THOMAS R. RASK, III OSB No. 934031
trask@kelrun.com
JULIE PARRISH, OSB No. 233864
jparrish@kelrun.com
Kell, Alterman & Runstein, L.L.P.
520 SW Yamhill Street, Suite 600
Portland, OR 97204
Telephone: 503-222-3531
Fax: 503-227-2980
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

MICHAEL FIRESTONE and LINDSAY BERSCHAUER, individually and as husband and wife; KATERINA EYRE, an individual; TAYLER HAYWARD, an individual; LISA LEDSON, an individual, THOMAS REILLY, an individual, and GERALD EARL CUMMINGS, II, an individual,

Plaintiffs,

v.

JANET YELLEN, in her official capacity as the Secretary of the United States Department of the Treasury, UNITED STATES DEPARTMENT OF THE TREASURY, and ANDREA GACKI, in her official capacity as Acting Director of the Financial Crimes Enforcement Network,

Defendants.

Case No: 3:24-cv-01034

PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

(EXPEDITED ORAL ARGUMENT REQUESTED)

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

EMERGENCY MOTION

Under FRCP 65 and LR 7-4, Plaintiffs Michael Firestone, Lindsay Berschauer, Katerina Eyre, Tayler Hayward, Lisa Ledson, Thomas Reilly, and Gerald Earl Cummings, II (collectively, "Plaintiffs") – each a small business owner of at least one entity subject to the reporting requirements under the Corporate Transparency Act[1] ("CTA") – move the Court for a temporary restraining order and preliminary injunction. Plaintiffs seek to have the CTA declared unconstitutional on its face with respect to Plaintiffs and all others similarly situated who are not exempt from the CTA. Plaintiffs seek to enjoin Defendants and any other agency or employee to whom Defendants delegate to act on Defendants' behalf from enforcing any part of the CTA in Oregon because as passed by Congress, the CTA violates the Plaintiffs' individual civil rights under the First, Fourth, Fifth, and Ninth Amendments of the Constitution of the United States. Plaintiffs also argue that if Defendants are allowed to enforce the CTA's civil and criminal penalties against Plaintiffs and others similarly situated, such enforcement would be an Eighth Amendment violation and in violation of Plaintiffs' rights of Due Process under the Fifth Amendment. Further, the CTA exceeds Congress's authority under Article I of the Constitution and encroaches upon the State's sovereignty, in violation of the Ninth and Tenth Amendments. The Court should hold the CTA unconstitutional on its face, and as applied to the Plaintiffs and other similarly situated Oregonians.

MEMORANDUM

INTRODUCTION

Buried deep in over 1,500 pages of the National Defense Authorization Act of 2021 ("NDAA") are fifteen pages of regulatory statute called the Corporate Transparency Act.[2] The

[1] A true copy of the Corporate Transparency Act, as passed under the National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (2021) is attached to the Motion as Exhibit A.

[2] H.R. 6395 (Public Law 116-283, Jan. 1, 2021), Corporate Transparency Act, 31 U.S.C. § 5336.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

"Sense of Congress"[3] is that the CTA is necessary because "more than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year" and that most States do not set about to require or collect information about the beneficial owners of such entities.[4] Congress further notes that "malign actors use the types of entities being regulated by the CTA for a litany of criminal activities including "money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, and acts of foreign corruption."[5]

While there is no dispute that these issues are serious and of genuine concern, rather than make investments into already-existing Federal agencies whose mission is to bring these types of criminals to justice, or make budget allocations to States to address these types of crimes at a local level by helping local law enforcement enforce existing State law, the CTA instead designs a complex statutory and regulatory scheme, replete with eye-popping civil and criminal penalties, which starts from a premise that all businesses subject to the CTA should be and will be suspect of these kinds of criminal activities at the outset of an entity's formation.

Developed from a premise that all covered entities[6] should be suspected by law enforcement of engaging in the types of criminal activities that Congress seeks to uncover, the

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The CTA creates new statutory regulations for some business owners at 31 U.S.C. § 5336 for which Plaintiffs are required to comply 5336 (*see*, H.R. 6395, Section 6403, Title LXIV - "Beneficial ownership information reporting requirements").

[3] H.R. 6395 at Sec. 6402.

[4] *Id.*

[5] *Id.*

[6] Plaintiffs define a covered entity as a business or other entity type whose entity was created by registering at the time of formation with the Secretary of State (or equivalent governmental agency tasked with corporate filings) or a Tribal government and is an entity type as described in H. R. 6395 at Sec. 6403 whose owners or those with "substantial control" of the entity must file beneficial ownership information with FinCEN. This includes entities like those held by Plaintiffs, whose for-profit businesses do not generate more than $5 million dollars in annual gross revenues and do not have more than 20 employees; and who are not subject to an exemption under § 5336 (a)(11)(B) of the CTA.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

finished work product of the CTA will result in a vast database containing the personally identifiable and "sensitive" information of the covered entities subject to the CTA's requirements. This database, which is designed to give law enforcement agencies unfettered access to the information contained therein, will be managed by the United States Department of Treasury's Financial Crimes Enforcement Network ("FinCEN). The FinCEN accounts of individual filers will be used to "collect information in a form and manner that is reasonably designed to generate a database that is **highly useful** (emphasis added) to national security, intelligence, and law enforcement agencies and Federal regulators."[7]

Such a collection and aggregation of the individualized and "sensitive"[8] information of law-abiding Oregonians like Plaintiffs, in furtherance of providing that information for unwarranted law enforcement purposes, is in opposite of the protections afforded Plaintiffs and others under the First, Fourth, Fifth, and Ninth Amendments. The CTA is a serious breach of Plaintiffs' rights to privacy, their right to not have law enforcement rifle through their personal information in search of a crime for which there is otherwise no reasonable suspicion or probable cause to search, and the right of Plaintiffs to not self-incriminate to the government.

