BANK POLICY INSTITUTE

October 29, 2024

Via Electronic Mail

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, D.C. 20551
Attention: Ann E. Misback, Secretary

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429
Attention: James P. Sheesley, Assistant Executive Secretary, Comments/Legal OES (EGRPRA)

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219
Attention: Chief Counsel's Office, Comment Processing

Re: Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996 (Federal Reserve Docket No. OP–1828; FDIC RIN 3064–ZA39; Docket ID OCC–2023–0016)

Ladies and Gentlemen:

The Bank Policy Institute[1] is writing in response to the second of four joint notices of regulatory review pursuant to the Economic Growth and Regulatory Paperwork Reduction Act of 1996 ("EGRPRA") issued by the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the "Agencies").[2] Consistent with the

[1] The Bank Policy Institute is a nonpartisan public policy, research and advocacy group that represents universal banks, regional banks, and the major foreign banks doing business in the United States. The Institute produces academic research and analysis on regulatory and monetary policy topics, analyzes and comments on proposed regulations, and represents the financial services industry with respect to cybersecurity, fraud, and other information security issues.

[2] *See* OCC, FRB, FDIC, *Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996*, 89 Fed. Reg. 62,679 (Aug. 01, 2024).

purposes of the EGRPRA review and our prior letter addressing the first notice,[3] this letter continues our recommendations regarding "outdated or otherwise unnecessary regulatory requirements"[4] within the categories of regulations currently under review.

As in our prior letter, we also identify overarching regulatory and supervisory trends that demand disproportionate attention to immaterial matters rather than material risks to the safety and soundness of the U.S. banking system. Accordingly, we encourage the Agencies to carefully scrutinize responses to the two new questions addressing the cumulative effects of the current regulatory burden[5] for this EGRPRA notice, the prior notice, and future notices.

This second notice illustrates the importance of expanding the EGRPRA review to include other agencies that finalize regulations or take other actions affecting banking organizations. A comprehensive review of the regulatory and supervisory framework for "Consumer Protection" and "Money Laundering" cannot be adequately conducted without the full participation of the Consumer Financial Protection Bureau and the Financial Crimes Enforcement Network.

As we noted in our prior letter, the absence of the CFPB from the EGRPRA process is particularly concerning. The Dodd-Frank Act assigned all "consumer financial protection functions" from the federal banking agencies to the CFPB, including "*all* authority to prescribe rules or issue orders or guidelines pursuant to any Federal consumer financial law"[6] and "exclusive authority to require reports and conduct examinations" in order to "assess[] compliance with the requirements of Federal consumer financial laws" for insured depository institutions with total assets of more than $10 billion.[7] While, by all accounts, the Agencies have increased their own consumer protection compliance activity, they do so on a questionable legal basis. To act in accordance with Dodd-Frank the Agencies should respect the CFPB's statutorily mandated role to oversee regulatory and supervisory activity related to consumer protection. Congress should also include the CFPB in the EGRPRA review.

Moreover, we highlight the consumer harm that would result from several recently finalized or proposed rules. The agencies, including the CFPB, should consider these harms, both with respect to each rule individually and their cumulative effect in the aggregate.

Rulemaking by other agencies, such as FinCen and the Securities and Exchange Commission, also significantly affects the U.S. banking system, sometimes stretching beyond the limits initially set by statute and resulting in overlapping or duplicative requirements that complicate compliance and compromise operational efficiency.[8] Congress should include these agencies in the EGRPRA process, as well. In the

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[3] *See* BPI, *Comment on First EGRPRA Notice*, (May 6, 2024), https://www.regulations.gov/comment/OCC-2023-0016-0008.

[4] 89 Fed. Reg. at 62,680.

[5] 89 Fed. Reg. at 62,681.

[6] 12 U.S.C. § 5581(a)–(b) (emphasis added).

[7] 12 U.S.C. § 5515(b)(1).

[8] *See, e.g.,* CFPB, *Overdraft Lending: Very Large Financial Institutions*, 89 FR 13852 (Feb. 23, 2024) (proposal to apply Regulation Z to overdraft credit provided by very large institutions unless credit is provided at or below costs and final losses as a true courtesy to consumers); *Credit Card Penalty Fees (Regulation Z)*, 89 FR 19128 (March 15, 2024) (final

absence of congressional action, these additional agencies should voluntarily submit to the EGRPRA review, as the National Credit Union Administration has commendably done.

I. Several current regulatory and supervisory trends in the Agencies create risks to safety and soundness and to consumers.

As discussed in our previous letter, we urge the Agencies to reconsider the current prioritization of immaterial matters that distract regulators and bank management from addressing truly material risks to an individual institution and the U.S. banking system. New survey results indicate the severity of this misallocation of bank personnel and resources, and the current cyber examination approach illustrates this trend. Additionally, recent regulatory measures outside the EGRPRA review and regulatory gaps for non-banks providing bank-like services risk consumer harm.

A. Compliance demands consume nearly half of board and C-suite time and the trend is only worsening.

Since our prior letter, BPI has published results from a survey of our member banks quantifying the impact of compliance demands.[9] In 2023, the management team at the average BPI member bank devoted 42 percent of its time "to regulatory or supervisory compliance, including examiner mandates and recommendations, as opposed to strategic planning or oversight of strategic planning, business planning, risk management, and other traditional management or board functions." Boards of directors devoted 44 percent of their time to those tasks.

Compliance burdens have increased over time. Compared to 2016, C-suite time spent on compliance or examiner mandates has surged by 75 percent, while board time has risen by 63 percent. Firms now employ 62 percent more full-time equivalents in compliance functions than they did in 2016.

These results demonstrate the ever-increasing compliance demands on U.S. banking organizations. We urge the Agencies to consider the overall burden in light of these results. In particular, the Agencies should consider whether it truly enhances the safety and soundness of the banking system when nearly half of management and board time is spent on compliance demands rather than managing financial risk and other core firm matters.

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rule imposes a smaller safe harbor for late fees); SEC, *Safeguarding Advisory Client Assets*, 88 FR 14672 (May 8, 2023) (proposing many new regulatory requirements for bank custodians, including provisions that would require custodians to segregate client deposits and assume greater liability for investment adviser decisions). *See also*, Tabitha Edgens, *The Lone Ranger in a Town Full of Sheriffs: How the SEC's Aggressive Agenda Interferes with the Business of Banking*, BPI (Sep. 12, 2023), https://bpi.com/the-lone-ranger-in-a-town-full-of-sheriffs-how-the-secs-aggressive-agenda-interferes-with-the-business-of-banking/. As noted in our prior letter, multiple agencies may also initiate simultaneous enforcement actions that often address the same underlying issues, which adds little value to the safety and soundness of the banking system or an individual institution but can significantly burden banks with high costs. As before, we encourage agencies to expand their coordination beyond timing and other process issues for conducting parallel investigations to include substantive coordination that aims to ensure a fair and just overall result.

