

February 14, 2023

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

RE: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities; Docket Number FINCEN-2021-0005 and RIN 1506-AB49/AB59

Dear Sir or Madam:

The American Bankers Association (ABA)<sup>1</sup> and the undersigned 51 state bankers associations (collectively, the Associations) are pleased to comment on FinCEN's proposal concerning access to and the safeguarding of beneficial ownership information.<sup>2</sup> The Corporate Transparency Act (CTA), part of the Anti-Money Laundering Act of 2020 (AMLA),<sup>3</sup> requires FinCEN to create a registry of the beneficial owners of legal entities formed or registered in the United States (the Registry), while minimizing the compliance burden on the regulated community.

When finalized, the proposed rule will be the second in a series of three regulations designed to establish the Registry. The first regulation set forth the information that must be reported to the Registry, who must report that information, and when it must be reported.<sup>4</sup> This proposal describes how FinCEN will regulate access by authorized recipients to the beneficial ownership information (BOI) within the Registry and requirements for the safeguarding of that information. The third regulation will update the beneficial ownership requirements of the existing Customer Due Diligence (CDD) Rule,<sup>5</sup> which currently requires banks and other covered financial institutions to identify and verify the identities of beneficial owners of their legal entity customers. Concurrently, FinCEN continues to develop the technological infrastructure underlying the Registry.

The banking industry has long supported the establishment of the Registry and remains committed to engaging with FinCEN to support and promote the goals of the CTA, namely, combating illicit finance through the establishment of the Registry, while simultaneously reducing the regulatory burden on both small businesses and regulated entities. However, we believe that the proposal is fatally flawed, and it will not accomplish either of these objectives. Accordingly, FinCEN should withdraw the current

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$23.6 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$19.4 trillion in deposits and extend \$12 trillion in loans.

<sup>2</sup> Financial Crimes Enforcement Network, Department of the Treasury, Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed. Reg. 77404 (December 16, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-12-16/pdf/2022-27031.pdf>.

<sup>3</sup> The CTA is Title LXIV of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (Jan. 1, 2021) (the NDAA). Division F of the NDAA is the Anti-Money Laundering Act of 2020, which includes the CTA.

<sup>4</sup> Financial Crimes Enforcement Network, Department of the Treasury, Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498 (September 30, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-09-30/pdf/2022-21020.pdf>.

<sup>5</sup> 31 CFR 1010.230.

proposal and engage with the financial services industry and small businesses to develop a new proposal that will better achieve the objectives of the CTA and AMLA.

## I. Summary of the Comment

The proposal is not consistent with the objectives of the CTA and AMLA, and as currently conceived, the Registry will be of limited, if any, value to banks. Although it is difficult to assess fully how the proposal will affect banks until FinCEN explains how it intends to amend the CDD Rule, it is nevertheless clear that the proposal does not meet Congress' goal of promoting financial transparency while eliminating duplicative reporting requirements and reducing unnecessary regulatory costs and burdens.

The proposal creates a framework in which banks' access to the Registry will be so limited that it will effectively be useless, resulting in a dual reporting regime for both banks and small businesses. Obtaining customers' BOI from the Registry will not support banks' compliance with the CDD Rule, and the proposal compounds this limitation by also precluding banks from using BOI more broadly to fulfill regulatory requirements beyond compliance with the CDD Rule. Moreover, FinCEN expects Federal functional regulators to assess compliance with the proposal during the course of Bank Secrecy Act (BSA) examinations. These limitations and expectations neither enhance banks' ability to combat money laundering and the financing of terrorism nor align with the AMLA's goal of a more risk-based approach to AML/CFT compliance. Indeed, the proposal would create significant redundancies and inefficiencies within banks' AML/CFT compliance programs. Further, such a restrictive approach will not enhance the safeguarding of BOI.

The prohibition on sharing BOI outside of the U.S. is contrary to the information-sharing goals of AMLA and enterprise-wide compliance. And there is no assurance that the BOI in the Registry will be accurate, complete, and reliable. Thus, the proposal would not enhance banks' CDD processes, but instead would impose additional compliance costs, resulting in an inefficient allocation of resources across bank AML compliance programs. Finally, the requirement in the CDD Rule that banks collect and maintain BOI in all cases will be redundant and unnecessary once the CTA has been fully implemented.

