Congress of the United States
Washington, DC 20515

May 5, 2021

The Honorable Janet Yellen
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Mr. Michael Mosier
Acting Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

Re: Beneficial Ownership Information Reporting Requirements
Docket Number FINCEN-2021-0005 and RIN 1506-AB49

Dear Secretary Yellen and Acting Director Mosier:

We write as the principal authors and Democratic negotiators of the Corporate Transparency Act (CTA),[1] landmark legislation to crack down on the abuse of shell companies for illicit purposes. We believe that this law will provide law enforcement, national security, and intelligence agencies; federal functional regulators; the Financial Crimes Enforcement Network (FinCEN); and other agencies authorized to receive CTA-related information from FinCEN (hereafter "Authorized Agencies") with powerful new tools to prevent bad actors from using the U.S. financial system to hide and launder their money. As designed by the law, FinCEN has a critically important role in determining how the law will be implemented.

This letter includes detailed responses to many of the specific questions posed by the Advanced Notice of Proposed Rulemaking (ANPRM), but we would like to highlight five issues at the outset that we believe merit special attention.

First, we intended for the CTA to be interpreted and implemented broadly and flexibly, and in a manner that evolves to address new strategies that sophisticated criminals employ to hide and launder their illicit assets. To that end, we intended for the scope of the bill to be construed as *broadly* as possible, and for the exemptions to be construed as *narrowly* as possible.

[1] Pub. L. No. 116-283, Title LXIV (2021).

Second, we carefully considered the scope of the existing Customer Due Diligence (CDD) rule,[2] and we concluded that the scope was under-inclusive, and should be broadened to capture more legal entities and more individuals as beneficial owners of legal entities. Most importantly, as explained below, we concluded that the CDD rule's definition of "beneficial owner" is overly narrow, because it only requires reporting companies to disclose a single "control" person, even when there are multiple individuals who exercise substantial control over the company. To address this deficiency, we crafted a definition of "beneficial owner" that purposely requires reporting companies to disclose *everyone* who exercises substantial control over the company. Thus, we note that under the statutory scheme, FinCEN will need to broaden the definition of "control" in the current CDD rule when it engages in the mandatory revision of that rule.

Third, we intended for the following principles to drive FinCEN's implementation of the CTA: (1) the beneficial ownership information contained in FinCEN's database should be accurate, current, and secure; (2) the information in the database should allow Authorized Agencies and financial institutions to quickly map the relationships among reporting companies and among individuals listed as beneficial owners; and (3) Authorized Agencies and financial institutions should be able to access the information in the database in a timely manner in order to support their authorized investigations and due diligence requirements.

Fourth, it is critical that the Treasury Department and other federal government stakeholders undertake a substantial and coordinated outreach effort prior to the law's effective date — which should start immediately, even while the rulemaking process is ongoing. To enable compliance with the new law, this is needed to ensure that agencies' timely and clear guidance on compliance is provided sufficiently in advance to reporting companies and to the business community more broadly on the new reporting obligations. This outreach should include information provided through routine informational mailings undertaken by FinCEN, the IRS, or other agencies; electronic communications; formal and informal outreach efforts by federal officials and Secretaries of State; and other means.

Finally, we note that FinCEN states that the rule is required to be finalized by January 1, 2022, but it is accepting comment on when it should reasonably become effective. As we noted above, we believe the CTA is essential to assisting Authorized Agencies and our international partners combat money laundering, terrorist financing, and other forms of financial crime. Accordingly, we expect FinCEN to make any final rule effective shortly after its release. We understand that FinCEN, in collaboration with its Department of Treasury colleagues, is currently working with a wide variety of stakeholders, including the Secretaries of State across the country, to ensure the business community both understands the general reporting required under the law and is prepared to begin to comply next year.

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[2] Financial Crimes Enforcement Network, *Customer Due Diligence Requirements for Financial Institutions*, 81 Fed. Reg. 29398 (May 11, 2016) (Final Rule).