[9] *See generally,* Joshua Smith and Benjamin Gross, *Survey Finds Compliance is Growing Demand on Bank Resources* (Oct. 29, 2024), https://bpi.com/survey-finds-compliance-is-growing-demand-on-bank-resources.

B. Overlapping and duplicative supervisory activities divert resources from key operational functions and initiatives to enhance information security.

In accordance with the Gramm-Leach-Bliley Act, the Agencies issued the Interagency Guidelines Establishing Information Security Standards ("Guidelines") requiring financial institutions to develop a "comprehensive written information security program that includes administrative, technical, and physical safeguards appropriate to the size and complexity of the [covered financial institution]." Moreover, under the Guidelines, a financial institution's board of directors is expected to oversee the information security program and receive annual reports on its status. The Federal Financial Institutions Examination Council IT Examination Handbook—issued contemporaneously with the Guidelines—further articulates regulatory expectations for information security programs. The requirements and expectations outlined in the Guidelines and IT Handbook are not outdated and do not require substantive reconsideration.

Nevertheless, as technology and cybersecurity play a more pivotal role within financial institutions, information security related examinations have increased in scope, depth and frequency. In some cases, the cumulative effect of these requirements has led to overlapping and duplicative supervisory activities on the same or similar topics across regulatory agencies. Similarly, the Agencies increasingly issue Matters Requiring Attention for incremental fixes or administrative procedures rather than systemic cyber risks. Responding to overlapping regulatory inquiries diverts finite cyber resources away from operational activities and has led to delays in strategic initiatives to enhance security and resilience. This concern is not without basis. BPI survey results demonstrate that firms devoted 40 percent more of their IT budgets to compliance tasks than they did in 2016 and Chief Information Security Officers report spending 50 percent of their time on compliance matters.

To address these challenges, the Agencies should consider opportunities to consolidate cyber exams under one entity composed of cyber experts from across the prudential regulators. Combining exams would greatly assist in the efficient use of cyber resources at both firms and regulatory agencies. It would help balance regulatory compliance work with the critical need for strategic program improvements while fulfilling agencies' oversight responsibilities. We recognize creating such a structure may take time but in the interim, we strongly encourage regulators to align exam calendars to reduce interagency and intra-agency overlap—including providing firms with exam schedules for the full year ahead to help firms better allocate resources for compliance demands. In addition, because supervisory activities related to information security often examine the same or similar topics, the Agencies should better leverage each other's testing, evaluations, and findings to limit the need for firms to demonstrate compliance with the same requirements multiple times.

Finally, the Agencies should focus MRAs on critical risk management concerns and limit MRAs for issues firms are already addressing through self-identified observations. Each of these changes would provide the Agencies with the information they need to execute their critical oversight responsibilities while reserving the time front-line personnel need to adjust to rapid technological change and prepare for emerging cyber threats.

C. The cumulative burden of recent regulatory measures outside the scope of the EGRPRA review risks harming lower-income consumers and reversing progress in financial inclusion.

The Agencies should ensure they do not impede banks' ability to expand financial inclusion. Several regulatory rules or proposals, individually or in aggregate, could have unintended consequences for low- and moderate-income communities. Though these regulations or proposals are not identified for

review under the "Consumer Protection" category in this notice, the Agencies should consider their potential impacts on consumer welfare.

Impeding low-cost or free checking accounts.

Debit card interchange revenue is an income stream that allows banks to invest in low-cost or free checking accounts and other essential services. Data from the first few years following the imposition of the interchange fee cap under Regulation II in 2011 reveal that the number of large financial institutions offering free deposit accounts to consumers fell from nearly 60 percent to below 20 percent.[10] Notably, a Federal Reserve Bank of Richmond study found that both large and small debit card issuers had substantially reduced free deposit account products and services after introducing the fee cap.[11] The evidence from the past 13 years is clear that further decreasing the fee cap, as proposed by the Federal Reserve last November, will result in bank account products and services that are more expensive and less attractive to LMI consumers, driving more of them out of the regulated banking industry, directly conflicting with the stated objectives of federal banking regulators of promoting financial inclusion. [12]

Curtailing credit cards and other services for lower-income consumers.

The CFPB last year significantly reduced the safe harbor for credit card late fee payments to $8 from its prior level of $30 for a first violation and $41 for a subsequent violation within the next six billing cycles.[13] Late fees serve as an important deterrent to missing payments and reduce banks' exposure to delinquency risk, which allow banks to offer credit to a broader range of consumers across the credit risk spectrum, including LMI consumers. The CFPB acknowledges that the $8 safe harbor, if widely adopted, would likely result in consumer harm, as banks may cease offering certain products or services or charge more to consumers for other services, which could be concentrated among subprime accountholders, including LMI consumers.[14]

Additionally, if banks were to cease offering certain types of credit cards or credit cards to consumers presenting higher credit risk in response to sharply restricted late fees, consumers may have to turn to non-bank providers of certain products and services that, as the CFPB has acknowledged, may

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[10] Sarin, Natasha, "Making Consumer Finance Work," Faculty Scholarship at Penn Carey Law, 2047 (2019), at 1537, *available at* https://scholarship.law.upenn.edu/faculty_scholarship/2047.

[11] *See* Wang, Zuh, "Price Cap Regulation in a Two-sided Market: Intended and Unintended Consequences," Working Paper No. 13-06R, The Federal Reserve Bank of Richmond (2015), *available at* https://www.richmondfed.org/-/media/RichmondFedOrg/publications/research/working_papers/2013/pdf/wp13-06r.pdf.

[12] *See Debit Card Interchange Fees and Routing*, 88 Fed. Reg. 78,100 (Nov. 14, 2023).

[13] *See Credit Card Penalty Fees (Regulation Z)*, 88 Fed. Reg. 18,906 (March 29, 2023). We note that this rule has been challenged by the Chamber of Commerce and other associations and is subject to ongoing litigation. *See Chamber of Commerce of The United States of America, et al. v. Consumer Financial Protection Bureau, et al.* (Case No. 4:24-cv-213).