As conceived, the proposal is fatally flawed and should be withdrawn. FinCEN should engage with key stakeholders, including banks and small businesses, to develop a new proposal that would establish a more efficient and effective regulatory framework for both banks and reporting companies. As a starting point, we recommend that the new proposal:

1. allow banks to use BOI more broadly to discharge their responsibilities under the BSA;
2. allow banks to share BOI with bank personnel across their enterprises, including in foreign jurisdictions;

3. clarify that banks are not required to access the Registry;
4. consider modern technological solutions that would provide a secure and efficient means of accessing the Registry;
5. include a safe harbor from liability for financial institutions that use BOI obtained from the Registry; and
6. amend the CDD Rule to clarify that banks are not required to collect and maintain BOI in all cases.

## **II. Summary of the Proposal**

As described in the CTA, legislation and regulations providing for the establishment of the Registry are necessary to protect U.S. national security interests; protect interstate and foreign commerce; better enable critical national security, intelligence and law enforcement efforts to counter money laundering, the financing of terrorism and other illicit activity; and bring the U.S. into compliance with international AML/CFT standards.<sup>6</sup> In addition to enhancing financial transparency, Congress intended for the CTA to “minimiz[e] the burden on the regulated community.”<sup>7</sup> Indeed, “Congress intended only one [beneficial ownership] reporting regime . . . FinCEN should be cognizant of the impact of any duplicative [reporting] requirements . . . ”<sup>8</sup>

The proposal would implement the provisions in the CTA that authorize certain entities to access BOI in the Registry. Specifically, the proposal would authorize FinCEN to disclose BOI to the “covered financial institutions” that are subject to the beneficial ownership requirements of the CDD Rule,<sup>9</sup> which includes banks. FinCEN has committed to clarifying the manner and technical procedures for financial institutions to access BOI in subsequent guidance (but has yet to provide significant details in that regard). Banks would only be able to share BOI with personnel located within the United States.<sup>10</sup>

FinCEN noted in the proposal that banks will not be permitted to run “open-ended queries in the beneficial ownership IT system or to receive multiple search results,” but would instead be required to “submit identifying information specific to a reporting company and receive in return an electronic transcript with that entity’s BOI.”<sup>11</sup> Banks may only request BOI after obtaining the reporting company’s consent, and prior to requesting BOI from FinCEN, they would be required to certify that they have obtained such consent and are requesting the information to facilitate compliance with the

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<sup>6</sup> CTA, section 6402(5).

<sup>7</sup> 87 Fed. Reg. 77406 (December 16, 2022).

<sup>8</sup> United States House of Representatives, Committee on Financial Services, *Letter to Secretary Yellen regarding the Corporate Transparency Act* (April 7, 2021), [https://financialservices.house.gov/uploadedfiles/04-07-21\\_letter\\_to\\_yellen\\_beneficial\\_ownership.pdf](https://financialservices.house.gov/uploadedfiles/04-07-21_letter_to_yellen_beneficial_ownership.pdf).

<sup>9</sup> Covered financial institutions are banks, broker-dealers, futures commission merchants or introducing brokers, and mutual funds. 31 CFR 1010.605(e)(1). It should be noted that money services businesses, cryptocurrency exchanges, and other financial institutions presenting heightened AML/CFT risk will not be allowed to access the Registry.

<sup>10</sup> 87 Fed. Reg. 77457 (December 16, 2022).

<sup>11</sup> 87 Fed. Reg. 77410 (December 16, 2022).

beneficial ownership requirements of the CDD Rule.<sup>12</sup> FinCEN also expects banks to maintain procedures, including employee training, to ensure that the requirements of the proposal are satisfied and that records are appropriately secured and maintained.<sup>13</sup>

### **III. Analysis and Recommendations**

#### **A. Banks' access to the Registry is so limited that it will effectively be useless.**

The CTA authorizes FinCEN to disclose BOI to banks to facilitate compliance with “customer due diligence requirements under applicable law.”<sup>14</sup> Because this particular statutory language is undefined, FinCEN has the authority to determine the scope within which banks may use BOI obtained from the Registry. Yet the proposal narrowly defines “customer due diligence requirements under applicable law” to mean the beneficial ownership requirements of the CDD Rule, set forth at 31 CFR 1010.230, which require covered financial institutions to identify and verify beneficial owners of their legal entity customers. FinCEN justifies this narrow information-retrieval process by asserting that it will reduce the overall risk of inappropriate use or unauthorized disclosure of BOI.<sup>15</sup> As presently conceived, however, the proposal would make banks’ access to BOI in the Registry practically useless.