For Plaintiffs, challenging the CTA is not merely an exercise of objecting to another government regulation and more red tape on small businesses. While Plaintiffs most certainly will be burdened by the financial cost of compliance, including the financial costs of trying to ensure Plaintiffs have followed ever step to a "T" and do so every single time a change occurs in their covered entity, the financial cost is only one of several burdens. The cost of compliance includes protecting themselves from the actual threat of civil and criminal penalties when there is no due process and no safe harbor in the law. But most problematic is that cost of compliance

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[7] H.R. 6395 at Sec. 6402.

[8] The Corporate Transparency Act, Pub. L. No. 116-283, 134 Stat. 4604, *codified at* 31 U.S.C. § 5336 mandates that persons – not corporations - who form entities under State law shall report "sensitive information" to FinCEN. *Id.* § 5336 note (6).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

includes an unwarranted and unreasonable invasion of Plaintiffs' privacy, and it does so in violation of their civil rights. The CTA is not just another hurdle for which a small business must comply. Nor can it be said that the CTA's requirement to give up personal and "sensitive" information to the Department of Treasury is no different than doing so when filing taxes with the Internal Revenue Service. Unlike filing a tax return, a document for which the contents are privacy protected unless subject to a court order, the database FinCEN seeks to create will give wide latitude to federal law enforcement agencies and unfettered use of Plaintiffs' disaggregated and personal information to prospectively search for criminal activity, and without Plaintiffs' consent. Plaintiffs strongly object to the use of their personal and "sensitive" information in this manner as being unconstitutional.

As explained by FinCEN on its website, covered entities will fall into one of three different operable dates at which time a covered entity will be subject to the CTA's registration and reporting requirements with FinCEN. Covered entities formed prior to January 1, 2024, must report to FinCEN by no later than December 31, 2024. Covered entities formed on or after January 1, 2024, must report to FinCEN within 90 days of formation. Covered entities formed after January 1, 2025, will have just 30 days by which to be compliant with FinCEN reporting.[9] The filers of all covered entities, once registered, will have only 30 days to report a change any time the entity changes ownership or makes changes to who controls the entity, or be subject to civil and/or criminal punishment.

Plaintiffs Firestone, Berschauer, Eyre, Reilly, and Cummings own companies that are subject to reporting by December 31, 2024. Plaintiffs Hayward and Ledson, along with tens of thousands of new 2024 entity filers[10] who have registered their new entities after January 1,

[9] UNITED STATES TREASURY, FINANCIAL CRIMES ENFORCEMENT NETWORK, "Beneficial Ownership Information Reporting: Frequently Asked Questions" *available at* https://www.fincen.gov/boi-faqs (retrieved electronically on March 24, 2024).

[10] OREGON SECRETARY OF STATE data query from the Corporation Division which

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

2024, are subject to FinCEN reporting within 90 days of their corporate filings at the Oregon Secretary of State's Corporation Division. Plaintiffs Firestone and Berschauer also have joint ownership in a company where the 90-day reporting requirement has already passed, leaving them subject to the CTA's excessive and ambiguous punishment scheme.

Failure to comply with the law and report to FinCEN by the foregoing deadlines will subject covered entities who are required to file documents with FinCEN to severe and substantial civil and criminal penalties. The CTA allows that civil penalties will accrue without safe harbor at a rate of up to $500.00 per day per required filer. For Plaintiffs Firestone and Berschauer, a husband and wife who have three covered entities subject to the CTA, failure to file with FinCEN could result in up to $2,000.00 per day in civil penalties, depending on how FinCEN determines to calculate penalties.[11] In a criminal prosecution for "willfully failing to report complete or update beneficial ownership information to FinCEN" Plaintiffs may be fined up to $10,000, imprisoned for up to two years, or both.[12] The CTA does not further define what Congress means by "willfully" as it relates to failing to report or update FinCEN information. By neglecting to define that term, the CTA leaves open the possibility that any civil and criminal punishment could be at the whim of whichever Presidential administration has control of FinCEN at the time the agency seeks to enforce prosecution for failure to report to FinCEN.

The open-ended nature of how fines and criminal punishment can be meted out by FinCEN is of significant concern to Plaintiffs. Plaintiffs Eyre and Ledson, for example, hold

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includes covered entities registered between January 1, 2024, and February 29, 2024, reflects more than 14,000 entity filers who could be subject to CTA filing requirements if they cannot show that they are exempt under § 5336 (a)(11)(B) of the CTA within 90 days of entity formation.

[11] CTA § 5336 (h)(3)(i). It is unknown yet whether filers like Plaintiffs Firestone and Berschauer would be subject to a $500.00 fine per company, or a $500.00 fine as individual filers for each company in which they have a beneficial ownership interest that would require them to register that interest with FinCEN.

[12] CTA § 5336 (h)(3)(ii).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
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520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

professional licensure in their respective career fields for which the State of Oregon, and not the federal government, holds exclusive statutory licensing authority.[13] The State licensing agencies which have issued Plaintiffs Eyre and Ledson's respective professional licenses require that Plaintiffs, as a condition of licensure, are subject to a criminal background check and must disclose any criminal actions with which they have been involved.