[14] The CFPB notes that "interest rates or other charges of subprime credit cards might increase more than for other cards, and some consumers might find these cards too expensive due to higher interest rate offers." 88 Fed. Reg. 18,934. The Bureau also recognizes that "it is also possible that some consumers' access to credit could fall if issuers could adequately offset lost fee revenue expected from them only by increasing APRs to a point at which a particular card is not viable, for example, because the APR exceeds applicable legal limits." *Id.*

"charge higher fees and interest rates."[15] Moreover, by removing the deterrent effect of higher late fees, the CFPB may inadvertently harm consumers, as late payments can trigger other negative consequences, as acknowledged by the CFPB, such as additional finance charges, a lost grace period, penalty rates, and reporting of the late payment to a credit bureau. Finally, late fees can help minimize adverse incentive effects associated with repayment plans and renegotiations.[16] A late fee that lacks a sufficient deterrent effect likely will incentivize customers to miss more payment, and this effect could be amplified if consumers believe they can simply reschedule past due amounts.[17] This effect would disincentivize banks from offering renegotiation opportunities in the first place, even to borrowers experiencing unavoidable, unexpected expenses or drops in income.[18]

Curtailing overdraft services that protect consumers.

The CFPB has issued a proposal to impose restrictions on discretionary overdraft products for banks with assets in excess of $10 billion.[19] In addition to exceeding its statutory authority, the CFPB's proposal to effectively cap overdraft fees likely would lead banks to restrict their overdraft service offerings.[20] Indeed, this result would significantly limit low-income consumers' access to liquidity and reduce the number of low-income consumers who open deposit accounts, as a 2021 Federal Reserve Bank of New York staff report found.[21] "[O]verdraft fee caps hamper, rather than foster, financial inclusion," the researchers concluded.[22]

This reality is underscored by surveys showing that Americans value overdraft services. A survey conducted by Morning Consult for the American Bankers Association found that 9 in 10 consumers (88%) find their bank's overdraft protection valuable, and nearly 8 in 10 consumers (77%) who have paid an overdraft fee in the past year were glad their bank covered their overdraft payment, rather than returning or declining payment.[23] Separate polling has demonstrated that frequent overdraft users overwhelmingly

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[15] CFPB, Shawn Sebastian, *New effort focused on financial issues facing rural communities*, (Mar 10, 2022), *available at* https://www.consumerfinance.gov/about-us/blog/new-effort-focused-on-financial-issues-facing-rural-communities/.

[16] BPI, Paul Calem, *The Role of Credit Card Late Fees in Encouraging Timely Repayment Is Essential to Efficient Functioning of the Market* (January 18, 2023), *available at* https://bpi.com/the-role-of-credit-card-late-fees-in-encouraging-timely-repayment-is-essential-to-efficient-functioning-of-the-market/.

[17] *Id.*

[18] *Id.*

[19] *See Overdraft Lending: Very Large Financial Institutions*, 89 Fed. Reg. 13,852 (Jan. 17, 2024).

[20] *See Letter from Paige Pidano Paridon, BPI, to Director Rohit Chopra, CFPB, re: Notice of Proposed Rulemaking Re: Overdraft Lending: Very Large Financial Institutions* (Docket No. CFPB-2024-0002; RIN 3170-AA42) (April 1, 2024), BPI-Comment-Letter-to-CFPB-re-Proposed-Overdraft-Rule.pdf.

[21] Jennifer L. Dlugosz et al., Fed. Reserve Bank of N.Y., Staff Reports, *Who Pays the Price? Overdraft Fee Ceilings and the Unbanked* (revised July 2023), https://www.newyorkfed.org/medialibrary/media/research/staff_reports/sr973.pdf?sc_lang=en.

[22] *Id.* at i.

[23] Am. Banker Ass'n, Press Release, National Survey: U.S. Consumers Remain Happy with Their Bank, Competitive Financial Services Marketplace (Oct. 9, 2023), https://www.aba.com/about-us/press-room/press-releases/consumer-survey-consumers-happy-and-competitive.

prefer incurring a fee to having their transaction declined.[24]

No access to overdraft could mean important bills go unpaid—like rent checks and utility payments—with devastating consequences for consumers.[25] Furthermore, consumers may be forced to seek credit from significantly less regulated entities, such as payday lenders, which could increase the risk of consumer harm.[26]

Disincentivizing services in new locations

We fully support the longstanding goals of the Community Reinvestment Act. We share with community advocates and other stakeholders the goal of continuing to promote and advance economic opportunity by building on the CRA's foundations to ensure banks continue to provide loans, investments, and services broadly across the communities they serve, including LMI areas, small businesses, and communities in need of financial services to sustain economic development. Indeed, we believe the important purposes and requirements of this Act should be integrated more broadly into the financial system, and therefore the Act should be expanded to cover credit unions and certain non-bank financial services entities.

Recently finalized amendments to the CRA[27] have been enjoined[28] and their future remains uncertain. Regardless of the outcome of litigation, these amendments are not beneficial to the Act's purposes. They aim to evaluate lending that is far outside of a bank's community where it does not have CRA infrastructure and may disincentivize a bank from making loans outside of its branch footprint. Establishing a CRA program in a new geography takes time—sometimes years—to develop, particularly when a bank must hire additional personnel, conduct program planning and analysis, and invest in marketing. Furthermore, banks may conclude that the loan volume in these locations would not offset significantly increased CRA costs and therefore determine that it does not make business sense to continue lending in areas far removed from the bank's physical footprint. Banks may also determine that they are unlikely to meet the rule's stringent benchmarks and metrics outside of their branch network. As a result, underserved communities could suffer from a constriction in the availability of credit in these locations.

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[24] Fin. Health Network, *Overdraft Trends Amid Historic Policy Shifts* (June 1, 2023), https://finhealthnetwork.org/research/overdraft-trends-amid-historic-policy-shifts/ ("When looking specifically at respondents from households that overdrafted more than 10 times, the vast majority (81%) indicated that they would have preferred to incur a fee on their most recent overdraft transaction rather than have the purchase or payment declined."), Consumer Bankers Assn., "The Value of Overdraft Services," (Jan. 2024), https://overdraftfacts.com/.

[25] *See e.g., Consumer Bankers Assn. Statement on CFPB's Misleading Overdraft Press Release* (Dec. 19, 2023), https://www.consumerbankers.com/cba-media-center/media-releases/cba-statement-cfpb%E2%80%99s-misleading-overdraft-press-release (Noting CFPB's failure to consider credit invisibles when estimating the demographics of the consumers who use overdraft).

[26] See e.g., Megan McCardle, *Opinion | Capping overdraft fees could actually hurt poor families*, Washington Post, (Jan. 24, 2024) https://www.washingtonpost.com/opinions/2024/01/24/cap-overdraft-fees-hurt-poor-families/.