Responses to Specific Questions

Definitions

1. The CTA requires reporting of beneficial ownership information by "reporting companies," which are defined, subject to certain exceptions, as including corporations, LLCs, or any "other similar entity" that is created by the filing of a document with a secretary of state or a similar office under the law of a state or Indian tribe or formed under the law of a foreign country and registered to do business in the United States by the filing of such a document.

1a. How should FinCEN interpret the phrase "other similar entity," and what factors should FinCEN consider in determining whether an entity qualifies as a similar entity?

We believe the phrase "other similar entity" should be interpreted broadly, and in a way that minimizes gaps and loopholes for bad actors. This phrase was intended to capture entities that share many of the same characteristics as corporations and limited liability companies (LLCs) — in particular, entities that are formed through a filing with the state — but which are not categorized as a corporation or an LLC. For example, this could include limited liability partnerships (LLPs), which are often created through a filing with the state, and share many of the same characteristics of corporations and LLCs.

This is critical to achieving the flexibility that we believe is necessary to prevent bad actors from evading the beneficial ownership reporting requirements. Without a catch-all phrase like "other similar entity," bad actors could simply find another type of entity that is not technically a corporation or LLC but which functions identically, using that entity to move their illicit assets anonymously. We encourage FinCEN to engage in continuous dialogue with the Authorized Agencies and Secretaries of State to ensure the definition remains up to date to capture all newly established similar entities.

2. The CTA limits the definition of reporting companies to corporations, LLCs, and other similar entities that are "created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe" or "registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe."

2a. Does this language describe corporate filing practices and the applicable law of the states and Indian tribes sufficiently clearly to avoid confusion about whether an entity does or does not meet this requirement?

This language is intentionally broad, because we wanted to ensure that it covers the full spectrum of company formation practices. However, to the extent that there is ambiguity over whether this language covers the formation process for a category of entity that is included within the definition of a "reporting company," FinCEN should interpret the language broadly to include such a formation process.

3. The CTA defines the "beneficial owner" of an entity, subject to certain exceptions, as "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise" either "exercises substantial control over the entity" or "owns or controls not less than 25 percent of the ownership interests of the entity." Is this definition, including the specified exceptions, sufficiently clear, or are there aspects of this definition and specified exceptions that FinCEN should clarify by regulation?

To the extent that greater clarity is necessary to achieve full compliance with the beneficial ownership reporting requirement, we believe FinCEN should clarify the "beneficial owner" definition. However, FinCEN should *not* use its rulemaking authority to either: (1) narrow the scope of the "beneficial owner" definition; or (2) broaden any exemptions to the "beneficial owner" definition.

3a. To what extent should FinCEN's regulatory definition of beneficial owner in this context be the same as, or similar to, the current CDD rule's definition or the standards used to determine who is a beneficial owner under 17 CFR §240.13d-3 adopted under the Securities Exchange Act of 1934?

We strongly believe that the definition of "beneficial owner" should be broader, and more flexible, than the current CDD rule's definition. We closely examined the CDD rule's definition of "beneficial owner," and we carefully considered whether the definition in the CTA should mirror the CDD rule's definition. Ultimately, we concluded that the CDD rule's definition was deficient in key respects, and deliberately decided *not* to align the CTA's definition of "beneficial owner" with the current CDD rule's definition.

Most importantly, the CDD rule's definition only requires companies to disclose a *single* control person, even if multiple individuals exercise substantial control over the company. Therefore, under this definition, companies are not required to disclose all of their beneficial owners. This is, quite simply, a fatal flaw: *Any definition that allows companies to avoid disclosing all of their beneficial owners is completely unacceptable*. As a result, we crafted a definition that requires companies to disclose *all* of their beneficial owners, and that does not arbitrarily cap the number of beneficial owners required to be disclosed.[3]

We would view any attempt to interpret the CTA's definition of "beneficial owner" as the same as, or similar to, the CDD rule's definition as a flagrant disregard for, and direct contradiction of, the will of Congress.