Through this Motion, Plaintiffs implore the Court to consider the very real and chilling effects the CTA will have with respect to its ambiguous punishment scheme and the secondary criminalization Plaintiffs and others similarly situated could be subjected to by State and federal law enforcement and regulatory agencies. Plaintiffs fear a loss of professional licensure if Plaintiffs and others similarly situated are criminally sanctioned for failure to comply with FinCEN filing requirements under the CTA.[14] Plaintiffs are also aware they could be in jeopardy if they in fact file with FinCEN their personal and identifiable information and then that information is later disclosed by FinCEN to federal law enforcement agencies for unwarranted

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[13] Plaintiff Eyre holds a Certified Public Accounting license issued by the Oregon Board of Accountancy Plaintiff Eyre is required as part of her license to disclose any criminal background or actions against her by any other regulatory agency, and maintain an ethics certification (see Oregon Board of Accountancy initial licensure application *available at* https://www.oregon.gov/BOA/Documents/Initial%20Licensing%20Application%202024.pdf . Plaintiff Ledson holds a Registered Nurse License issued by the Oregon State Board of Nursing. Plaintiff Ledson is subject to a criminal background check and fingerprinting, the positive results of which could preclude her from practicing in the nursing field. See OREGON STATE BOARD OF NURSING, "How Criminal History Affects Your Application" *available at* https://www.oregon.gov/osbn/Pages/criminal-history.aspx (electronically retrieved on March 24, 2024.

[14] As examples, the Oregon State Bar requires a character and fitness licensure component for attorneys; restaurant entrepreneurs are subject to and can be precluded from holding a liquor license issued by the Oregon Liquor and Cannabis Commission and be precluded from being an Oregon Lottery vendor if they fail a criminal background check; private investigators are subject to background checks by the Department of Public Safety Standards and Training, and numerous other professional and business licenses issued by the State require licensees to pass background checks. The criminalization of small business owners under the CTA creates a risk of thousands of Oregon business owners with professional licenses being in jeopardy of losing state licensure.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

search purposes. Based upon analogous precedent, it is reasonable for Plaintiffs to expect that the federal government could threaten criminal punishment under federal statutes not directly related to FinCEN for business activities that are otherwise lawful in Oregon, but still considered illegal for the purposes of initiating federal prosecution.[15]

For the reasons stated above, the Court should grant this Motion to prevent Defendants from engaging in civil rights violations against Plaintiffs and other similarly situated Oregon covered entities subject to the CTA, the enforcement of which will cause them irreparable harm.

LEGAL STANDARDS GOVERNING THIS MOTION

Fed. R. Civ. P. 65 provides for the issuance of temporary restraining orders to prevent "irreparable injury, loss, or damage."[16] "The purpose of a preliminary injunction is to preserve the status quo pending a determination of the action on the merits." *Chalk v. U.S. Dist. Ct.*, 840 F.2d 701,704 (CA9, 1998). "The same legal standard applies to temporary restraining orders and preliminary injunctions sought pursuant to Federal Rule of Civil Procedure 65." *Too Marker*

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[15] The scope of Plaintiff Ledson's nursing business could include an intersection with Oregon's medical cannabis laws. While medical cannabis is lawful in Oregon under state law, the federal government and its law enforcement agencies, still in law, and practice, punish Americans under federal drug laws. These are the same agencies that would have unfettered access to Plaintiff Ledson's business information under the CTA, *See* Torney, K., *"She Immigrated Legally. She Married a U.S. Citizen. But She Was Denied Citizenship for Working in Legal Cannabis"* POLITICO MAGAZINE (Dec. 23, 2023) *available at* https://www.politico.com/news/magazine/2023/12/23/biden-administration-immigrants-legal-cannabis-00133085; *Reimers v. United States Citizenship,* 2023 U.S. App. Lexis 13682; *see also,* Washington State Liquor and Cannabis Board "Cannabis Licensing" information which explains that while immigrant applicants can seek licensure in Washington's lawful cannabis industry, the federal government can criminally sanction applicants for naturalized U.S. citizenship, *available at* https://lcb.wa.gov/cannabis-license/cannabis-licensing (electronically retrieved on March 24, 2024).

[16] "The standard for issuing a TRO is essentially the same as the standard for issuing a preliminary injunction." *Stuhlbarg Int'l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n. 7 (9th Cir. 2001). "A plaintiff seeking a preliminary injunction must establish that [he or she] is likely to succeed on the merits, that [he or she] is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [his or her] favor, and that an injunction is in the public interest." *Winter v. NRDC, Inc.*, 555 U.S. 7, 20 139 S.Ct 365, 374 (2008).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

Products Inc., v Shinhanan Art Materials, Inc., 2009 WL 4718733 at *2 (D Or 2009). "To restrain or enjoin a defendant from acting, a plaintiff must show: (1) likelihood of success on the merits; (2) likelihood of irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that an injunction is in the public interest." *Id.*

"Although a plaintiff seeking a preliminary injunction must make a showing on each element, the Ninth Circuit employs a 'version of a sliding scale' approach where 'a stronger showing of one element may offset a weaker showing of another.'" *Steinmeyer v. Am. Ass'n of Blood Banks*, 2023 U.S. Dist. LEXIS 177263 (quoting *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-35 (9th Cir. 2011). "For example, a stronger showing of irreparable harm to plaintiff might offset a lesser showing of likelihood of success on the merits." *Irvin v. HSBC Bank USA, N.A.,* 2017 WL 5075246 at *1 (D Or 2017).

It is not necessary for the moving party to "prove his case in full." *Univ. of Tex. V. Camenisch*, 451 U.S. 390, 395 (1981). Nor do plaintiffs need to show that they are "more likely than not" to prevail. *Leiva-Perez v. Holder*, 640 F. 3d 962, 966 (CA9 2011). Plaintiffs instead need only demonstrate a "fair chance of success on the merits" or raise questions, as Plaintiffs do here, that their questions are "serious enough to require litigation." *Benda v. Grand Lodge of the Int'l Ass'n of Machinists & Aerospace Workers*, 584 F. 2d 308, 315 (CA9 1978).