[27] *See Community Reinvestment Act*, 89 Fed. Reg. 6,574 (Feb. 1, 2024).

[28] *Federal Court Enjoins Community Reinvestment Act Final Rule*, Covington (April 1, 2024), https://www.cov.com/en/news-and-insights/insights/2024/04/federal-court-enjoins-community-reinvestment-act-final-rule#layout=card&numberOfResults=12.

Hampering small-dollar loans.

Bank small-dollar loan products are a safer alternative to predatory payday lending, title loans, and other less regulated, less affordable options and should be incentivized by the Agencies' regulation. BPI research has shown that these products could be highly useful in helping households deal with unexpected expenses and, in conjunction with low-fee transaction accounts, could bring more unbanked and underbanked consumers into the banking system.[29]

Unfortunately, the federal banking agencies and the CFPB have created a regulatory environment that discourages banks from offering small-dollar products, mainly through attempts at creating untenable price caps and generating uncertainty in the marketplace.

The Military Lending Act's Military Annual Percent Rate (MAPR) cap and agencies' pursuit of either barring or scrutinizing loans with rates above 36 percent are price caps that inhibit banks from offering small dollar loans less than $2,500, especially to borrowers who have low or no credit.[30] Every loan and credit product has certain fixed costs that are independent from the size of the loan. Although these fixed costs typically constitute a low percentage of overall costs when the loan amount is large, fixed costs are disproportionally higher in small-dollar loans.[31] Consequently, the smaller the loan size, the higher the APR must be to offset those costs to allow the bank to just break even. According to a 2020 Federal Reserve report, that break-even rate was 36 percent for a $2,530 loan, meaning that loans smaller than that require higher APRs to just break even.[32]

Apart from price caps, general scrutiny of small-dollar loans has created an unfavorable environment for that marketplace.[33] A 2022 GAO report found that from 2010 through 2020, the federal banking agencies and the CFPB issued or rescinded at least 19 actions related to small-dollar loans.[34] As highlighted in the report, "market participants and observers who commented on regulatory uncertainty around small-dollar loans told [GAO] banks are hesitant to offer such loans in part because of changes to

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[29] Francisco Covas and Paul Calem, BPI, "A New Path to Offering Small-Dollar Loans" (May 4, 2020), *available at*: https://bpi.com/a-new-path-to-offering-small-dollar-loans/.

[30] The CDFI Fund recently finalized changes to its CDFI Certification, which now presumes that a product that has loan rates greater than 36% that also has several other characteristics, such as that the loans have an annual default rate over 5%; the loans include a leveraged payment mechanism; and any such loans of $1,000 or less have repayment timeframes that exceed 12 months, are not responsible credit products and therefore are not eligible for certification. *See* CDFI Certification Application (December 2023), *available at*: https://www.cdfifund.gov/sites/cdfi/files/2023-12/Final_508_CDFI_Certification_Application_Form_120523.pdf.

[31] Fixed costs typically include operating costs, such as processing payments, collecting delinquent payments, evaluating loan requests, soliciting customers, and servicing the loans.

[32] Lisa Chen & Gregory Elliehausen, "The Cost Structure of Consumer Finance Companies and Its Implications for Interest Rates: Evidence from the Federal Reserve Board's 2015 Survey of Finance Companies," FEDS Notes, Aug. 12, 2020. https://www.federalreserve.gov/econres/notes/feds-notes/the-cost-structure-of-consumer-finance-companies-and-its-implications-for-interest-rates-20200812.html.

[33] *See* Paul Calem, BPI, "Regulatory Risks May Discourage Small-Dollar Lending by Banks" (Sept 12, 2022), Regulatory Risks May Discourage Small-Dollar Lending by Banks - Bank Policy Institute (bpi.com).

[34] "Banking Services: Regulators Have Taken Actions to Increase Access, but Measurement of Actions' Effectiveness Could Be Improved," GAO-22-104468, at 30 (Feb. 2022), *available at* https://www.gao.gov/assets/gao-22-104468.pdf.

related rules or guidance in recent years."[35] The Treasury should encourage the banking regulators to explicitly support small-dollar lending products to help increase access to this critical product for underserved individuals.

Overcalibrating capital requirements for consumer services.

Proposed capital regulations[36] would harm consumers in several ways. BPI detailed several negative consequences earlier this year in a joint response with the American Bankers Association and Consumers Bankers Association[37] to a request for information on financial inclusion issued by the U.S. Treasury Department.[38]

For example, the proposed regulations would raise the costs of providing credit card loans and limit their availability. The CFPB has established that "[a]cross all age groups and income levels, credit cards trigger the creation of consumer credit records more frequently than any other product." [39] Yet the proposed regulations would make it harder for banks to offer credit card loans: proposed retail risk weights exceed international standards by 10 percentage points; the new Credit Conversion Factor for unconditionally cancelable undrawn lines would require banks to capitalize unused portions of a customer's credit limit; and the new standardized operational risk capital charges, including the excessively high capital charge for fee income, would require banks to hold capital based on any income associated with credit card activities.[40]

By making it comparatively cheaper for consumers to obtain credit with non-bank financial institutions, rather than with banks, the proposed regulations could ultimately harm consumers' long-term financial health. In particular, increased reliance on nonbank financial products resulting from the costs of this proposal may damage consumers' ability to increase their credit scores – consequences that follow

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[35] *Id*.

[36] *See Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity*, 88 Fed. Reg. 64028 (Sept. 18, 2023).

[37] *See* ABA, BPI, and CBA, *Comment on Request for Information on Financial Inclusion (Treas-DO-2023-0014*) (Feb. 20, 2024), p. 9-13, https://www.regulations.gov/comment/TREAS-DO-2023-0014-0034.

[38] 88 Fed. Reg. 88,702.

[39] Consumer Financial Protection Bureau Office of Research, CFPB Data Point: Becoming Credit Visible (June 2017) https://files.consumerfinance.gov/f/documents/BecomingCreditVisible_Data_Point_Final.pdf. Student loans were a distant second, but that was driven almost entirely by consumers under the age of 25. Debt collection for unpaid medical and cell phone bills were third – but as the CFPB points out, any credit visibility caused by such reporting was likely to only diminish a consumers' future access to credit.

[40] Some customers may find ways to mitigate the impact of the proposal on the supply and cost of retail credit – for example, by getting a first loan with a co-borrower or by building an initial credit history by becoming an authorized user on someone else's credit card. But the CFPB found in 2017 that these avenues are disproportionately available to consumers in upper income neighborhoods, where consumers were twice as likely as consumers from low-income neighborhoods to transition out of credit invisibility by relying in whole or in part on the credit worthiness of others (30.3 percent vs. 14.9 percent).

consumers throughout their financial lifespans. Additionally, nonbanks maintain less access to credit during market stress,[41] which could exacerbate the effects of a recession on consumers' credit availability.