The definition of beneficial owner under 17 C.F.R. § 240.13d-3 was crafted with a narrower goal in mind, and it should not limit the scope of the CTA's definition.

[3] *See* 31 U.S.C. § 5336(a)(3)(A) (defining "beneficial owner" to mean "an individual who, directly or indirectly, … exercises substantial control over the entity"); *id.* at § 5336(b)(2)(A) (requiring reporting companies to "identify *each* beneficial owner of the applicable reporting company") (emphasis added).

3b. Should FinCEN define either or both of the terms "own" and "control" with respect to the ownership interests of an entity? If so, should such a definition be drawn from or based on an existing definition in another area, such as securities law or tax law?

While existing definitions of ownership or control in other areas, such as securities or tax laws, may be informative, these definitions were not intended to address the same problems as the CTA, which is aimed primarily at preventing bad actors from using anonymous shell companies to hide and launder illicit assets.

Therefore, when FinCEN defines the terms "own" and "control," it should do so with the broad purposes of the CTA in mind — *i.e.*, with an eye toward preventing bad actors from using anonymous shell companies for illicit purposes, and toward making it easier for Authorized Agencies to identify the illicit actors connected to a company.

3c. Should FinCEN define the term "substantial control"? If so, should FinCEN define "substantial control" to mean that no reporting company can have more than one beneficial owner who is considered to be in substantial control of the company, or should FinCEN define that term to make it possible that a reporting company may have more than one beneficial owner with "substantial control"?

The definition of "substantial control" is one of the most important definitions in the CTA, and the scope of this definition will go a long way toward determining the effectiveness of the CTA as a whole. We deliberately did not define the term "substantial control," because we believed that a rigid statutory definition would not be able to keep up with the constantly evolving corporate structures of sophisticated, professional criminals who seek to use legal entities to hide and launder their illicit assets. Instead, we left this term undefined in the statute in order to give FinCEN the authority to interpret the term in a way that is both broad and flexible.

As noted in our response to question 3a above, we strongly oppose interpreting the definition of "substantial control" to mean that no reporting company can have more than one beneficial owner who is considered to be in substantial control of the company. We believe such an interpretation is categorically barred by the statutory text of the CTA, which clearly requires reporting companies to disclose "each beneficial owner"[4] — not *one* beneficial owner, but *each* beneficial owner.

4. The CTA defines the term "applicant" as an individual who "files an application to form" or "registers or files an application to register" a reporting company under applicable state or tribal law. Is this language sufficiently clear, in light of current law and current filing and registration practices, or should FinCEN expand on this definition, and if so how?

The definition of "applicant" was intended to cover the full spectrum of company

[4] *Id.* at § 5336(b)(2)(A).

formation and registration practices. We did not intend for there to be any scenario in which a company is formed or registered without *anyone* satisfying the definition of an "applicant," nor do we believe that the current definition allows for such a scenario. As such, if FinCEN determines that the current definition *does* allow for a company to be formed without anyone qualifying as an "applicant," we would urge FinCEN to expand on the definition to ensure that there is an "applicant" for every reporting company subject to the beneficial ownership reporting requirement in section 5336(b)(1)(A).

5. Are there any other terms used in the CTA, in addition to those the CTA defines, that should be defined in FinCEN's regulations to provide additional clarity? If so, which terms, why should FinCEN define such terms by regulation, and how should any such terms be defined?

We intended for FinCEN to have organic rulemaking authority to define additional terms in the CTA, if it determines that any additional terms need further elucidation. However, we take no position on whether any terms in the CTA that are not already defined need further definition.

6. The CTA contains numerous defined exemptions from the definition of "reporting company." Are these exemptions sufficiently clear, or are there aspects of any of these definitions that FinCEN should clarify by regulation?

