March 13, 2019

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
United States House of Representatives
2221 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
United States House of Representatives
2004 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairwoman Waters and Ranking Member McHenry,

We, the undersigned trade associations, are pleased to support Congressional efforts to end the misuse of anonymous shell corporations and pass meaningful anti-money laundering reform legislation. These efforts will help modernize the anti-money laundering and countering the financing of terrorism (AML/CFT) regime in the United States and help prevent the use of corporate structures to hide the identities of their beneficial owners from law enforcement.

Although the Financial Crimes Enforcement Network (FinCEN) adopted a customer due diligence regulation requiring financial institutions to collect information about beneficial owners, there is no existing mechanism for financial institutions to verify that information. When FinCEN issued the rule in May 2016, it urged Congress to pass companion legislation to enhance

the rule by creating a federal registry of the beneficial owners of legal business entities. Having a single federal registry would provide a verifiable and centralized source of beneficial ownership information, meeting the needs of law enforcement and helping financial institutions satisfy their regulatory obligations.

The failure to require legal entities to register beneficial ownership information represents a significant gap in the U.S. regulatory system that allows criminals, money launderers, kleptocrats, and terrorist financiers to obscure their identities from law enforcement. The federal government and, importantly, the law enforcement community do not have ready access to ownership information for certain corporate structures to assist them with their investigations into alleged money laundering and human trafficking activities. Closing this gap is an important reason why we, along with the Fraternal Order of Police and the National District Attorneys Association, support legislative plans to address these concerns.

While establishing a single federal registry for this purpose would create new obligations for legal entities and their beneficial owners, those obligations are neither burdensome nor overreaching. Indeed, we agree with the founder of the Small Business Majority that "providing the name, address and identification of the true owner of a business is not a burden. They are well aware of who controls and who benefits from their proceeds. The definition….is clear, easy to follow, and workable for small businesses who have no need to hide their owners' identity." We understand the concerns raised by some members of the small business community about the potential challenges this could present, however we believe that they can be appropriately addressed through accompanying education and outreach efforts, to ensure that small businesses are not caught unawares.

In addition to creating a federal beneficial ownership registry of legal entities, we encourage the Committee to address and amend the outdated and inefficient Bank Secrecy Act (BSA) regulatory framework. The current regime is nearly 50 years old, and has not fundamentally changed since its adoption in 1970. It is still operated as an individual, bilateral reporting system despite advances in technology that could improve its efficiency and effectiveness. A core problem is that today's regime incentivizes financial institutions to achieve compliance with technical requirements that bear little relationship to the actual goal of preventing, detecting, or halting financial crime. Moreover, the regime fails to consider collateral damage that may impact national security or financial inclusion goals. In other words, bank examiners focus on technical compliance, not the provision of valuable information to law enforcement or other measurements of effectiveness. Fundamental change is required to make this system an effective law enforcement and national security tool.

A set of articles in *The Economist* details the unfortunate consequences that the misalignment in AML/CFT expectations and standards has created as financial institutions have

worked to balance fear of enforcement and supervisory expectations with the AML compliance costs of maintaining a global business.[1] Often, and unfortunately, the best and most straightforward solution for financial institutions is simply not to serve certain customers, sometimes referred to as de-risking. De-risking can result in the withdrawal of financial services from already underserved populations and a migration of transactions out of the traditional financial services sector into unregulated channels that are not monitored for suspicious activity. The Government Accountability Office (GAO) found in its 2018 study on de-risking along the southern U.S. border that 80% of Southwest border banks de-risked due to a perceived AML/CFT compliance burden. Accordingly, the GAO recommended the regulatory agencies consider BSA reforms.[2]

To address these problems with the current regime, we recommend four key reforms to help clarify the complex regulatory reporting structure. Specifically, we believe that the Treasury Secretary should be required to:

1. Publish regularly updated national priorities for the AML/CFT regime; and take steps to better align the examination/compliance framework with these priorities (e.g., ensuring examinations focus on identification and management of risk, versus emphasis on technical compliance absent risk indicators);
2. Facilitate information sharing and feedback from law enforcement to financial institutions and further facilitate information sharing between financial institutions;
3. Update and streamline the process of filing Suspicious Activity Reports and Currency Transaction Reports to provide more timely and relevant information to law enforcement; and
4. Encourage and support the use of technology and artificial intelligence within financial institutions' AML programs.

We believe these reforms would represent great steps towards reducing the burden on customers, while at the same time improving the quality of information given to law enforcement.

[1] See The great unbanking: swingeing fines have made banks too risk-averse, *The Economist*, July 6, 2017, available at https://www.economist.com/leaders/2017/07/06/swingeing-fines-have-made-banks-too-risk-averse. See also "Rolling up the welcome mat: A crackdown on financial crime means global banks are derisking", *The Economist*, July 8, 2017, *available* at https://www.economist.com/international/2017/07/08/a-crackdown-on-financial-crime-means-global-banks-are-derisking.

[2] See "BANK SECRECY ACT: Further Actions Needed to Address Domestic and International Derisking Concerns," U.S. Government Accountability Office, June 26, 2018, *available at* https://www.gao.gov/products/GAO-18-642T.

We are pleased to support the Committee's work and stand ready to assist your efforts to modernize and enhance the effectiveness and efficiency of our nation's AML/CFT regime. We look forward to working with you on this important endeavor.

Sincerely,

The Bank Policy Institute
Institute of International Finance
Consumer Bankers Association
Institute of International Bankers
Mid-Size Bank Coalition of America
Bankers Association for Finance and Trade
Securities Industry and Financial Markets Association
The American Bankers Association
National Association of Federally-Insured Credit Unions

cc: Chairman Mike Crapo, Senate Committee on Banking, Housing, and Urban Affairs

Ranking Member Sherrod Brown, Senate Committee on Banking, Housing, and Urban Affairs