As another example, the capital proposal would significantly increase the capital charge for low down payment mortgages -- as much as 80 percent in some cases, due to the regulations' 20 percentage point add-on to the risk weights under the internationally agreed-upon standards.[42] As a result, consumers who are unable to afford significant cash down payments of 20 percent, including many first-time homebuyers will find reduced availability of mortgages and higher costs for the mortgages that are available.

The proposed capital regulations would impose severely overcalibrated capital requirements on mortgage and retail exposures. We encourage the Agencies to review the comment to Treasury[43] in further detail and revise the regulations to mitigate these and other negative consumer consequences.

D. Regulatory gaps for non-banks offering financial services leave room for consumer harm, particularly among more vulnerable populations.

Banks are not alone in the consumer financial services market and compete fiercely with non-bank firms such as fintechs and non-bank mortgage lenders. However, these providers lack the same comprehensive regulatory and supervisory regime that applies to banks. Many aspects of the multi-layered bank regulatory and supervisory framework generally don't apply to non-bank fintechs, including capital and liquidity requirements to guard against losses in a failure and ensure stable funding; federal data security standards and oversight that protect customers' sensitive financial data; direct regulatory oversight on consumer protection, including guarding customers against fraud and scams; examination and supervision from on-site examiners; and FDIC deposit insurance up to $250,000. As noted above, non-banks are not subject to the CRA, which encourages banks to extend credit in the communities where they take deposits, including LMI communities. The Agencies should ensure equitable regulation and

[41] *See* Fleckenstein, Q., et al., *Nonbank Lending and Credit Cyclicality*, NYU Stern School of Business (Dec. 23, 2023) *available at* https://ssrn.com/abstract=3629232 (finding that non-banks were responsible for the majority of the decline in lending during the Global Financial Crisis); *see also* Aldasoro, Iñaki, Sebastian Doerr and Haonan Zhou, *Non-Bank Lending during Crises*, BIS Working Papers No. 1074 (Feb. 16, 2023), *available at* https://www.bis.org/publ/work1074.htm ("We find that non-banks cut their syndicated credit by significantly more than banks during crises, even after accounting for time-varying lender and borrower characteristics."); Ben-David, Itzhak, Mark Johnson, and René Stulz, *Why Did Small Business FinTech Lending Dry Up During the COVID-19 Crisis?*, Nat'l Bureau of Econ. Rsch. Working Paper No. 29205 (Sept. 2021), *available at* https://www.nber.org/papers/w29205. For a discussion regarding the role of nonbank mortgage lenders and servicers in particular, see Kim, You Suk, et al., "Mapping the boom in nonbank mortgage lending – and understanding the risks," Brookings Institution Commentary (Sept. 10, 2018), *available at* https://www.brookings.edu/articles/mapping-the-boom-in-nonbank-mortgage-lending-and-understanding-the-risks/; *see also* Kim, You Suk, et al., "Liquidity Crises in the Mortgage Market," Brookings Papers on Econ. Act. 347 – 428 (Mar. 8, 2018), *available at* https://www.brookings.edu/articles/liquidity-crises-in-the-mortgage-market/.

[42] 88 Fed. Reg. at 64048.

[43] *See supra note* 37].

supervision across banks and non-banks, including working with the CFPB to exercise its supervisory designation authority.[44]

II. The Agencies should make targeted changes to the categories of regulations currently under review to streamline the regulatory framework and refocus on critical risks to safety and soundness.

A. Consumer Protection: Advertisement of Membership

Advertisement of Membership

The banking industry is strongly committed to consumer protection, promoting public confidence in insured deposits, and preventing false and misleading representations about the manner and extent of FDIC deposit insurance. Accordingly, the industry supports the modernization of the FDIC's rules on signs and advertising, which have not been comprehensively updated since 2006, a time prior to the digitization of the financial services marketplace.[45] Furthermore, given the rise of new market participants offering bank-like products (or products purporting to be bank-like), including those promising pass-through deposit insurance and similar products and services—whether through partnerships with insured depository institutions or independently—we support the FDIC's efforts to prevent misleading representations regarding deposit insurance coverage and to help mitigate customer confusion.

However, as we explained in a comment letter in July of this year, the final rule issued in December 2023 established a compliance date of January 1, 2025, thereby providing banks approximately one year to achieve compliance, which is insufficient time to implement the final rule.[46] Moreover, the suggested implementation timeline assumed the final rule would provide institutions with greater clarity and/or flexibility than it does and essentially adopted the proposed rule as final. As banks have been planning and preparing to implement changes to their systems in accordance with the rule, it has become clear that there is significant ambiguity regarding multiple aspects of the rule, which has meaningfully delayed implementation efforts.

To this end, we respectfully requested that the compliance deadline be extended to January 1, 2026, in order to provide organizations with sufficient time to implement the rule, as clarified by the guidance to be issued by the end of this year.[47] The FDIC partially granted this request, extending the compliance deadline until May 1, 2025.

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[44] *See, e.g.,* Letter from Paige Pidano Paridon, BPI, to Director Rohit Chopra, CFPB, supporting the joint trades petition for rulemaking defining larger participants of the aggregation services market (Oct. 3, 2022), BPI-CFPBcommentreDataAggregatorPetitionforRulemaking-2022.10.03.pdf.

[45] FDIC, *FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo* (Jan. 18, 2024), https://www.federalregister.gov/documents/2024/01/18/2023-28629/fdic-official-signs-and-advertising-requirements-false-advertising-misrepresentation-of-insured

[46] *See Trades Request Clarity on FDIC Rules Governing Signs and Advertising* (July 15, 2024), BPI, ABA, *et al.*, https://bpi.com/trades-request-clarity-on-fdic-rules-governing-signs-and-advertising/.

[47] *See generally*, *BPI and ABA Comment on Proposal to Modernize Rules Governing FDIC Sign and Advertising Statements*, Bank Policy Institute (April 7, 2023), https://bpi.com/bpi-and-aba-comment-on-proposal-to-modernize-rules-governing-fdic-sign-and-advertising-statements/.

We respectfully request that the FDIC continue to work collaboratively with the industry to respond to questions and to provide implementation aids, such as continuing to expand the rule's FAQs. Banks and other entities subject to the final rule must have sufficient time and information to implement all necessary changes to ensure a positive customer experience and to further the FDIC's goals in amending the rules regarding signs and advertising of deposit and non-deposit products.