At the outset, it's important to note that the vast majority of the exemptions to the definition of "reporting company" adhered to a clear, consistent, and coherent set of principles: generally, companies were only exempted from the definition of "reporting company" if they: (1) already disclose their beneficial owners publicly; (2) already disclose their beneficial owners to a government agency, such as a prudential regulator; or (3) disclose — either publicly or to a government agency — an individual within the company who is required to know who the beneficial owners of the company are. It is therefore our strong belief that these same principles should be applied in the implementation process. Similarly, FinCEN should not interpret any exemptions in a way that would broaden the scope of the exemption — and therefore weaken the law.

One example of this would be state-chartered non-depository trust companies. Because these entities are supervised and examined by state authorities, the set of principles intended by the exemptions (and specifically, by the exemption in section 5336(a)(11)(B)(iii)) are met. The effect is that Authorized Agencies are able to work with the entity's prudential regulator to access beneficial ownership information and/or an individual within the company who is required to know who the beneficial owners of the company are.

Another concrete example of this lies in the definition of "ownership" to be used in determining whether an entity is exempt under the so-called "subsidiary exemption."[5] This exemption should only be made available to an entity of which the ownership interests are

[5] *Id.* at § 5336(a)(11)(B)(xxii).

wholly owned or controlled, directly or indirectly, by one or more of the entities included in the exemption that are themselves exempted by the CTA elsewhere. To exempt subsidiaries that are, for example, partially owned or even majority-owned (as some commentators have argued) but not wholly owned would substantially increase the universe of exempt entities, and introduce major risks that bad actors will gain access to the U.S. financial system through jointly owned entities or other types of joint ventures. This would grant illicit actors a clear path to evade reporting requirements and gain entry to the U.S. financial system: find an exempt company to serve as a partner, or as a majority owner in a joint venture, and, thus, escape detection.

Where Congress intended to identify an ownership interest less than 100%, it did so, as in the definition of "beneficial ownership" which includes an individual who "owns or controls *not less than 25 percent* of the ownership interests of the entity." In the absence of such a qualifier, Congress clearly intended such ownership or control to mean 100% of the entity's ownership interest or 100% of its control rights.

7. In addition to the statutory exemptions from the definition of "reporting company," the CTA authorizes the Secretary, with the concurrence of the Attorney General and the Secretary of Homeland Security, to exempt any other entity or class of entities by regulation, upon making certain determinations. Are there any categories of entities that are not currently subject to an exemption from the definition of "reporting company" that FinCEN should consider for an exemption pursuant to this authority, and if so why?

The exemptions to the definition of "reporting company" were debated extensively over a period of months of House-Senate negotiations, and had been previously discussed and assessed by the committees of jurisdiction for years. Accordingly, FinCEN should presume that if a type of entity is not explicitly included in the list of exemptions, then Congress intended to *include* that type of entity within the definition of "reporting company." Therefore, we do not believe that any additional categories of entities should be considered at this time for an exemption pursuant to this authority.

To the extent that FinCEN does, at some point in the future, consider exempting additional categories of entities pursuant to this authority, it should only exempt those additional categories after a full, public notice-and-comment period. Furthermore, any additional exemptions should have to satisfy the criteria described in the answer to question 6 above — namely, that the company either: (1) already discloses their beneficial owners publicly; (2) already discloses their beneficial owners to a government agency, such as a prudential regulator; or (3) discloses — either publicly or to a government agency — an individual within the company who is required to know who the beneficial owners of the company are.

8. If a trust or special purpose vehicle is formed by a filing with a secretary of state or a similar office, should it be included or excluded from the reporting requirements?

As noted in the answer to question 1a above, the phrase "other similar entity" was intended to capture precisely these types of entities — namely, entities that are formed through a

filing with the state. To the extent that a trust or SPV is formed by a filing with the secretary of state or a similar office, then we believe it should be included as a "similar entity" and subject to the beneficial ownership reporting requirements.

Reporting of Beneficial Ownership Information

12. Should a reporting company be required to provide information about the reporting company's corporate affiliates, parents, and subsidiaries as a matter of course, or only when that information has a bearing on the reporting company's ultimate beneficial owner(s)?

