a reporting company."[60] Although we acknowledge the complexity of issues involving access to the registry, to ensure the registry is highly useful, FinCEN should provide a bank that has secured customer consent with full and immediate access to the customer's registry information. Moreover, FinCEN should facilitate flexibility in the mechanisms through which reporting companies may provide, and banks may elicit, the necessary consent.

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59 NPRM, Proposed 31 C.F.R. § 1010.380(d)(3)(ii)(C)(1).

60 31 U.S.C. § 5336(c)(2)(B)(iii).

B. FinCEN should consider ease-of-use as it develops the registry.

If banks are not able to query the registry easily and rely on the data therein, they may simply opt not to use the registry, which would run counter to Congressional intent. We encourage FinCEN to develop the means for banks to search the registry in real time, with respect to reporting companies for which they have consent, and to pull data in bulk (perhaps through an application programming interface ("API")) so that a bank's due diligence processes can readily integrate the data in the registry.

C. FinCEN identifiers should be designed to make them informative.

The NPRM does not address the potential structure or content of the FinCEN identifier. To increase the usefulness of the identifier, BPI recommends that FinCEN consider structuring it to include content that complements other beneficial ownership information. FinCEN may wish to consider, for example, including in the identifier additional information about the individual or entity, such as a location and country code, as are incorporated in Bank Identification Codes and International Bank Account Numbers.

D. FinCEN should clarify permissible uses by banks of registry information.

FinCEN should clarify the permissible uses of information by banks of information in the registry. Under the CTA, FinCEN may disclose information in the registry to a bank subject to customer due diligence requirements only based on a request that would "facilitate the compliance of the financial institution with customer due diligence requirements under applicable law."[61] FinCEN should clarify that this limitation does not require that registry information be used solely for CDD Rule compliance, but instead that it may be used, to the extent a customer has provided consent, for the broader range of customer due diligence activities that an institution may undertake, which include understanding the nature and purpose of customer relationships, conducting ongoing monitoring of transactions to identify and report suspicious transactions, and maintaining and updating customer information. By confirming that institutions may access the registry for these and other specified due diligence-related purposes (provided they have consent of the relevant entity), FinCEN would facilitate broader usefulness of the registry in mitigating relevant illicit finance risks and improving the efficiency of relevant AML processes.

IV. FinCEN should establish processes to verify reported beneficial ownership information and allow financial institutions to rely on that information.

As BPI discussed in its comment letter responding to the ANPRM,[62] to make the registry an effective tool for national security, intelligence, law enforcement agencies, financial institutions, and federal functional regulators, FinCEN should ensure that the registry is an "accurate, complete, and

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61 *Id*.

62 *See* note 7, above.

highly useful" source of beneficial ownership information about reporting companies.[63] To accomplish this objective, we believe FinCEN should establish processes that enable verification of reported beneficial ownership information included in the registry. Further, banks should be expressly permitted (but not required) to *rely on* the information in the registry in satisfying their obligations to identify and verify the identity of beneficial owners under the CDD Rule, including any revised CDD Rule. Permitting bank reliance on the information in the registry would, in accordance with the CTA's instruction, minimize burdens on banks that are unnecessary or duplicative in light of the CTA's enactment.

A. Verification of reported information by FinCEN is critical.

1. Absent FinCEN verification, authorized users will lack sufficient assurances the information in the registry is accurate.

BPI respectfully submits that processes for FinCEN verification are necessary to "ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful."[64] In our view, absent verification, authorized registry users—be they law enforcement or national security officials, regulators, or banks—will lack sufficient assurances that the information in the registry is accurate. To that end, we suggest that FinCEN undertake regular assessments of its verification processes, which would promote confidence in the utility of the registry.

Without sufficient assurances as to accuracy, users will be less willing and, ultimately, less likely to rely on the registry. User reluctance to rely on the registry is inconsistent with the statutory directive that the information reported to FinCEN be "highly useful." Moreover, at least insofar as there is symmetry between the final rule resulting from this NPRM and a revised CDD Rule, FinCEN verification has the potential to reduce unnecessary or duplicative burdens on banks and minimize burdens on reporting companies by obviating the need for each bank at which a reporting company opens an account to separately verify the same beneficial ownership information.[65] If FinCEN does not establish

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63 31 U.S.C. § 5336(b)(4)(B)(ii).