B. Directors, Officers, and Employers: Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirement; Management Official Interlocks; Golden Parachute and Indemnification Payments

Limits on Extensions of Credit to Executive Officers, Directors and Principal Shareholders; Related Disclosure Requirement

Regulation O should be subject to several targeted changes. Because thresholds for Regulation O have not been updated over time to reflect inflation and certain marketplace developments, as described below, approvals consume inordinate senior management and board attention. Regulation O should be revised as described to free senior management and board members to focus their attention on the most impactful matters affecting the banking organization. We believe the proposed modifications would not in any way detract from Regulation O's purpose to safeguard banks from insider abuse.

Regulators should exclude as related interests portfolio companies of certain principal shareholders.

The definition of "control" in 12 C.F.R. 215.2(c) includes a presumption of control where a person directly or indirectly owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a company or bank and no other person owns, controls, or has the power to vote a greater percentage of that class of voting securities. For a principal shareholder that is an investment fund complex, as discussed in SR Letter 19-16,[48] or any other investor that does not actively manage the portfolio companies in which it invests, the result is that portfolio companies in which the principal shareholder owns, controls or has the power to vote between 10 and 25 percent of a class of voting securities may automatically be considered the principal shareholder's "related interests," assuming there is no larger shareholder.

The Agencies should include a new carve-out from the "rebuttable presumption of control" in Regulation O that would apply to principal shareholders that are not in the business of operating or controlling banking organizations, consistent with the policy rationale underlying SR Letter 19-16. For those principal shareholders, the carve-out would exclude a portfolio company from being "related interests" if the principal shareholder owns between 10% and 25% of a class of voting securities of such portfolio company. To qualify for this proposed carve-out, the principal shareholder would generally be required to file a notice under the Change in Bank Control Act ("CIBCA") and not receive an objection from the appropriate federal banking agency, as well as comply with any conditions imposed in connection with any such agency action. The principal shareholder would be required not to exercise or attempt to control the banking organization's management or policies. Exceptions to filing under the CIBCA would include (i) an institution received a discretionary exemption from the appropriate. federal banking agency, (ii) a CIBCA

[48] FRB, *SR 19-16: Status of Certain Investment Funds and Their Portfolio Investments for Purposes of Regulation O and Reporting Requirements under Part 363 of FDIC Regulations* (Dec. 27, 2019), https://www.federalreserve.gov/supervisionreg/srletters/sr1916.htm.

notice is not triggered under the applicable regulation, or (iii) an institution successfully rebutted the presumption of control under the applicable regulation.

Regulators should include a grace period.

The Agencies should include a grace period to permit a bank to achieve compliance with Regulation O with respect to a principal shareholder that crosses the 10% threshold but is not required to file a prior notice under CIBCA because the acquisition is a result of either a stock redemption or other actions of third parties that are not within the control of the principal shareholder or because the principal shareholder has received relief from the appropriate federal banking agency with respect to the prior notice filing requirement at the 10% threshold. The proposed grace period would last for 90 calendar days, the same grace period a shareholder is given to file a post-notice under the CIBCA when the shareholder's acquisition is the result of actions by others that are beyond its control.

When a principal shareholder does not proceed with the filing of the after-the-fact notice under CIBCA and reduces its position to below 10% of voting securities within 90 calendar days of the transaction, as has recently occurred in several instances, the bank would not be required to expend considerable resources to develop a compliance framework and apply the Regulation O procedural requirements to extensions of credit to the principal shareholder and all of its related interests during the period of time it takes the principal shareholder to reduce its interest below 10%. Additionally, when a principal shareholder has numerous related interests (e.g., several thousand), establishing a framework that captures all of the related interests—even with relief from the rebuttable presumption of control—takes considerable time. Because there may be little or no advance notice that the shareholder is becoming a principal shareholder, a grace period would allow a bank to make sure that extensions of credit to the insider comply with Regulation O in an orderly and complete manner.

Regulators should include an exemption for qualified custodial overdrafts.

The Agencies should exempt "qualified custodial overdrafts" from the definition of "extension of credit" in 12 C.F.R 215.3.[49] Without relief, in the context of a fund complex of the type identified in SR Letter 19-16 that is a principal shareholder, a bank may not be able to continue to provide a full range of services to the fund complex because the bank would not be able to comply with the Regulation O lending limits. The same issue arises even outside of fund complex clients. Indeed, the nature of the insider does not change the nature of these low-risk extensions of credit. Accordingly, we recommend extending the exclusion for qualified custodial overdrafts to all insiders.

[49] Qualified custodial overdraft means an extension of credit by a bank in the ordinary course of business in connection with payment transactions, settlement services, or futures, derivatives, and securities clearing, provided that (i) the credit is repaid by the end of five business days, (ii) the bank has established and maintains policies and procedures reasonably designed to manage the credit exposure arising from the extension of credit in a safe and sound manner, and (iii) the bank has no reason to believe that the recipient of the credit will have difficulty repaying the extension of credit in accordance with its terms.

Regulators should include exemptions for certain ordinary course, arms-length secondary market transactions.

The Agencies should exempt certain ordinary course, arms-length secondary market transactions where the insider in question is a principal shareholder that would be covered by the proposed relief above (i.e., a principal shareholder that is not involved in management) or any of its related interests. For debt purchases, an exemption would include the purchase in the ordinary course of business in the secondary market of a loan or other debt instrument issued by a principal shareholder that would be covered by the proposed relief or any of its related interests. For sales of credit protection, an exemption would include the sale in the ordinary course of business by the bank of credit protection on a publicly traded debt instrument issued by a principal shareholder that would be covered by the proposed relief or any of its related interests.

In both cases, the bank's counterparty to the debt purchase or sale of credit protection is an unrelated third party, and the transaction proceeds are not transferred to the insider itself. The terms of the transaction are set by the market and not negotiated between the bank and the insider and would be consistent with the terms and creditworthiness standards in Regulation O. The transactions are generally short-term trading, including as part of the bank's market-making function, and typically conducted by a trading desk that is separate from the bank's credit department.

Regulators should include an exemption for certain credit card transactions.

The dollar threshold of $15,000 in 12 C.F.R. 215.3(b)(5) should be eliminated for accounts approved through an automated underwriting process that does not involve individual review or clearance and under terms that are offered to the general public. For credit card accounts not approved through an automated underwriting process, the dollar threshold should be increased to at least $100,000, which is the limit for revolving credit to be treated as a "qualifying revolving exposure" under the regulatory capital rules (12 C.F.R. 217.101(b)), and indexed to inflation going forward, as discussed below.

