# Coalition for Integrity

February 14, 2023

Mr. Himamauli Das
Acting Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna, VA 22183

Submitted electronically via http://www.regulations.gov

RE: **Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities**
Docket No.: FINCEN-2021-0005 and RIN 1506-AB49/AB59

Dear Acting Director Das:

This letter responds to Financial Crimes Enforcement Network's (FinCEN) request for comment on the second notice of proposed rulemaking (NPRM) on the Corporate Transparency Act (CTA), regarding beneficial ownership information access and safeguards. Coalition for Integrity (C4I) appreciates the opportunity to comment on the proposed rulemaking.

Coalition for Integrity is a non-partisan 501(c)(3) organization. We work with a broad network of individuals and organizations to combat corruption and promote integrity in the public and private sectors both in the United States and internationally.

We welcome Financial Crimes Enforcement Network's (FinCEN) efforts to implement the CTA.

In our last comment, submitted February 2022, Coalition for Integrity identified several principles that were core to the effective implementation of an access rule for the CTA. The proposed rule released this December, as written, needs better clarification in several places to deliver on those principles – including timely, uncomplicated access for investigators and relevant financial institutions; utility of the data; and we offer our support for certain provisions and offer recommendations to FinCEN to strengthen the rule below. These follow:

1. **Remove unnecessary hurdles to access for state, local, and tribal law enforcement:** While the CTA authorizes FinCEN may disclose beneficial ownership information to these users "if a court of competent jurisdiction, including any officer of such a court, has authorized the law enforcement agency to seek the information in a criminal or civil

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investigation," the draft rule makes these protocols more stringent and unduly burdensome. It does so by requiring a "court order" – usually administered by a judge – in lieu of the CTA's plain language requiring a "court authorization" by "any officer" of a court of competent jurisdiction. While "any officer" includes a judge, it may also depending on the court include a magistrate, clerk, bailiff, sheriff, or other full or part-time court personnel. As mentioned in our previous comment, imposing additional, extensive processes would inevitably slow down access to the registry and thereby impede the important investigations, prosecutions, and civil enforcement proceedings conducted by those agencies. FinCEN should reverse course to faithfully implement the plain text of the statute.

2. **Clarify information sharing standards for access by foreign competent authorities:** Under the proposed rule, foreign competent authorities – once approved to receive the BO information via a U.S. agency request – are seemingly not allowed to share information further than the staff they have trained to access the database. In this instance, foreign competent authorities may have investigations hamstrung by an inability to share a key piece of evidence within the team responsible for leading an investigation or prosecution. This stands in contrast to information sharing protocols for domestic law enforcement, who can, under the proposed rule, share information within investigative teams including with officials who have not received training on the database; relying on the first official's training. FinCEN should consider clarifying in favor of more robust sharing among relevant officials within competent authorities.
3. **Permit relevant financial institutions to use BO information accessed under the CTA in applicable AML and sanctions screening requirements:** The CTA allows financial institutions with customer due diligence obligations to use the BO database pursuant to those obligations. The proposed rule narrows the use of this information pursuant to the 2016 Customer Due Diligence Rule (CDD Rule), which is just a portion of broader AML laws that financial institutions fulfill as part of their "customer due diligence obligations," as referred to in the CTA. Financial institutions should be able to use this information to satisfy sanctions screening, anti-fraud processes, and other key AML measures, as well as the 2016 CDD rule.
4. **Identify access protocols for auditors of the CTA database:** the CTA requires that the Comptroller General of the United States within Government Accountability Office audit the database on an annual basis. The proposed rule so far remains silent regarding how frequently or in what format database auditors can access the database. Clarify that the auditors identified in the statute have complete, timely, and uncomplicated access to the database to fulfill their obligations under the law.

5. **Require information in the database to be validated and verified as part of the statutory requirement that information be "accurate, complete, and highly useful":** As part of the proposed rule, FinCEN states that it continues to contemplate ways to verify beneficial ownership information – ensuring that a certain piece of data can be associated to a particular individual. While that is a crucial component of verification, FinCEN must also take steps to validate information as it is submitted to the database: e.g. whether the street address provided is recognized by the U.S. Postal Service as valid.
6. **Maintain language regarding the redisclosure of beneficial ownership information**: The proposed rule takes the right tact in clarifying that the redisclosure of beneficial ownership information does not need to be approved again when it is redisclosed in the context of investigations pursuant to which the information is accessed in the first place, whether by state, local and tribal authorities, the Department of Justice, and by international partners that accessed information under applicable treaties and other agreements.

While not the subject of this notice and comment, Coalition for Integrity further urges FinCEN to rescind the draft form it has offered for public comment pursuant to the first rulemaking on the CTA, regarding beneficial ownership reporting requirements. The forms, in allowing respondents to mark that they are "unable to get information" for specific fields, effectively renders portions of the Corporate Transparency Act optional. This is an unacceptable outcome for a landmark anti-corruption statute. FinCEN should consider rescinding the form ahead of the March 20 comment deadline and reissue a revised form without these fields.

Over the years, the United States has committed to implementing beneficial ownership transparency in several different fora. The establishment of a beneficial ownership registry FinCEN would be a strong signal that the U.S. is taking the necessary steps to uphold its commitments, and we thank you in advance for your continued action to ensure strong and effective implementation of the Corporate Transparency Act.

Please do not hesitate to contact me at sshah@coalitionforintegrity.org if you have any questions.

Sincerely,

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