"A preliminary injunction may issue under the 'serious questions' test." *All. for the Wild Rockies v. Cottrell* at *1134. "According to this test, a plaintiff can obtain a preliminary injunction by demonstrating that 'serious questions going to the merits were raised and the balance of hardships tips sharply in the plaintiff's favor.'" *Picozzi v. Nev. Dept. of Corr*., 2020 U.S. Dist. LEXIS 143082 (quoting *All. for the Wild Rockies v. Cottrell* at *1134-35.) "Given the haste" a "preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits. A party thus is not

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

required to prove his case in full at a preliminary-injunction hearing." *Univ. of Tex. V. Camenisch* at *395.

FACTUAL BACKGROUND

PLAINTIFFS

Plaintiffs reflect a cross-swath of the thousands of existing and newly formed Oregon entities that submit an entity filing with the Oregon Secretary of State every month. They represent rural and urban businesses. They are people who make a living with their hands, on farms, and in clinical and professional settings. They reflect individuals who have worked hard to obtain the skills necessary to join a licensed Oregon profession. They reflect first-generation immigrants and college students who form businesses in the hopes of obtaining their piece of the American dream. Plaintiffs object to FinCEN reporting in part because the CTA's exemption scheme wrongly puts the burdens of achieving the CTA's goals squarely on the shoulders of Plaintiffs and other similarly situated filers, while stripping them of their Constitutional rights in the process. Meanwhile, the CTA provided exemptions to the entity types that many believe are in *actual* need of better government monitoring, or at a minimum, who could afford a lobbyist to carve them out of the legislation. These same exempted entities – large corporations, global financial institutions, and insurance companies – are also the types of entities better situated and with the financial resources to help the federal government in its efforts to monitor for financial crimes and money laundering for terrorism.

Plaintiffs Michael Firestone and Lindsay Berschauer, individually and as husband and wife, are sole shareholders in three entities which require FinCEN reporting. Both husband and wife each own one business individually, and together, they are equal partners in the third entity whose filing requirement just came due. Plaintiffs are both U.S. citizens residing in Yamhill County. Two of the covered entities Plaintiffs Firestone and Berschauer own are agricultural in nature and serve the growing/farming community in Oregon's renowned hazelnut industry.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

None of the Plaintiffs' three covered entities qualify for an exemption from the CTA's requirements to report to FinCEN, and without a declaration that the CTA is unconstitutional and without enjoining Defendants from enforcing the law, Plaintiffs will be required to comply with the CTA or be subject to civil fines and/or criminal penalties.

Plaintiff Katerina Eyre, individually, owns a covered entity which holds an equity stake in another business that is also required to comply with the CTA. She is a resident of Washington County. Plaintiff is a first-generation American business owner, the daughter of immigrants from Singapore and England. Though Plaintiff enjoys full Constitutional rights as U.S. citizen, she is concerned not only for the protection of her own civil rights, but for those in the immigrant community for whom failure to comply with the CTA could result in criminal penalties which subsequently could result in immigration and deportation proceedings. Plaintiff Eyre's covered entity does not qualify for an exemption from the CTA's requirements to report to FinCEN, and without a declaration that the CTA is unconstitutional and without enjoining Defendants from enforcing the law, Plaintiff will be required to comply with the CTA or be subject to civil fines and/or criminal penalties.

Plaintiff Tayler Hayward is a 20-year-old college student who was adopted out of California's foster care system. Prior to moving to Oregon in 2024, Plaintiff, a first-generation college student, earned some of her income by selling hand-made jewelry under a business license issued by the City of Redding, California. Plaintiff is a U.S. citizen and a new resident of Clackamas County. She is still working to put herself through college with no familial support. In 2024, she filed her business with the Oregon Secretary of State so that she might continue to sell her hand-made items at local area markets to raise money for college tuition. Plaintiff Hayward's covered entity does not qualify for an exemption from the CTA's requirements to report to FinCEN, and without a declaration that the CTA is unconstitutional and without

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

enjoining Defendants from enforcing the law, Plaintiff will be required to comply with the CTA or be subject to civil fines and/or criminal penalties.

Plaintiff Lisa Ledson is a majority shareholder in a newly formed entity she owns with her spouse.. Plaintiff is the mother of twin daughters, one of whom is severely disabled. Plaintiff's business, a nursing delegation service, will help families who are caring for loved ones with severe developmental disabilities, including medically fragile children. Being self-employed allows Plaintiff to work from home and continue to take care of her disabled daughter. Plaintiff also serves as a founding board member of a newly formed entity that will seek 501(c)(3) tax exempt status from the Internal Revenue Service. However, while the CTA provides that nonprofit entities are exempt, the Internal Revenue Service generally takes longer than 90 days to issue a tax-exempt status to a new entity. Plaintiff, as a volunteer of the organization, and along with the rest of the volunteer board, would be required to comply with FinCEN reporting, regardless of the fact that the nonprofit is likely to receive tax exempt status after the 90-day FinCEN filing requirement period. By the time Plaintiff's nonprofit entity receives tax exempt status, Plaintiff will have already been harmed by complying with the required reporting, and FinCEN will keep and use Plaintiff's "sensitive" information for years after the Internal Revenue Service issues a tax-exempt status for the organization. Plaintiff is a U.S. citizen and resident of Clackamas County. Plaintiff's nursing delegation business does not qualify for an exemption from the CTA's requirements to report to FinCEN, and the nonprofit will not qualify for a FinCEN exemption within 90 days of its entity filing. Without a declaration that the CTA is unconstitutional and without enjoining Defendants from enforcing the law, Plaintiff will be required to comply with the CTA for both entities or be subject to civil fines and/or criminal penalties.