Regulators should increase the quantitative thresholds.

The dollar thresholds in Regulation O should be raised and automatically indexed to inflation going forward annually (but in no event less than every 5 years). In our view, the thresholds should be significantly higher in order to relieve compliance burden and provide bank executive officers and other insiders the ability to have a meaningful banking relationship with their employing banking organization (while still subject to Regulation O's other safeguards).

- The threshold that applies to a bank executive officer or director for inadvertent overdraft payments in 12 C.F.R 215.4(e) should be raised from $1000 to $10,000.

- The threshold under 12 C.F.R. 215.3(b)(6) for excluding from the definition of "extension of credit" indebtedness arising by reason of an interest-bearing overdraft credit plan of the type specified in 215.4(e) should be raised from $5000 to $20,000.

- The threshold that applies to bank executives for all other consumer credit in 12 C.F.R. 215.5(c)(4) should be raised from $100k to $1,000,000.

- The aggregate individual exposure threshold that triggers the board approval requirement in 12 C.F.R. 215.4(b)(2), which threshold is established by regulation pursuant to Section 22(h), should be raised from $500,000 to $2,500,000.

Although these thresholds are greater than just Consumer Price Index adjustments, they would help focus Regulation O compliance on the relationships that are more likely to pose a meaningful risk to the regulation's purposes. The thresholds that also impose a cap of a percentage of the bank's unimpaired capital and surplus (in addition to the dollar threshold) help ensure that the risk is appropriate for an institution given its size. If there is a concern that the dollar threshold is too high to be suitable across all banks, the Federal Reserve could introduce an additional tier (or tiers) at a lower dollar threshold based on a bank's size.

Management Official Interlocks

The Agencies need to reform their supervisory practice with respect to the restrictions that apply to management officials of institutions subject to the "major assets" provision.[50] Current practice makes waivers nearly impossible to maintain, even when a banking organization proposes suitable limitations and can demonstrate there will not be anticompetitive effects.

Golden Parachute and Indemnification Payments

It is our understanding that the FDIC interprets the regulation too broadly, sweeping in non-executive employees and using it as a punitive measure for activities unrelated to a bank's financial stability. The FDIC should narrow its interpretation to the breadth intended by Congress. Overbroad interpretation makes it difficult to retain talent, especially when banks are limited in their ability to indemnify officers and directors when a civil monetary penalty is levied.

FDIC and OCC regulations currently bar banks from indemnifying bank directors and require directors to repay advancement of legal expenses if directors settle an administrative action or a final order is issued which imposes a civil money penalty, removes the director or prohibits the director from participating in the conduct of the bank's affairs, or requires a director to cease and desist from or take any affirmative action.[51]

Limiting indemnification can discourage qualified director candidates from accepting offers to become directors; cause directors to become too risk-averse in making or refusing to make decisions and overseeing the bank; and result in some directors refusing to serve on the board's credit or loan committee. The current regulations can cause directors to settle an administrative action before they fully exercise their rights to defend against an administrative or civil action commenced by the agencies. Banks may pay legal expenses incurred prior to the agency commencing the action, but directors who contest an administrative action can risk having to repay the bank for legal expenses if the matter is settled or if a final order results in a civil monetary penalty, a removal from office, or order to cease and desist from or take any affirmative action described in Section 8(b) of the Federal Deposit Insurance Act.

[50] 12 C.F.R. 348.3(c).

[51] *See* 12 C.F.R. 359 (FDIC); 12 C.F.R. 7.2014 (OCC).

The statutory authorization for the FDIC to adopt regulations sets forth a number of factors that the FDIC may include in its regulation.[52] Many of the factors relate to the severity of the conduct being challenged by a federal banking agency, including criminal acts, self-dealing, and actions that caused a bank to fail.[53] These factors are not properly reflected in the current regulations.

These regulations are in stark contrast to the Model Business Corporation Act and state corporate codes, which allow corporations to pay for legal expenses and liability of directors even if the matter is settled or a decision or order is issued against the director finding culpability or liability, so long as the director has met his or her fiduciary duties under state corporate law. The regulations do not make an exception for directors who have acted fully consistent with their fiduciary duties under state corporate codes and case law.

Instead, regulations on indemnification should follow the law of the state in which the bank's (or bank holding company's) main office or charter is located or corporate governance law that the bank elects under its bylaws. The expanded compliance obligations imposed on boards and the accompanying increase in time commitment have presented challenges for banking organizations seeking to recruit new directors. These difficulties are exacerbated when directors are subject to a risk of personal liability in the absence of bad faith or disloyal conduct. Reforms would attract additional qualified directors and encourage these directors to undertake their responsibilities diligently without undue fear of personal liability. We believe that there is no compelling public interest served by subjecting bank directors to greater risk of personal liability than directors of other corporations who are not subject to Part 359. Having the most qualified and dedicated directors serve on the boards of our leading financial institutions greatly contributes to a safe, sound and efficient banking system. Accordingly, absent a conflicting compelling public interest, agency rulemaking and policy should encourage, not discourage (e.g., as does Part 359), persons with qualification and dedication from serving as directors on the boards of banking organizations.

C. Money Laundering

Bank Secrecy Act Compliance

We recommend a more risk-based and less prescriptive approach to collecting Customer Identification Program (CIP) information that would allow banks to rely, in appropriate circumstances, on a broader array of third parties to collect information on customer identity.[54] Many new financial technology companies that presently do not satisfy the CIP rule's reliance requirements may be well placed to partner with banks to provide efficient, effective, and secure means of collecting and verifying customer information. This approach would take account of the fact that accounts are opened in situations where the account holder is not physically present at the financial institution, and in these scenarios, not just in the case of credit card accounts, banks should be allowed the flexibility to secure identifying information from a reliable third-party source. Therefore, we recommend that the CIP rule should be revised to establish higher-level objectives and expand subject institutions' ability to innovate and/or engage a broader array of third parties to perform CIP.

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[52] *See* 12 U.S.C. 1828(k).

[53] *Id.*

[54] *See* 31 C.F.R. 1020.220.

Reports of Crimes or Suspected Crimes

There should be several targeted changes to Suspicious Activity Report procedures and related activity.[55]

Regulators should align SAR requirements with FinCEN's National Priorities.

FinCEN should revise the SAR form to include check boxes or fields to indicate which, if any, national priorities the reported suspicious activity relates to. FinCEN should make clear in any revisions to the form that institutions are only required to undertake their best efforts to link suspicious activity to national priorities, especially because it will not always be clear at the time of filing whether the activity relates to a priority. Additionally, the decision of whether to link activity to a national priority should not be subject to retrospective questioning with the benefit of hindsight.