We believe that reporting companies should be required to provide information about its corporate affiliates, parents, and subsidiaries as a matter of course. Disclosing information about a reporting company's affiliates, parents, and subsidiaries will give Authorized Agencies and financial institutions a more robust picture of the company's relationships, and will make it easier for these agencies to map relationships between companies in the database. Contrary to this goal, only requiring this information when it has a bearing on the reporting company's ultimate beneficial owner would allow the reporting company to make a discretionary determination about which affiliates, parents, and subsidiaries to disclose, which invites abuse by bad actors.

13. What information, if any, should FinCEN require a reporting company to provide about the nature of a reporting company's relationship to its beneficial owners (including any corporate intermediaries or any other contract, arrangement, understanding, or relationship), to ensure that the beneficial ownership database is highly useful to authorized users?

We believe reporting companies should be required to identify whether each beneficial owner falls under the "ownership" prong[6] or the "control" prong[7] of the "beneficial owner" definition. The nature of each function — owner vs. manager — is important information that will better inform Authorized Agencies about the role that each individual is playing in the reporting company.

We also believe that it is important to identify whether ownership or control is being exercised directly or indirectly, or through any contract, arrangement, understanding, or other relationship. As such, we believe FinCEN should require reporting companies to identify whether ownership or control is being exercised through any method other than directly — *i.e.*, indirectly, or through a contract, arrangement, understanding, relationship, or similar method. This will enable Authorized Agencies to have a fuller picture of the relationships both within the reporting company and across reporting companies.

[6] *Id.* at § 5336(a)(3)(A)(ii).

[7] *Id.* at § 5336(a)(3)(A)(i).

14. Persons currently obligated to file reports with FinCEN overwhelmingly do so electronically, either on a form-by-form basis or in batches using proprietary software developed by private-sector technology service providers.

14b. Should FinCEN allow or support any mechanisms other than direct electronic filing?

While electronic filing should be the norm, we believe FinCEN should consider allowing potential exemptions, if such alternative filing methods are necessary to accommodate small businesses that may have technological limitations. However, if beneficial ownership information is not filed electronically, then in these exceptional circumstances, FinCEN should be required to expeditiously input such information into the database, to ensure that the database contains all the beneficial ownership information that reporting companies have filed.

15. Section 5336(b)(2)(C) requires written certifications to be filed with FinCEN by exempt pooled investment vehicles described in section 5336(a)(11)(B)(xviii) that are formed under the laws of a foreign country.

15b. What information should be included in these certifications?

We believe the pooled investment vehicles described in section 5336(a)(11)(B)(xviii) should be required to file the same information about the individuals who exercise substantial control as reporting companies, including whether such substantial control is exercised directly or indirectly, or through a contract, arrangement, understanding, relationship, or similar method.

15c. Should there be a mechanism through which such filings could be made to foreign authorities and forwarded to FinCEN, or should such filings have to be made directly to FinCEN?

We believe these filings should be made directly with FinCEN, and should not be filed with foreign authorities and then forwarded to FinCEN. It's important for FinCEN to have a direct relationship with all reporting companies, including pooled investment vehicles, to ensure that FinCEN has the ability to follow up directly in case there are deficiencies in the filing.

15e. Should these certifications be accessible to database users, and if so, should they be accessible on the same terms as beneficial ownership information of reporting companies?

Yes, we believe these certifications should be accessible to database users. We see no reason why the accessibility of the information about the individuals who exercise the substantial control over these foreign pooled investment vehicles should differ from the accessibility of similar information about reporting companies.

21. For those reporting companies without FinCEN identifiers, what should be considered a "timely manner" for updating a change in beneficial ownership?

This question was debated extensively in the negotiations over the CTA, and while we set an outer limit on the deadline for when changes to beneficial ownership information would have to be filed (1 year), we intended for this information to be filed as soon as practicable. If changes to beneficial ownership information are not filed in a timely manner, then the information database could be stale, and therefore not useful for Authorized Agencies and financial institutions. This would undermine the purpose of the CTA, which is to ensure that Authorized Agencies and financial institutions have access to accurate, up-to-date beneficial ownership information for reporting companies. To that end, we strongly urge FinCEN to require updates to beneficial ownership information to be filed as quickly as possible.