Plaintiff Reilly is a mechanic who owns an automotive repair business and a car rental business. Plaintiff is nearing retirement. Plaintiff intends to sell the automotive business and has

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

already secured a buyer with whom he can transition the automotive business as the new owner. The sale will not take place until sometime after Plaintiff is required to file under the reporting requirements with FinCEN. The CTA requires when there is a change to the entity, a filer that has an existing FinCEN reporting requirement must update FinCEN within 30 days. Transacting the sale of Plaintiff's business will mean that as the automotive business transitions to the new owner, the new owner will be required to make a new filing with FinCEN. However, FinCEN and other law enforcement entities will continue to have unfettered access to Plaintiff's personally identifiable and "sensitive" information for a period of five years after the sale of the business, even though Plaintiff will no longer be legally responsible for the business or its activities. Plaintiff is a U.S. Citizen and a resident of Clackamas County. Plaintiff Reilly's covered entity does not qualify for an exemption from the CTA's requirements to report to FinCEN, and without a declaration that the CTA is unconstitutional and without enjoining Defendants from enforcing the law, Plaintiff will be required to comply with the CTA or be subject to civil fines and/or criminal penalties.

Plaintiff Cummings owns two entities that will be subject to FinCEN reporting requirements, one registered in Oregon and the other in Washington state. Plaintiff's Oregon entity is in the insurance industry, but not subject to an exemption from FinCEN reporting requirements such as the exemption large corporate insurance entities enjoy under the law. Plaintiff's Washington entity is also registered as a foreign corporation in Oregon with a separate assumed business name. Plaintiff's Washington entity conducts business in part by offering credit card processing services as a reselling vendor of those services to end-user customers. Though Plaintiff's Washington entity has a nexus with the type of banking and financial services that are otherwise exempt under the CTA, as a reselling vendor and small business, Plaintiff is not exempt in the same way large corporate banks and credit card companies are exempt from FinCEN reporting requirements. Plaintiff is a U.S. citizen and a resident of Columbia County,

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

Oregon. Plaintiff Cummings's covered entities do not qualify for an exemption from the CTA's requirements to report to FinCEN, and without a declaration that the CTA is unconstitutional and without enjoining Defendants from enforcing the law, Plaintiff will be required to comply with the CTA or be subject to civil fines and/or criminal penalties.

While each Plaintiff has a personal story for choosing to register an entity with the Oregon Secretary of State, they are not alone in that choice. Every day in Oregon, hundreds of new entities are filed with the Oregon Secretary of State. For banking and other business purposes, many will file an Employee Identification Number ("EIN") with the Internal Revenue Service. Both the Secretary of State and IRS access points to entity registration and ownership have very little information about FinCEN reporting requirements. What information does exist is pushed down to the bottom of a webpage or email filled with other links. The new filer getting a PDF copy of their EIN letter won't read anything about FinCEN reporting requirements because the Internal Revenue Service doesn't bother to address the matter with the contents of the EIN letter. But the EIN letter is generally the only document that a new filer will receive from federal government in relation to filing a new entity. Many times, new filers, like Plaintiff Hayward for example, are underbanked and they lack access to paid professional advisors. Beyond Plaintiffs' serious concerns regarding the CTA's constitutionality, Plaintiffs fear that by the time Oregon entity filers have any kind of constructive notice of the requirements to report to FinCEN, they will have missed the window to submit their "sensitive" information, the result of which will trigger civil penalties and/or criminal sanctions, and with little or no meaningful right to appeal.

All the Plaintiffs in this matter object to being forced to comply with the CTA as a violation of their fundamental constitutional rights and as an encroachment on Oregon's sovereign right to assign the duties to regulate entity formation to our elected Secretary of State, who is chosen directly by a vote of the people of Oregon.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

The CTA's Reporting Requirements

The CTA became law on January 1, 2021, following votes by the House of Representatives and the Senate, respectively, to override a presidential veto. *See* William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (2021).

The CTA's stated purposes are to combat money laundering, the financing of terrorism, and other illicit activity in "compliance with international . . . standards," and to "set a clear, Federal standard for incorporation practices." 31 U.S.C. § 5336 note (5).

To achieve those ends, the CTA requires "reporting companies" to provide FinCEN information regarding each "beneficial owner" and "applicant." 31 U.S.C. § 5336(b)(1)(A). Each term is broadly defined:

- A "reporting company" is defined as a "corporation, limited liability company, or similar entity that is (i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or (ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe." *Id.* § 5336(a)(11)(A).

- A "beneficial owner" is defined as "an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise" (i) "exercises substantial control over the entity;" or (ii) "owns or controls not less than 25 percent of the ownership interests of the entity." *Id.* § 5336(a)(3)(A).

- An "applicant" is defined as any individual who files an application to form a reporting company or "registers or files an application to register" a non-U.S. company to do business in the United States. *Id.* § 5336(a)(2).

For each of the covered individuals, the reporting company must provide to FinCEN their full legal name, date of birth, current residential or business street address, and "unique identifying number from an acceptable identification document." *Id.* § 5336(b)(2)(A). The

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

covered individuals must surrender their personal information when they form or register their reporting companies.

For existing reporting companies, individuals must give their personal information to reporting companies to report to FinCEN not later than two years after FinCEN promulgates certain regulations. *See id*. §§ 5336(b)(1)(B)-(C).

On September 29, 2022, FinCEN issued a final rule (the "Final Rule") implementing the CTA's reporting requirements to take effect on January 1, 2024, for newly formed entities and January 1, 2025, for existing entities. *See* Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. 59498, 59549 (Sept. 30, 2022) (to be codified at 31 C.F.R. pt. 1010).[17]

Any person who "willfully" fails to comply with the CTA's reporting requirements is subject to a civil penalty of up to $500 per day up to $10,000, two years' imprisonment, or both a fine and imprisonment. 31 U.S.C. §§ 5336(h)(1), (3). The word "willfully" in the statute is vague, ambiguous, and undefined without a clear standard for when FinCEN would levy such punishment against a required filer.