64 *Id.*

65 In any event, the verification responsibility should not be assigned to banks via a revised CDD Rule or otherwise. As described in Section 1.A, banks have struggled in applying the CDD Rule to determine who should (or should not) be considered a beneficial owner, and the CDD Rule's prongs pertaining to beneficial ownership are much cleaner to apply than the components of the definition proposed in the NPRM. If the proposed components prevail, any requirement or expectation that banks verify the information reported to the registry would compound this already challenging problem and run directly counter to Congress' mandate that the CDD Rule be revised "to reduce unnecessary or duplicative burdens on financial institutions and legal entity customers." Ultimately, if banks are required to separately identify and verify the identity of beneficial owners of legal entity customers that also must report to FinCEN under the CTA, banks may decline to utilize the registry, reasonably concluding that it does not provide meaningful information that outweighs the substantial burdens associated with reconciling information discrepancies discussed in Section IV.C.

processes to verify information in the registry, individual authorized users—including law enforcement and national security agencies, as well as banks—will be required to independently undertake their own verification processes before using the information in the registry. Bank verification of reported information will impose unnecessary burdens on reporting companies because banks would likely need to collect from the reporting company the same information that company already reported to FinCEN. The burden would be compounded for customers with accounts at multiple banks.

According to the NPRM, FinCEN is "continu[ing] to evaluate options for verification" of reported beneficial ownership information. BPI is strongly supportive of these efforts and would welcome direct engagement with FinCEN as it considers its options, especially in light of members' significant experience and expertise in performing automated and other types of verification of customer information. This experience may also help inform FinCEN's evaluation of the costs associated with verifying beneficial ownership information, as required under Section 6502(b)(1)(C) of the CTA.

2. Collecting identification documents is important, but insufficient on its own.

As recognized by the NPRM, one potential verification tool is the collection of identification documents. As proposed by FinCEN, reporting companies would be required to submit to FinCEN a scanned copy of a non-expired identification document for each beneficial owner. This requirement would provide significant efficiencies for law enforcement and national security officials, banks, and their customers, particularly if, as described in section IV.B.1, banks are permitted to rely on the reported information. As FinCEN develops processes for identification document collection, we believe that FinCEN should consider how it will implement data quality standards, mitigate fraud risks, and develop appropriate consent and data privacy practices.

3. Requiring certifications of reported information is not a substitute for verification.

BPI supports the proposed requirement in the NPRM that filers certify their submissions to FinCEN.[66] Combined with the CTA's penalties for reporting violations, including providing false or fraudulent beneficial ownership information, these certifications should provide all authorized registry users with additional confidence in the information reported to FinCEN and foster the utility of the information. Requiring certifications, however—whether alone or coupled with FinCEN's collection of identification documents—would not provide sufficient assurances of accuracy or serve as an adequate substitute for FinCEN verification.

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66 NPRM, at 69930.

4. Verification sufficient to support reliance by registry users can be performed by FinCEN in a centralized, efficient, and effective manner.

BPI respectfully submits that only verification by FinCEN will "ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful."[67] In our view, neither the collection of identification documents by FinCEN nor a certification requirement—alone or in combination—provides verification of the reported beneficial ownership information sufficient to support reliance by registry users. Sufficient verification could be performed by FinCEN in a centralized, efficient, and effective manner, either alone or in combination with collecting identification documents and certifications. In particular, FinCEN could automate verification, in whole or in substantial part, which has the potential to not only improve the accuracy of the information in the registry but also reduce the aggregate burden that would otherwise be imposed on FinCEN (and, ultimately, other authorized registry users).

For instance, FinCEN could consider implementing one or more APIs that directly connect to systems or databases maintained by other federal agencies and/or secretaries of state and, through those APIs, implement automated processes to verify the beneficial ownership information reported to FinCEN. FinCEN could also consider leveraging automated non-documentary tools that are commercially available and already in use by many banks to verify the identity of beneficial owners. Through use of APIs, commercially available tools, or other automated tools, human intervention could be limited to addressing material inconsistencies identified through the automated processes. Given members' extensive experience with verification tools and APIs, BPI members would welcome direct engagement with FinCEN concerning verification means that would improve the accuracy and usefulness of the registry, support reliance by authorized registry users, and address FinCEN objectives, including regarding effectiveness and efficiency.