**The Associations recommend that FinCEN expand banks’ authorized use of BOI,** principally because: (1) banks’ access to the Registry will not support their compliance with the CDD Rule; (2) broader use of BOI would facilitate a more efficient allocation of resources and banks’ compliance with the BSA; and (3) the proposed restrictive approach will do little to safeguard BOI.

#### *1. Obtaining customers’ BOI from the Registry will not support banks’ compliance with the CDD Rule.*

The CDD Rule simply requires banks to identify and verify the identity of the beneficial owners of their legal entity customers—it does not require banks to verify that those individuals are, in fact, beneficial owners. The BOI in the Registry will not help banks verify the identities of their customers’ beneficial owners since, in most cases, that BOI will be the same information that customers provide to banks through the banks’ CDD processes. Further, while it is not part of the current proposal, if FinCEN is contemplating changing the amended CDD Rule to require banks to verify the status of the beneficial owners provided by their customers, i.e., whether they are, in fact, the customer’s beneficial owners, we would be strongly opposed to it.

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<sup>12</sup> 87 Fed. Reg. 77457 (December 16, 2022).

<sup>13</sup> *Id.*

<sup>14</sup> CTA, section 6403(d)(1)(B).

<sup>15</sup> 87 Fed. Reg. 77415 (December 16, 2022).

2. *Banks use BOI to fulfill regulatory requirements beyond compliance with the CDD Rule.*

The proposal fails to acknowledge that banks use BOI to fulfill regulatory requirements beyond compliance with the CDD Rule, and thus the proposed narrow use of BOI obtained from the Registry should be eliminated. The purpose of CDD is much broader than simply collecting and storing BOI. Indeed, the Federal Financial Institutions Examination Council's BSA/AML Manual (the FFIEC Manual) states:

The cornerstone of a strong BSA/AML compliance program is the adoption and implementation of risk-based CDD policies, procedures, and processes for all customers, particularly those that present a higher risk for money laundering and terrorist financing. *The objective of CDD is to enable the bank to understand the nature and purpose of customer relationships, which may include understanding the types of transactions in which a customer is likely to engage. These processes assist the bank in determining when transactions are potentially suspicious.*<sup>16</sup>

The FFIEC Manual further acknowledges that “beneficial ownership information collected under the [CDD Rule] may be relevant to other regulatory requirements,” such as “identifying suspicious activity, and determining Office of Foreign Assets Control (OFAC) sanctioned parties.”<sup>17</sup> Additionally, the preamble of the CDD Rule underscores the broad purpose of CDD, specifically that BOI should be leveraged throughout a bank’s AML compliance program:

Explicit CDD requirements would also enable financial institutions to assess and mitigate risk more effectively in connection with existing legal requirements. It is through CDD that financial institutions are able to understand the risks associated with their customers, to monitor accounts more effectively, and to evaluate activity to determine whether it is unusual or suspicious, as required under suspicious activity reporting obligations. Further, in the event that a financial institution files a [SAR], information gathered through CDD in many instances can enhance SARs.<sup>18</sup>

Given the broad purposes of CDD, banks must be able to use BOI obtained from the Registry to discharge their responsibilities generally under the BSA, including complying with the Customer Identification Program Rule,<sup>19</sup> monitoring customer transactions, reporting suspicious activity and OFAC screening. Limiting the purpose for which banks may use BOI obtained from the Registry will simply result in an inefficient use of resources that will detract from, rather than enhance, banks’ efforts to mitigate AML/CFT risk and comply with the BSA.

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<sup>16</sup> FFIEC, BSA/AML Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence — Overview* (emphasis added).

<sup>17</sup> FFIEC, BSA/AML Manual, *Assessing Compliance with BSA Regulatory Requirements, Beneficial Ownership Requirements for Legal Entity Customers—Overview*.