The CTA Database of Personal Information

The disclosures required by the CTA will be used to create a database of personal information regarding "beneficial owners" and "applicants."

The CTA requires FinCEN to keep the personal data of a reporting company's beneficial owners and applicants for the life of their companies, and then at least five years after the date, if any, on which they wind their companies down. *Id.* § 5336(c)(1).

[17] If there are any changes to the reported data—such as if a "beneficial owner" or "applicant" moves or gets a new driver's license—the entity must provide updated information to FinCEN no more than one year after the change (30 days under the Final Rule or be subject to the CTA's punishment scheme. 31 U.S.C. § 5336(b)(1)(D).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

For the duration of that time, FinCEN may share information in the database with federal, State, local, and tribal law enforcement agencies; with financial institutions for customer due diligence (with the reporting company's consent); and with "a Federal functional regulator or other appropriate regulatory agency," including foreign governmental agencies. *Id.* § 5336(c)(2)(B). The CTA also provides that information in the database "shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury" in the performance of their "official duties." *Id.* § 5336(c)(5).

If the request for a person's information comes from a State, local, or tribal law enforcement agency, the statute requires that "a court of competent jurisdiction . . . has authorized the law enforcement agency to seek the information in a criminal or civil investigation." *Id.* § 5336(c)(2)(B)(i)(II).

No court authorization is required if a request for a person's information comes from a "Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity." *Id.* § 5336(c)(2)(B)(i)(I).

Likewise, if a federal agency makes a request for someone's personal data on behalf of a non-U.S. law enforcement agency, prosecutor, or judge—for instance, pursuant to an international treaty—FinCEN has no statutory authority to deny the request so long as the requested data is limited to the "investigation or national security or intelligence activity" that the foreign or international entity has in mind.[18] *Id.* § 5336(c)(2)(B)(ii).

The CTA also gives Treasury Department employees carte blanche to access people's information when their "official duties" require it. *Id.* § 5336(c)(5).

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[18] The Notice of Proposed Rulemaking regarding regulations to govern access by federal, State, tribal, and foreign agencies and banks to the beneficial ownership information was published on December 16, 2022. *See* Federal Register: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities, 87 Fed. Reg. 77404 (Dec. 16, 2022) (to be codified at 31 C.F.R. pt. 1010).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

The Burdens the CTA Imposes on States

Since statehood, the Oregon Legislature, not the federal government, has had the responsibility for passing laws regarding corporate entity formation. This includes statutory criterion for the information the State collects with respect to who can form a corporate entity, and for what purpose. It is already illegal in Oregon to form a corporate entity for unlawful purposes. In Oregon, the responsibility of managing the Corporation Division where entities file falls to the elected Secretary of State.

In passing the CTA, Congress acknowledged that "most or all States do not require" people to give "information about the beneficial owners" of entities formed under State laws each year. *Id.* § 5336 note (2). Nonetheless, the CTA requires State agencies to "cooperate with and provide information requested by FinCEN," so the federal government can create and maintain the new beneficial owner and applicant database. *Id.* § 5336(d)(2).

According to the CTA, as a condition of the funds, "each State and Indian Tribe shall, not later than 2 years after the effective date of [FinCEN's reporting regulations, i.e., by September 29, 2024]," notify reporting company filers of the personal-data reporting requirements and update relevant websites, instructions, and forms. *Id.* § 5336(e)(2)(A).

The Act mandates that notice to State filers "explicitly state that the notification is on behalf of the Department of the Treasury for the purpose of preventing money laundering, the financing of terrorism, proliferation financing, serious tax fraud, and other financial crime by requiring nonpublic registration of business entities formed or registered to do business in the United States." *Id.* § 5336(e)(2)(B).

The CTA also prohibits entities formed under State law from issuing "a certificate in bearer form"—*i.e.,* a certificate giving ownership rights to whoever holds the certificate—"evidencing either a whole or fractional interest in the entity." *Id.* § 5336(f).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

The Entities Impacted by the CTA

According to FinCEN, the "reporting companies" subject to the CTA will include approximately 32.6 million existing entities in 2024, plus roughly 5 million additional entities created or registered under State and Tribal laws every year from 2025 to 2035, as well as foreign companies registered to do business in the United States. *See* Beneficial Ownership Information Reporting Requirements, 87 Fed. Reg. at 59549. In Oregon, the filing requirements could be imposed on several hundred thousand filers whether they are engaged in commercial activity or non-commercial activity.

The CTA exempts from its reporting requirements twenty-four categories of publicly traded companies, entities engaged in regulated industries (like banks, investment funds, broker-dealers, and other financial institutions), and 501(c) federal tax-exempt entities, among others. *See* 31 U.S.C. § 5336(a)(11)(B). Secretary of State records show that there are several hundred new filings on average daily, and under the very technical rules of the CTA, even entities that might be able to later secure an exemption will likely still be required to do an initial FinCEN registration within 90 days, and have their information retained for law enforcement searches for a period of five years after they receive the exemption.

One CTA exemption is for private companies with (a) more than 20 full-time employees in the United States, (b) more than $5 million in gross receipts or sales, and (c) an operating presence at a physical office in the United States. *See id.* § 5336(a)(11)(B)(xxi). There is almost no new entity being filed in Oregon that would achieve this type of exemption within the first 90 days of commencing a new business, therefore making this exemption nearly irrelevant for most Oregon filers who had not already achieved these criteria prior to the CTA going into effect on January 1, 2024.

Non-public companies with a U.S. operating presence but 20 or fewer full-time employees or less than $5 million in gross receipts or sales are not exempt. *See id.* The CTA

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

also does not exempt entities created for non-business purposes, such as entities formed to hold a family residence, entities formed with the intent to seek 501(c) federal tax-exempt status but have not yet applied for it, or non-profit entities not seeking 501(c) federal tax-exempt status.