21a. Should this period differ based on the type of reporting company?

We believe that the required period for updating beneficial ownership information should be uniform across all companies, and that any deviations from this uniform standard for different types of reporting companies should be limited to extreme — and unavoidable — circumstances. Likewise, a desire for clear, consistent, uniform guidance about reporting entities providing updated information is also why we required a review by the Treasury Secretary, in consultation with the Attorney General and the Homeland Security Secretary, to determine whether to establish a shorter timeline than was provided in the bill for certain reporting entities to update their beneficial ownership information.

22. Section 5336(h)(3)(C) contains a safe harbor for persons who seek to correct previously submitted but inaccurate beneficial ownership information pursuant to FinCEN regulations. How should FinCEN's regulations define the scope of this safe harbor? Should the nature of the inaccuracy (e.g., a misspelled address versus the complete omission of a beneficial owner) be relevant to the availability of the safe harbor?

The safe harbor in section 5336(h)(3)(C) was intended to provide relief to persons who make innocent mistakes on their filings, and subsequently voluntarily correct those mistakes. However, the safe harbor is *not* available to any person who "acts for the purpose of evading the reporting requirements" or "has actual knowledge that any information contained in the report is inaccurate."[8]

We believe that FinCEN should seek to limit the scope of the safe harbor to capture only innocent mistakes that are subsequently corrected. In addition, we believe that the nature of the inaccuracy should inform whether the person acted for the purpose of evading the CTA, or had actual knowledge of the inaccuracy.

23. What steps should reporting companies be required to take to support and confirm the accuracy of beneficial ownership information?

[8] *See id.* at § 5336(h)(3)(C)(i)(II)(aa)–(bb).

We believe that reporting companies should be required to take all steps that are reasonably necessary to confirm the accuracy of beneficial ownership information. The specific steps that are necessary to confirm the accuracy of beneficial ownership information will necessarily differ depending on the facts and circumstances.

We strongly urge FinCEN to avoid requiring reporting companies to take a "check-the-box" approach to confirming the accuracy of beneficial ownership information. FinCEN should consider providing guidance to reporting companies on the steps they should be taking, including through a "Questions and Answers" document. The goal, however, should always be to ensure that the beneficial ownership information in the database is as accurate and up-to-date as possible.

23a. Should reporting companies be required to certify the accuracy of their information when they submit it?

We believe that such a certification would be appropriate. Reporting companies are already subject to civil and criminal penalties for filing inaccurate information,[9] so requiring that they certify the accuracy of the information should not pose an additional burden.

23b. If so, what should this certification cover?

At a minimum, the certification should attest that to the best of the applicant or reporting company's knowledge, all the information contained in the report is accurate, and that the applicant or reporting company has taken all steps that are reasonably necessary to confirm the accuracy of the information.

24. What steps should FinCEN take to ensure that beneficial ownership information being reported is accurate and complete?

As noted above, the accuracy of the beneficial ownership information in the database is paramount. To that end, FinCEN should develop automated processes that flag incomplete, inaccurate, or suspicious filings. If filings are flagged as incomplete or inaccurate, FinCEN should quickly contact the reporting company in order to correct the deficiency. In addition, FinCEN should explore ways to leverage the Suspicious Activity Report (SAR) database to identify incomplete, inaccurate, or suspicious filings.

Security and Use of Beneficial Ownership and Applicant Information

32. When a state, local, or tribal law enforcement agency requests beneficial ownership information pursuant to an authorization from a court of competent jurisdiction to seek the information in a criminal or civil investigation, how, if at all, should FinCEN authenticate or confirm such authorization?

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[9] *See id.* at § 5336(h)(3).

We believe that state, local, and tribal law enforcement agencies should be permitted to self-certify that they are engaged in a legitimate criminal or civil investigation. Safeguards to ensure that state, local, and tribal law enforcement agencies are using the beneficial ownership information obtained from the database properly were debated extensively during the negotiations over the CTA.