<sup>18</sup> Financial Crimes Enforcement Network, Department of the Treasury, Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29398, 29400 (May 11, 2016), <https://www.govinfo.gov/content/pkg/FR-2016-05-11/pdf/2016-10567.pdf>.

<sup>19</sup> 31 CFR 1020.220.

Moreover, since the proposal would not prohibit banks from using BOI obtained directly from their customers for a variety of purposes, banks would have to expend additional resources to ensure that BOI obtained from the Registry is appropriately identified and walled off from BOI collected directly from customers to prevent the former from being used for the broader purposes of risk mitigation and BSA compliance. Because bank regulators' access to the Registry is to "assess, supervise, enforce, or otherwise determine the compliance of such financial institution with customer due diligence requirements under applicable law," this is a real concern for banks, as the proposal would create additional technical compliance requirements, which is contrary to the objectives of AMLA.<sup>20</sup>

*3. The proposed restrictive approach will not enhance the safeguarding of BOI.*

Banks have long collected beneficial ownership and other sensitive data from their customers and are already required to protect against its unauthorized disclosure.<sup>21</sup> For years, banks have served as the intermediary between law enforcement and consumers—collecting, maintaining, and reporting vast amounts of personally identifiable information (PII) associated with their customers—and they are subject to stringent requirements that require them to protect against the unauthorized disclosure of PII, including BOI. Limiting banks' use of and access to BOI in the Registry to protect information that many banks already maintain and are required to safeguard belies reality and limits the value of the Registry for banks.

In addition to legal protections, there are long-standing public-private sector efforts to safeguard sensitive information, such as a multiyear project that the Federal Banking Information Infrastructure Committee (FBIIC) and Financial Services Sector Coordinating Council (FSSCC) completed in late 2022. The goal of this effort was to enhance transparency and awareness of security measures for firm data maintained at federal regulatory agencies and enhance awareness of any potential issues that could impact such data. This is a good example of how the public and private sectors have collaborated to better protect sensitive firm data gathered during the supervisory process.<sup>22</sup>

In sum, limiting banks' use of and access to BOI in the Registry will not enhance the safeguarding of BOI, and would make banks' access to such information practically useless.

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<sup>20</sup> 87 Fed. Reg. 77454 (December 16, 2022).

<sup>21</sup> See, e.g., Interagency Guidelines Establishing Standards for Safeguarding Customer Information and Rescission of Year 2000 Standards for Safety and Soundness, 66 FR 8616 (Feb. 1, 2001).

<sup>22</sup> See FBIIC-FSSCC Joint Data Protection Working Group Report, November 2022. Note, the report is not publicly available.

B. The prohibition on sharing BOI outside of the U.S. is contrary to the information-sharing goals of AMLA and enterprise-wide compliance.

**The Associations recommend that FinCEN allow banks to share BOI with bank personnel across their enterprises, including in foreign jurisdictions.** To address the risks associated with the cross-border financial system, banks often establish AML compliance functions within foreign jurisdictions, tasking foreign employees and agents with conducting certain compliance activities, such as CDD. Under the proposal, these banks would be prohibited from disclosing BOI obtained from the Registry to any personnel located outside the U.S., even if they are supporting compliance with the CDD Rule.

Prohibiting banks from sharing BOI outside of the U.S. is contrary to the information-sharing goals of AMLA and enterprise-wide compliance. For example, FinCEN has indicated that it intends to finalize the Suspicious Activity Report (SAR) Sharing Pilot Program<sup>23</sup> during the summer of 2023, which would allow banks to share SARs with their foreign business units. However, as currently drafted, the proposal would prohibit banks from incorporating BOI obtained from the Registry into SARs shared under the SAR Sharing Pilot Program. Given the current and anticipated need to share BOI outside of the U.S., FinCEN should allow banks to share BOI with personnel located in foreign jurisdictions. Failure to do so will impede banks' ability to conduct effective CDD on their customers and undermine the efficiency and effectiveness of BSA compliance.