Subsequent Use of FinCEN-Captured Data is Invasive and Opens the Door to Further Civil Rights Violations

In addition to Plaintiffs' core concerns about the CTA, Plaintiffs highlight additional concerns related to the language in the Title LXV – MISCELLANEOUS section of H.R. 6395 which relates back to the CTA. It might be easy to overlook the end section of any piece of legislation as merely including conforming language or statutory reconciliations, but the Court cannot ignore the breadth and scope of the myriad of ways numerous federal agencies seek to use individualized and aggregated FinCEN data once the data is harvested from covered entity filers like Plaintiffs.[19] These uses include by way of statutory example, FinCEN authorizing Plaintiffs' "sensitive" information and data to:

- "strengthen[ing] the capability of national security, intelligence, and law enforcement agencies to – combat incorporation abuses and civil and criminal misconduct;"[20]
- "conduct a study on - best practices….on the usage and usefulness of personally identifiable information, sensitive-but-unclassified data, or similar information provided by parties to the United States Government users of the information and data, including law enforcement agencies and regulators:"[21]

[19] H.R. 6395 at Secs. 6502 to 6508 provide for multiple studies by various governmental entities with the express purpose of using FinCEN data to explore other types of crime the federal government could proactively seek to use FinCEN data in furtherance of law enforcement against American citizens and without probable cause.
[20] H.R. 6395 at Sec. 6502. GAO AND TREASURY STUDIES ON BENEFICIAL OWNERSHIP REPORTING REQUIREMENTS at H.R. 6395(a)(2)(A).
[21] H.R. 6395 at Sec. 6503. GAO STUDY ON FEEDBACK LOOPS at Sec. 6503(b)(1).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

- "conduct a study on – any practice or standard inside or outside the Unites States for providing feedback through sensitive information and public-private partnership information sharing efforts…;"[22]
- "commence a study of currency transaction reports which shall include – an analysis of the importance of currency transactions to law enforcement;"[23]
- "study, in consultation with law enforcement, relevant Federal agencies, appropriate private sector stakeholders (including financial institutions and data and technology companies), academic and other research organizations….what role gatekeepers, such as lawyers, notaries, accountants, investment advisors, logistics agents, and trust and company service providers, play in facilitating trafficking networks and the laundering of illicit proceeds."[24]

These examples of how the CTA will allow the federal government to provide FinCEN data access to a host of federal agencies, law enforcement entities, and a myriad of others, offers the Court a breathtakingly expansive, but not-exhaustive, view of those who might have access to Plaintiffs' data under the CTA, without Plaintiffs' actual consent for use of their private information, other than what was compelled "consent" under threat of civil and criminal penalties. These statutory studies which will rely on Plaintiffs' personal data further reinforces the idea that the CTA starts with a premise that all covered entities and individuals are wrongdoers and criminals, and therefore, law enforcement needs more invasive tools to proactively search for criminal activity, even when none might exist. Such a premise is in direct contradiction to the constitutional safeguards Plaintiffs and others are entitled to under the Fourth and Fifth Amendments of the U.S. Constitution.

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[22] H.R. 6395 at Sec. 6503. GAO STUDY ON FEEDBACK LOOPS at Sec. 6503(b)(2).
[23] H.R. 6395 at Sec. 6504. GAO CTA STUDY AND REPORTS at Sec. 6504 § (1)(B).
[24] H.R. 6395 at Sec. 6505. GAO STUDIES ON TRAFFICKING at Sec. 6505 § (b)(1)(G).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

MEMORANDUM IN SUPPORT

This Motion seeks to prevent immediate and irreparable injury and seeks to preserve the status quo while the parties' claims are adjudicated. If the Motion is not granted, Plaintiffs, and others similarly situated, will be forced to relent to Defendants' unprecedented intrusion into the individual privacy rights of Plaintiffs. In the alternative, Plaintiffs and others will be subjected to actual statutorily-imposed threats of civil penalties and criminal punishment for failure to comply. The financial costs and burdens of compliance, as well as the loss of Plaintiffs' constitutional rights under the threat of sanctions, will cause irreparable and immediate harm if Defendants are allowed to enforce the CTA in Oregon.

I. PLAINTIFFS ARE LIKELY TO SUCCEED ON THE MERITS

It cannot be said that every law passed by the Legislative branch is drafted in a manner that will pass Constitutional muster. The CTA is one such law where the law both exceeds Congress's authority, and in doing so, infringes on protected individual liberties of those the law seeks to regulate. While the CTA might be well-intended, as passed into law, it violates Plaintiffs' First, Fourth, Fifth, and Ninth Amendment rights. Further, the civil penalties, criminal fines, and the threat of imprisonment included in the CTA, with no substantive right to appeal that punishment scheme, would be violative of the Plaintiff's Eight Amendment rights to be free from excessive fines and cruel and unusual punishment. The CTA burdens fundamental constitutional rights, and though the matter of the CTA has not yet been heard in the Ninth Circuit, the Defendants in this case have already lost their best arguments once in the United States District Court for Northern Alabama, where the judge in that jurisdiction determined that the CTA was "unconstitutional because it cannot be justified as an exercise of Congress' enumerated powers."[25]

[25] *Nat'l Small Bus. United v. Yellen*, 2024 U.S. Dist. LEXIS 36205 (March 1, 2024).

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

While the *National Small Business United v. Yellen* holding is instructive and should be used to inform this Court, Judge Burke, in his Memorandum Opinion, arrived at his conclusion that the CTA was unconstitutional solely based on the Alabama plaintiffs' and Defendants' summary judgment arguments surrounding the issues that Congress exceeded its Constitutional authority. We agree with Judge Burke on that point, and Plaintiffs in this case echo those same arguments in their own Complaint, but Plaintiffs also do so with the caveat that the Alabama decision did not go far enough in protecting the individual civil rights of the plaintiffs in that case.