B. Banks should be permitted, but not required, to rely on beneficial ownership information in the registry.

The CTA contemplates, but does not mandate, bank reliance on the registry and requires FinCEN to consider reliance when revising the CDD Rule to align with the CTA.[68] Given this intersection, it is important that the registry be designed and implemented in such a way that banks may, but are not

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67 31 U.S.C. § 5336(b)(4)(B)(ii).

68 *See* 31 U.S.C. § 5336(b)(1)(F) ("In promulgating the regulations required . . . the Secretary of the Treasury shall, to the greatest extent practicable . . . collect [beneficial ownership] information in a form and manner that ensures the information is highly useful in . . . confirming beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law."). *See also id*. § 5336(c)(2)(B)(iii) (authorizing disclosure of beneficial ownership pursuant to a request by a financial institution to facilitate compliance with customer due diligence requirements).

required to, satisfy any obligation under the CDD Rule, including any revised rule, to identify and verify the beneficial owners of a legal entity customer by relying on information in the registry.[69] Indeed, Congress clearly contemplated that FinCEN would create and manage a comprehensive nationwide system for reporting beneficial ownership information, and did so for the purpose of improving the U.S. AML/CFT regime.[70] In our view, not permitting bank reliance would be inconsistent with the notion of such a regime. Further, as described above, in addition to promoting the registry's usefulness, the ability of banks to rely on beneficial ownership information in the registry will reduce the burden on reporting companies, who might otherwise have to provide information regarding beneficial owners to multiple sources.

1. Permitting reliance would better enable banks to refocus CDD activities on the basis of risk.

The CTA directs FinCEN to revise the CDD Rule in such a way as to maximize resource efficiency in order to more effectively counter illicit financial activity.[71] Although FinCEN is not permitted to "repeal the requirement that financial institutions identify and verify beneficial owners of legal entity customers," in making revisions to the CDD Rule, FinCEN must consider both the "degree of reliance by financial institutions" on the registry for purposes of obtaining and updating beneficial ownership information and the "use of risk-based principles for requiring reports of beneficial ownership information."[72] Congress's contemplation of both reliance and risk-based principles in aligning the CDD Rule with the CTA suggests that any obligation to obtain beneficial ownership information, or the beneficial ownership information that must be obtained, should turn, at least in meaningful part, on risk.[73] Permitting banks to rely on the registry in satisfying any obligation under the CDD Rule, including any revised rule, to identify and verify the identity of beneficial owners of a legal entity customer would

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69 In addition, FinCEN should clarify that there is no expectation that a bank leverage beneficial ownership information in the registry unless and until any such leveraging is addressed in a revised CDD Rule. FinCEN should also consider establishing a safe harbor for institutions that rely on beneficial ownership information in the registry. Such a safe harbor could, for example, provide that institutions will be deemed to comply with any obligations under the CDD Rule, including any revised rule, to identify and verify a legal entity customer's beneficial owners if they retrieve that customer's reported information in the registry.

70 *See* NDAA 2021, § 6402(5).

71 *See id.* § 6402(8).

72 *Id*. § 6403(d)(3)(A)–(B).

73 For example, if banks are not able to rely on the information in the registry, whether because they lack sufficient assurances that it is accurate or because FinCEN does not permit reliance, they should have substantially more latitude in connection with any obligation under the CDD Rule, including any revised rule, to identify or verify the identity of beneficial owners.

better enable those banks to refocus their CDD activities on the basis of risk, thereby maximizing resource efficiency in order to more effectively counter illicit financial activity.

In a similar vein, if banks are permitted to rely on the beneficial ownership information reported to the registry, the NPRM's requirement that reporting companies file updated reports with FinCEN when there are changes in reported information has the potential to better enable banks to refocus CDD efforts on the basis of risk.