The FFIEC Manual recognizes the need to conduct enterprise-wide CDD:

The bank may choose to implement CDD policies, procedures, and processes on an enterprise-wide basis. To the extent permitted by law, this implementation may include sharing or obtaining customer information across business lines, separate legal entities within an enterprise, and affiliated support units. To encourage cost effectiveness, enhance efficiency, and increase availability of potentially relevant information, the bank may find it useful to cross-check for customer information in data systems maintained within the financial institution for other purposes, such as credit underwriting, marketing, or fraud detection.<sup>24</sup>

However, the proposal does not address whether and to what extent banks may share BOI with affiliates, independent auditors and third-party service providers, which would be integral to supporting enterprise-wide AML/CFT compliance. For example, independent auditors serve a critical role in ensuring that banks are compliant with all regulatory requirements, especially those that will be assessed by functional regulators. In addition, banks often work with third-party service providers who assist with AML/CFT compliance functions such as CDD. Especially in light of the new requirements that the

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<sup>23</sup> Financial Crimes Enforcement Network, Department of the Treasury, Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates, 87 Fed. Reg. 3719 (January 25, 2022), <https://www.govinfo.gov/content/pkg/FR-2022-01-25/pdf/2022-01331.pdf>.

<sup>24</sup> FFIEC, BSA/AML Manual, *Assessing Compliance with BSA Regulatory Requirements, Customer Due Diligence Requirements—Overview*.

proposal would create, banks should be allowed to share BOI with internal and outside auditors and third-party service providers, as needed, as long as the sharing of BOI complies with the law.

C. FinCEN should clarify that banks are not required to access the Registry.

The proposal notes that “in practice, entities may choose to access BOI only if the benefits to their operational needs, which includes cost savings and other nonquantifiable benefits, outweigh the costs associated with the requirements for accessing BOI.”<sup>25</sup> The proposal states further that “[u]nder the proposed rule accessing BOI is not mandatory; therefore, the proposed rule would not impose [compliance] requirements in the strictest sense.”<sup>26</sup> While it is encouraging that FinCEN appears to recognize that banks’ access to the Registry should be discretionary, the proposal fails to pass FinCEN’s cost-benefit test. Therefore, many banks will choose not to access the Registry, and we strongly urge FinCEN to state explicitly in the text of the final rule that banks are not required to do so.

1. *The proposal would not enhance banks’ CDD processes but would impose additional compliance costs, resulting in an inefficient allocation of resources across bank AML compliance programs.*

Even before FinCEN issued the CDD Rule, most banks collected and stored their customers’ BOI, and kept this information updated to ensure that they maintained accurate customer risk profiles and appropriately monitored for, and reported, suspicious activity. Banks subsequently committed substantial resources to develop systems to comply with the CDD Rule, and it is likely that many banks will continue to rely on those systems, even after the Registry becomes operational.

Because banks already have well-developed and effective systems and processes to identify and verify the identities of their customers’ beneficial owners, there is nothing to be gained by requiring banks to access the Registry. In fact, since banks already collect their customers’ BOI through their own CDD processes, requiring banks to access the Registry—which in most cases will contain the same BOI as that collected by the bank—is unnecessarily duplicative.

Moreover, requiring banks to access the Registry will unnecessarily increase regulatory costs and result in an inefficient allocation of resources. For example, the proposal would require banks to obtain consent from reporting companies (their customers) to access the Registry; however, the proposal does not adequately consider the costs of this requirement.<sup>27</sup> Banks would have to establish new, or amend existing, processes to obtain consent, which will require banks to increase staffing or task existing staff with additional responsibilities. Moreover, customers may not give or may revoke their consent, which, consequently, would require banks to expend additional resources to

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<sup>25</sup> 87 Fed. Reg. 77445 (December 16, 2022).

<sup>26</sup> 87 Fed. Reg. 77446 (December 16, 2022) (emphasis added).

<sup>27</sup> ABA also notes that the proposal does not clearly describe whether consent must be explicit or whether banks may obtain implied consent from their customers.

monitor on an ongoing basis (and document) which customers have consented. And the consent requirement not only applies to new customers, but also to the existing customers for which banks seek to access the Registry.

There are additional inefficiencies and burdens associated with the potential lack of reliability of the BOI and missing information in the Registry. Under the Final Beneficial Ownership Information Reporting Requirements Rule (BOI Rule), reporting companies are required to submit BOI to the Registry,<sup>28</sup> but there are no mechanisms to verify the accuracy and reliability of such information. Additionally, the CTA<sup>29</sup> and the BOI Rule<sup>30</sup> set forth 23 exemptions from the definition of “reporting company.” Given such a large number of exemptions—including the exemption for “large operating companies”—it seems clear that much of the BOI that banks would want to collect from the Registry simply will not be there, because their customers were not required to report it.