Regulators should implement as soon as practicable the automated reporting provisions (e.g., routine structuring, low-dollar fraud and routine cyber intrusions) of the AML Act, explore the potential use of "bulk" SAR filings and consider authorizing institutions to stop filings SARs on transactions considered low risk and of minimal investigative value.

Regulators should expressly permit, through exceptive relief or otherwise, financial institutions that have sufficient internal governance mechanisms and appropriate guardrails to make automated filings of SARs in certain circumstances, with all such SARs subject to the SAR safe harbor provisions. *See* 31 U.S.C. § 5318(g)(3); *see also, e.g.,* 31 C.F.R. § 1020.320(f). The filings within the scope of regulators' authorization for automated SAR filing should be determined on the basis of risk and should include routine structuring, low-dollar fraud, and routine cyber intrusion SARs. Regulators should also explore mechanisms to permit financial institutions to make "bulk" SAR filings, again for certain types of transactions that are less complex and of little or no investigative value. For example, such bulk filings could consist of a quarterly report of all transactions identified as satisfying certain criteria.

Regulators should also consider authorizing institutions, through exceptive relief or otherwise, to stop filing SARs, and related investigative practices, on transactions considered low risk and of minimal investigative value. For example, institutions currently file individual SARs on attempted application fraud, failed business email compromise schemes, and other fraudulent transactions that result in no actual loss, but involve an attempt to gain access to a credit line, deposits, or other assets worth more than $5,000. Although FinCEN has enumerated fraud as a national AML/CFT priority, banks should be permitted to streamline reporting of these "zero-dollar frauds," instead of preparing and submitting SARs on each individual attempt. Another example would be to allow banks to take a risk-based approach to the regulatory expectation of conducting manual continuing activity reviews (CARs) of all cases 90 days after a SAR is filed.

[55] *See* 12 C.F.R. 21.11; 12 C.F.R. 1020.320.

Regulators should permit automatic reporting of basic cash transactional data and eliminate the Currency Transaction Report ("CTR") aggregation requirement.

FinCEN should adopt a system in which institutions send basic cash transactional data directly to FinCEN. Such a system would eliminate the need to file a CTR, instead permitting institutions to send certain basic data for cash transactions satisfying specified criteria. The basic data that institutions would provide to FinCEN should include data corresponding to a limited, but prioritized, set of fields currently included in the CTR form. Each institution would continue to review underlying transactional activity and take additional steps as warranted based on the institution's AML compliance risk management framework.

FinCEN should eliminate the CTR aggregation requirement and permit automatic reporting of basic cash transactional data. The aggregation requirement applicable to CTRs imposes substantial burdens on financial institutions, especially given the breadth of the regulatory language and related FinCEN guidance. In line with Section 6216 of the AML Act, regulators should consider where aspects of CTR requirements have been made redundant or obsolete by SAR requirements and adjust the regulatory expectations accordingly.

As BPI has previously raised with FinCEN and the federal banking agencies, the agencies should clarify that, with respect to certain activities, automated approaches can be used to satisfy SAR requirements. For example, where a structuring-related alert is generated, an institution should be able to file the transactional details with FinCEN. Those details would include information such as the names of the account holders or any other persons reasonably known to the institution to be involved, and the locations of the deposits. In connection with such a filing, the institution would not conduct a comprehensive investigation of the activity, unless it received a follow-up inquiry from law enforcement or national security authorities. After receiving such a follow-up inquiry, the institution would be required to conduct a full and timely investigation of the activity. A similar approach to initial, automated filings should also be considered for other high frequency, limited complexity types of suspicious activity.

FinCen should revise the SAR burden estimate.

In stark contrast to FinCEN's burden estimate of 1.98 hours per SAR, BPI's estimate is 21.41 hours per SAR. This estimate includes time dedicated to producing and reviewing a SAR, overseeing the process of filing a SAR, and the actual filing of a SAR, and not just the mechanical process of generating, submitting, and storing the SAR; uses a methodology that does not include any time dedicated to the basic design, development and maintenance of an institution's SAR-program (e.g., policies, IT architecture, etc.); pertains to AML SARs rather than those exclusively related to fraud, which are typically handled by other business lines outside of firms' AML/BSA compliance groups; and includes only SARs filed by institutions/offices physically located within the United States. An accurate burden estimate should be undertaken expeditiously, as a more accurate estimate will facilitate a more efficient use of the limited resources of both the government and SAR filers, and help financial institutions allocate the appropriate resources to adequately fulfil the regulatory requirement.

Regulators should make additional targeted changes.

- The SAR filing requirement shouldn't be triggered when there is a single instance of structuring.

- If an institution files multiple SARs on a single customer, there should be no requirement or expectation that the institution will exit the customer after filing a certain number of SARs, and the institution should instead be encouraged to consider the actual financial crime risk of the customer holistically, together with any other relevant factors, including law enforcement's interest in keeping an account open, when determining whether to modify or exit the customer relationship.

- The "critical fields" part of the SAR form should be eliminated and it should be considered whether to raise monetary thresholds.

- The application of FinCEN's advisory addressing cyber-events and related suspicious activity reporting should be tailored, as SARs with respect to cyber-events will frequently add little information to that already reporting through other mechanisms to governmental authorities.

- The keywords and advisories that continue to be active and valid with respect to SAR requirements should be updated.

- A short concise statement should be sufficient to provide a rationale when not filing a SAR. Detailed decision-making should not need to be documented.

- The filing requirements of FinCEN/banking agencies should be harmonized.

- FinCEN, working with the federal banking agencies, should, where possible, tailor the scope of the type of conduct and clarify the level of suspicion or evidence of that conduct that triggers an obligation to file a SAR. Of particular note, the filing of SARs is currently required for a "transaction [with] no business or apparent lawful purpose."[56] We believe this criterion should be tailored to specify that, unless there are additional facts that provide a basis for suspicion, a SAR is not required simply because a transaction lacks an identifiable business or lawful purpose, or is not a transaction in which a customer would normally be expected to engage.

- A mechanism should be developed for law enforcement and national security authorities to provide regular feedback to financial institutions on filed SARs to enable them to target their internal monitoring and tracking mechanisms to better serve law enforcement and national security goals.

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[56] *See, e.g.,* 31 C.F.R. § 1020.320(a)(2)(iii).

The Bank Policy Institute appreciates the opportunity to comment as part of the EGRPRA review. If you have any questions, please contact me by phone at (202) 589-2534 or by email at joshua.smith@bpi.com.

Respectfully submitted,

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