State, local, and tribal law enforcement agencies with access to the beneficial ownership database are already required to maintain a detailed, auditable trail of each request for beneficial ownership information, and are subject to annual audits to verify that their requests for beneficial ownership information were appropriate. We strongly believe that these safeguards are sufficient to ensure that these law enforcement agencies are using the database appropriately, and pursuant to authorized investigations.

33. Should FinCEN provide a definition or criteria for determining whether a court has "competent jurisdiction" or has "authorized" such an order? If so, what definition or criteria would be appropriate?

We intended for the phrase "court of competent jurisdiction" to be flexible, and to encompass all authorized adjudicatory bodies, including magistrates. As the joint statement of managers makes clear: "'Court of competent jurisdiction,' for purposes of this measure, includes an officer of such a court such as a judge, magistrate, or a Clerk of Courts."[10] Accordingly, we do not believe that FinCEN should — or even has the authority to — unnecessarily limit either the terms "court of competent jurisdiction" or "authorized." Instead, FinCEN should defer to states, tribes, and local governments on what is an authorized adjudicatory body within their jurisdictions.

34. As a U.S. Government agency, FinCEN is subject to strict security and privacy laws, regulations, and other requirements that will protect the security and confidentiality of beneficial ownership and applicant information. What additional security and privacy measures should FinCEN implement to protect this information and limit its use to authorized purposes, which includes facilitating important national security, intelligence, and law enforcement activities as well as financial institutions' compliance with AML, CFT, and CDD requirements under applicable law? Would it be sufficient to make misuse of such information subject to existing penalties for violations of the BSA and FinCEN regulations, or should other protections be put in place, and if so what should they be?

FinCEN should utilize existing penalties for violations of the BSA and FinCEN regulations, along with the penalties clearly outlined in the CTA for an entity's failure to disclose required information or for unauthorized disclosure or use of beneficial ownership information.

[10] *See also* Black's Law Dictionary (11th ed. 2019) (defining "officer of the court" as, "Someone who is charged with upholding the law and administering the judicial system. Typically, officer of the court refers to a judge, clerk, bailiff, sheriff, or the like, but the term also applies to a lawyer, who is obliged to obey court rules and who owes a duty of candor to the court.").

FinCEN should also continue to require annual training for authorized users of the rules related to security of the information in the database.

35. How can FinCEN make beneficial ownership information available to financial institutions with CDD obligations so as to make that information most useful to those financial institutions?

FinCEN should provide for a secure, effective, efficient mechanism for financial institutions to gain access to the actual beneficial ownership information in the database for any company that has given the financial institutions consent to query the database for its beneficial ownership information. To the maximum extent practicable, the mechanisms established should ensure a timely, efficient, and automated exchange of information between the financial institution and FinCEN, to enable the financial institution to complete its customer due diligence process.

FinCEN should in turn *avoid* a so-called "red light/green light" approach designed to simply confirm whether information submitted to the financial institution by a reporting company is a precise match to the beneficial ownership information held by FinCEN. As far as practicable, FinCEN should devise an automated system that responds in real time to a qualifying request from a financial institution with *all* of the beneficial ownership information that FinCEN holds on the entity. It is important that this system be as efficient and streamlined as possible, seamlessly providing to financial institutions in a timely way the full information they need to fulfill their CDD obligations, which will, by law, remain in place. Depending of course on technology and security, the more information financial institutions are able to obtain from FinCEN, the better for both preserving the integrity of financial institutions' CDD procedures and for ensuring the continuing accuracy, timeliness, and reliability of beneficial ownership information in the database.

35a. Please describe whether financial institutions should be able to use that information for other customer identification purposes, including verification of customer information program information, with the consent of the reporting company?