More specifically, permitting reliance on verified beneficial ownership information reported to the registry, including changes to that information, would eliminate the need under the current CDD Rule, or any revised rule, for banks to re-collect beneficial ownership information at each new account opening. The CDD Rule's new account requirements are, in practice, extremely burdensome, particularly in situations where a bank routinely opens multiple accounts for a customer on the same day or within a short period of time. Further, the cost of complying with the new account requirements does not appear to come with any corresponding benefit. There is no reason to believe that opening a new account, in and of itself, is an indication of changed beneficial ownership information. BPI members also are not aware of any feedback from law enforcement that re-collection on this basis has made a difference in addressing illicit finance risks. The efforts now focused on re-collection activities—efforts that would become both unnecessary and duplicative for banks and increase burdens on reporting companies—could then be redirected at true illicit finance risks.

Of course, regardless of whether reliance on the FinCEN Registry is permitted, banks would continue to undertake ongoing monitoring of their customers on the basis of risk, which may warrant collecting, updating, or re-verifying beneficial ownership information. They, however, should be given the flexibility in how they do so.

2. An inability of banks to rely on the registry will result in substantial burdens that are inconsistent with the purposes of the CTA.

As described above, if information in the registry is not verified by FinCEN, banks would need to separately verify the beneficial ownership information for each legal entity customer that opens an account at the bank. This would create duplicative burdens, especially for customers that open accounts at multiple banks. Similarly, if banks may not rely on the information in the registry to satisfy their obligations under the CDD Rule to identify and verify the identity of beneficial owners—whether because the information in the registry has not been validated or because FinCEN does not permit reliance—they would need to undertake identification and verification measures independent of the registry. As a consequence, reporting companies would be subjected to unnecessary additional burdens by being required to report beneficial ownership information to FinCEN and to separately report such information to each bank at which they open an account. For the reasons described in Section I.A above, these burdens would be amplified if FinCEN were to adopt the proposed substantial control and

ownership elements of the proposed rule in the NPRM and/or if FinCEN were not to harmonize requirements under the final beneficial ownership reporting rule and the CDD Rule, including revisions to that rule.

The resulting costs associated with not permitting banks to rely on the registry would be inconsistent with the CTA's instruction that FinCEN "seek to minimize burdens on reporting companies associated with the collection of the information . . . in light of the private compliance costs placed on legitimate businesses."[74] For these reasons, FinCEN should permit banks to ultimately not only access, but also rely on, the beneficial ownership information in the registry.

C. If banks are not permitted to rely on the registry, they should not be responsible for reconciling or reporting discrepancies.

If banks are not permitted to rely on the registry for beneficial ownership information and are instead required under the CDD Rule, including any revised rule, to separately identify and verify the identity of the beneficial owners of legal entity customers—a requirement that we firmly believe FinCEN should not impose—institutions could be compelled to expend enormous resources resolving discrepancies identified between the beneficial ownership information they collect under the CDD Rule and the information in the registry.

It is inevitable that discrepancies will occur between the information in the registry and the information collected by banks, and the scale of these discrepancies will likely increase substantially if there are significant discrepancies between requirements for beneficial ownership reporting to FinCEN and under the CDD Rule. In any case, we expect that discrepancies will arise for numerous legitimate reasons and banks afforded access to the registry should not be required or expected to reconcile or report those discrepancies. Any such requirement or expectation would unnecessarily divert time and resources away from efforts to identify and report illicit financial activity. Implementing the CTA, including the registry and a revised CDD Rule, in a manner that would lead institutions to devote significant resources to chasing down discrepancies—what would essentially be a "check-the-box" exercise—rather than focusing on identifying and reporting illicit activity would be inconsistent with Congress's instructions to FinCEN in promulgating the beneficial ownership reporting rule and revising the CDD Rule.[75] Banks afforded access to the registry should instead be permitted, if they identify a discrepancy between the beneficial ownership information in the registry and the bank's information, to

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74 31 U.S.C. § 5336(b)(1)(F)(iii).

75 NDAA 2021, § 6402(8) (FinCEN shall, in promulgating the beneficial ownership reporting rule, "seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information"); *id.* § 6403(d)(1)(C) (FinCEN shall, in revising the CDD Rule, "reduce any burdens on financial institutions and legal entity customers that are, in light of the enactment of this division and the amendments made by this division, unnecessary or duplicative").

determine appropriate actions on the basis of risk, including by leveraging their own risk-based customer due diligence review processes.

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BPI appreciates FinCEN's consideration of its comments. If you have any questions, please contact the undersigned by phone at 202-589-1935 or by email at *Angelena.Bradfield@bpi.com.*

Respectfully submitted,

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