FinCEN’s release of the proposed report that will be used to collect BOI, as required by the BOI Rule, compounded this problem.<sup>31</sup> Notably, the proposed report would allow reporting companies to forgo identifying beneficial owners entirely or provide only certain information associated with beneficial owners by responding that it is “Unable to identify all Beneficial Owners” or “Unknown,” with respect to the beneficial owner’s identifying information.<sup>32</sup>

Consequently, if banks are required to access and rely on the Registry, the quality and reliability of information underlying customer risk profiles may be quite limited, unless banks establish duplicative systems to identify and correct discrepancies within the Registry. This would yet again require banks to hire additional staff and add resources to reconcile discrepancies and ensure that BOI obtained from the Registry is complete and accurate. Indeed, some large banks anticipate that they will have to hire up to 40-50 additional staff just to manage the technical process associated with the Registry.

Overall, the proposed mechanism for accessing the BOI in the Registry seems highly inefficient and, frankly, dated. Under the proposal, banks that choose to access the Registry would only be allowed to submit to the Registry identifying information specific to their reporting company customers, and would receive in return an electronic transcript with a specific entity’s BOI. **FinCEN should consider modern technological solutions—e.g., an application programming interface, secure portal, etc.—that would provide a secure and efficient process for banks that choose to access the Registry.** However, to be clear, even if FinCEN implements a more efficient technological solution for accessing the Registry, that solution will not address the significant issues with the proposal discussed herein.

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<sup>28</sup> 87 Fed. Reg. 59591 (September 30, 2022).

<sup>29</sup> CTA, section 6403(a).

<sup>30</sup> 87 Fed. Reg. 59593-59594 (September 30, 2022).

<sup>31</sup> Financial Crimes Enforcement Network, Department of the Treasury, Agency Information Collection Activities; Proposed Collection; Comment Request; Beneficial Ownership Information Reports, 88 Fed. Reg. 2760 (January 17, 2023), <https://www.govinfo.gov/content/pkg/FR-2023-01-17/pdf/2023-00703.pdf>.

<sup>32</sup> ABA acknowledges that reporting companies are subject to civil and criminal penalties for a failure to meet the requirements of the BOI Rule; however, as a practical matter, it will be very difficult for FinCEN to determine that a reporting company submitted a report in bad faith.

In sum, the compliance costs associated with the proposal are not limited to reconciling data discrepancies. Compliance will necessarily require training relevant staff, making changes to bank policies and procedures, enhancing information security, and educating senior management and customers. These costs are significant, and FinCEN should not overlook or underestimate them.

2. *Even if banks are not required to access the Registry, FinCEN should ensure banks are not liable for any discrepancies in BOI obtained from the Registry.*

**FinCEN should include in the final rule a safe harbor from liability for financial institutions that use BOI obtained from the Registry.** As described in the proposal, functional regulators will examine banks' use of BOI obtained from the Registry to discharge their responsibilities under the CDD Rule. Due to the appreciable risk that BOI obtained from the Registry could contradict or otherwise be inconsistent with BOI obtained directly from customers, banks should not be held liable for any discrepancies.

D. The requirement in the CDD Rule that banks collect and maintain BOI in all cases is redundant and unnecessary.

The U.S. did not maintain a national BOI Registry when FinCEN promulgated the CDD Rule; therefore, one of the primary purposes of the CDD Rule was to establish a framework that would require banks, which serve as gatekeepers to the financial system, "to retain more useful customer information, which would significantly improve law enforcement's ability to pursue new leads with respect to legal entities under investigation."<sup>33</sup> The proposal acknowledges this framework, stating, "the beneficial ownership data available to law enforcement and national security agencies are generally limited to the information collected by financial institutions . . . ."<sup>34</sup> The Registry is a step forward in the U.S. AML regime, and will provide law enforcement broad, timely access to BOI, thereby eliminating the need for banks to continue to serve as conduits for law enforcement investigations.