To the extent that the beneficial ownership information is useful to financial institutions for other due diligence purposes, and the customer consents to additional uses, we see no reason why financial institutions shouldn't be allowed to use the beneficial ownership information for those purposes. We deliberately decided *not* to tie the phrase "customer due diligence requirements under applicable law" to the revised CDD rule under section 5336(d), in order to leave open the possibility that this information could be used for other due diligence purposes.

35b. Please describe whether FinCEN should make financial institution access more efficient by permitting reporting companies to pre-authorize specific financial institutions to which such information should be made available?

We are not necessarily opposed to allowing pre-authorization for specific financial institutions, but FinCEN should carefully consider whether that would lead to overly

complicated request forms for financial institutions. For example, this approach could result in there being one form for a financial institution when it hasn't been pre-authorized by the reporting company, and another form for pre-authorized financial institutions.

35c. In response to requests from financial institutions for beneficial ownership information, pursuant to 31 U.S.C. 5336(c)(2)(A), what is a reasonable period within which FinCEN should provide a response? Please also describe what specific information should be provided.

We anticipate that FinCEN will work to develop an automated system to ensure that beneficial ownership information could be provided to requesting financial institutions within 24 hours — at most — of the request. Any longer period could unnecessarily slow down account opening and other CDD-impacted processes. We fully expect that beneficial ownership information will be seamlessly provided to requesting financial institutions on a nearly real-time basis.

FinCEN should provide financial institutions making a qualifying request with all of the beneficial ownership information that the company submitted to FinCEN under section 5336(b)(2)(A). Financial institutions should have complete information to incorporate into their CDD-impacted processes and in order to catch any red flags or inconsistencies with any other, non-beneficial ownership information that the company has submitted to them.

36. How should FinCEN handle updated reporting for changes in beneficial ownership when beneficial ownership information has been previously requested by financial institutions, federal functional regulators, law enforcement, or other appropriate regulatory agencies?

To address changes to beneficial ownership information which has been previously requested by an Authorized Agency or a financial institution within the past year, we believe that FinCEN should develop a system to automatically notify the requesting agency or financial institution of the change, without a requirement to "opt in" to receive such information.

36a. If a requestor has previously requested and received beneficial ownership information concerning a particular legal entity, should the requester automatically receive notification from FinCEN that an update to the beneficial ownership information was subsequently submitted by the legal entity customer?

We believe that if a reporting company updates beneficial ownership information, and an Authorized Agency or a financial institution has recently requested that beneficial ownership information, then the agency or financial institution should receive an automated notification that the information they previously requested has been updated.

37. One category of authorized access to beneficial ownership information from the FinCEN database involves "a request made by a Federal functional regulator or other appropriate regulatory agency." How should the term "appropriate regulatory agency" be

interpreted? Should it be defined by regulation? If so, why and how?

We intended the phrase "appropriate regulatory agency" to cover agencies with regulatory jurisdiction over financial institutions with CDD requirements or the reporting company.

38. In what circumstances should applicant information be accessible on the same terms as beneficial ownership information (i.e., to agencies engaged in national security, intelligence, or law enforcement; to non-federal law enforcement agencies; to federal agencies, on behalf of certain foreign requestors; to federal functional regulators or other agencies; and to financial institutions subject to CDD requirements). If financial institutions are not required to consider applicant information in connection with due diligence on a reporting company opening an account, for example, should a financial institution's terms of access to applicant information differ from the terms of its access to beneficial ownership information?

Applicant information should be available to authorized agencies on the same terms as beneficial ownership information. To the extent that financial institutions are required to consider applicant information in connection with their due diligence requirements, then applicant information should also be available to financial institutions.

We appreciate the thoroughness and care which FinCEN has demonstrated in moving forward promptly to implement this landmark legislation in a timely way. We look forward to working with you in the months ahead to ensure full, effective implementation of the law.

Sincerely,

Carolyn B. Maloney
Chairwoman
House Committee on Oversight and Reform

Maxine Waters
Chairwoman
House Committee on Financial Services

Sherrod Brown
Chairman
Senate Committee on Banking, Housing,
and Urban Affairs