The CTA requires FinCEN to revise the CDD Rule to, among other things, reduce unnecessary or duplicative burdens on financial institutions and legal entity customers.<sup>35</sup> Indeed, "Congress intended only one [beneficial ownership] reporting regime . . . ."<sup>36</sup> Accordingly, because the Registry would establish a new framework in which reporting companies would submit BOI to the Registry, which would be broadly accessible by law enforcement, **FinCEN should amend the CDD rule to clarify that covered financial institutions may, but are not required to, identify and verify the beneficial owners of their legal entity customers.** In the alternative, FinCEN should consider amending the CDD Rule to require banks only to identify and verify the beneficial owners of their

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<sup>33</sup> Financial Crimes Enforcement Network, Department of the Treasury, Customer Due Diligence Requirements for Financial Institutions, 79 Fed. Reg. 45151, 45157 (August 4, 2014), <https://www.govinfo.gov/content/pkg/FR-2014-08-04/pdf/2014-18036.pdf>.

<sup>34</sup> 87 Fed. Reg. 77405 (December 16, 2022).

<sup>35</sup> CTA, section 6403(d)(1)(C).

<sup>36</sup> United States House of Representatives, Committee on Financial Services, *Letter to Secretary Yellen regarding the Corporate Transparency Act* (April 7, 2021), [https://financialservices.house.gov/uploadedfiles/04-07-21\\_letter\\_to\\_yellen\\_beneficial\\_ownership.pdf](https://financialservices.house.gov/uploadedfiles/04-07-21_letter_to_yellen_beneficial_ownership.pdf).

legal entity customers on a risk basis. Moreover, to the extent necessary, FinCEN should also consider revisiting the proposal to ensure that it aligns with the revised CDD Rule.

Finally, while not the subject of the proposal, we also recommend that FinCEN consider amending the CDD Rule to facilitate a more efficient CDD process. For example, the CDD Rule currently requires banks to identify and verify the beneficial owners for a particular customer for each account opened at the bank. In practice, a single bank customer may open numerous accounts, and requiring banks to collect or confirm information at account opening in each instance is a redundant process and forces banks to allocate valuable resources to CDD that could be used elsewhere throughout the bank's AML compliance program.

#### **IV. Conclusion**

The Associations remain committed to engaging with FinCEN to support and promote the goals of the CTA, and we fully support the establishment of the Registry. However, the proposal does not align with the goals and purpose of the CTA and AMLA, would not enhance banks' CDD processes, would result in an inefficient allocation of resources, and would impose additional, unnecessary technical compliance requirements on banks.

While we appreciate FinCEN's considerable efforts to implement the CTA, we believe the proposal is fatally flawed and should be withdrawn. FinCEN should engage with key stakeholders to develop a new proposal that better meets the objectives of the CTA and AMLA.

Sincerely,

American Bankers Association  
Alabama Bankers Association  
Alaska Bankers Association  
Arizona Bankers Association  
Arkansas Bankers Association  
California Bankers Association  
Colorado Bankers Association  
Connecticut Bankers Association  
Delaware Bankers Association  
Florida Bankers Association  
Georgia Bankers Association  
Hawaii Bankers Association  
Idaho Bankers Association  
Illinois Bankers Association  
Indiana Bankers Association  
Iowa Bankers Association  
Kansas Bankers Association  
Kentucky Bankers Association

Louisiana Bankers Association  
Maine Bankers Association  
Maryland Bankers Association  
Massachusetts Bankers Association  
Michigan Bankers Association  
Minnesota Bankers Association  
Mississippi Bankers Association  
Missouri Bankers Association  
Montana Bankers Association  
Nebraska Bankers Association  
Nevada Bankers Association  
New Hampshire Bankers Association  
New Jersey Bankers Association  
New Mexico Bankers Association  
New York Bankers Association  
North Carolina Bankers Association  
North Dakota Bankers Association  
Ohio Bankers League  
Oklahoma Bankers Association  
Oregon Bankers Association  
Pennsylvania Bankers Association  
Puerto Rico Bankers Association  
Rhode Island Bankers Association  
South Carolina Bankers Association  
South Dakota Bankers Association  
Tennessee Bankers Association  
Texas Bankers Association  
Utah Bankers Association  
Vermont Bankers Association  
Virginia Bankers Association  
Washington Bankers Association  
West Virginia Bankers Association  
Wisconsin Bankers Association  
Wyoming Bankers Association