The Plaintiffs represented herein make strong claims against Defendants for infringement of Plaintiffs' individual Constitutional rights which Plaintiffs believe should be fully considered by an Oregon court. More specifically, Plaintiffs believe that if the Court conducts a constitutional analysis of the CTA regarding the issues of:

- protection for Plaintiffs from being forced into compelled speech as required by the CTA, for which Plaintiffs are protected under the First Amendment;
- protection for Plaintiffs to associate freely under the First Amendment;
- protection from the federal government's invasion of Plaintiffs' privacy for which Plaintiffs are protected by the Ninth Amendment;
- protection from the chilling effects of the federal government aggregating individually identifiable and "sensitive" information to be used by numerous law enforcement agencies to search for criminal activity without probable cause, or even reasonable suspicion, and in violation of Plaintiffs' Fourth Amendment rights;
- protection under the Fifth Amendment for Plaintiffs from being compelled to testify to FinCEN that their covered entity engages in activities considered lawful in Oregon, but would put Plaintiffs in legal jeopardy of being charged with federal crimes; and
- preservation of the Plaintiffs' rights to due process under the Fifth Amendment;

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

that the Court could find that Plaintiffs are likely to succeed on the merits of their Constitutional claims, and that the Court should enjoin Defendants and any agent to whom Defendants would delegate authority under the CTA from enforcing the CTA against Plaintiffs and covered entities in Oregon.

II. PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF DEFENDANTS ARE ALLOWED TO ENFORCE THE CTA AGAINST PLAINTIFFS, AND PLAINTIFFS WILL SUFFER IRREPARABLE HARM IF ANY FEDERAL AGENCY OR OTHER FINCEN-AUTHORIZED USER IS ALLOWED TO ACCESS PLAINTIFFS' PERSONAL DATA

Congress's laudable goals of protecting the public are appreciated by the Plaintiffs, but those goals cannot be reconciled with Congress's path to achieve those goals.

Each Plaintiff in this case, and those similarly situated, stands to suffer similar and unique consequences if Defendants are allowed to enforce the CTA. All Plaintiffs will likely bear significant financial costs associated with the vague and complex compliance rules in order to protect Plaintiffs from an ambiguous punishment scheme if they fail to comply with the law. This burden is onerous in that it requires Plaintiffs to seek out and pay for lawyers or accountants to file with or update FinCEN within 30 days of any change made by any required filer associated with the entity any time that a change occurs.

Plaintiffs will be further harmed if law enforcement agencies and others as allowed by FinCEN are able to use and share unfettered, the individual and "sensitive" information of Plaintiffs. All Plaintiffs will jointly suffer from the infringement of numerous violations of their constitutional rights if the CTA is allowed to be enforced. All Plaintiffs, right now, must choose between permanently trading in their constitutional rights to the Financial Crimes Enforcement Network or face the actual likelihood of civil and criminal penalties.

Plaintiffs Hayward and Ledson are now beyond the 90 days from the date of their new entity filing in 2024. By objecting to being forced to cede their constitutional rights to FinCEN,

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

they are now faced with the actual threat of FinCEN's sanctions if they do not comply. Plaintiffs Firestone and Berschauer are in a similar position for their jointly-held entity. The late filing could trigger FinCEN's civil and criminal punishment scheme as there is no safe harbor for a late filing and there is no meaningful right of appeal for Plaintiffs.

For Plaintiff Ledson, the threat of sanctions goes beyond those that can be levied by FinCEN. By complying with FinCEN requirements, she opens herself up to the scrutiny of federal law enforcement agencies.

Political pendulums swing with November elections. A president of a persuasion to use FinCEN data to enforce federal drug laws in states like Oregon, where cannabis and psilocybin have been legalized by voters, puts Plaintiff Ledson and others like her in an untenable position where reporting her business information to FinCEN to comply with the CTA could result in federal criminal prosecution under other federal statutes.

For Plaintiffs Eyre and Ledson, the threat of criminalization under the CTA puts their livelihood at risk. Just as registering a business with the Oregon Secretary of State is a responsibility of the State to manage, so too is it within the States' power to enact professional licensure requirements. The CTA's criminal penalty scheme puts individuals whose livelihoods depend on State licensure in jeopardy. A criminal sanction under the CTA could force Plaintiffs Eyre and Ledson out of their professional work.

For Plaintiffs Firestone and Berschauer, the civil penalties for failing to comply with the CTA will stack up quickly. At up to $2,000.00 per day across their three covered entities depending on how it is determined fines will be calculated – per entity or per filer - the cost of compliance is excessive when weighed against the loss of their Constitutional rights. Plaintiff Cummings, with more than one entity, is also potentially subject to a significant amount of civil penalties and the risk of criminal sanctions if he fails to comply with the law.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

It is also undisputed that the Internal Revenue Service, another division of the U.S. Treasury, has had people in its employ who have leaked the confidential tax records of individual citizens, leading to a severe distrust of the agency.[26] Beyond the infringement of their Constitutional rights, Plaintiffs rightly fear that Defendants cannot adequately safeguard their information from hackers, leakers, and data breaches, and not just by those at the U.S. Treasury, but by any similar hack, leak or data breach when their information in transferred to law enforcement agencies and other unknown third-party accessors of Plaintiffs' "sensitive" information.

While Defendants might argue that some of this "sensitive" information exists within other federal agencies, such information cannot be used for some of the CTA's stated purposes, like law enforcement, without a warrant (where law enforcement has probable cause) or consent (like using a passport to voluntarily travel through an airport).

Lastly, it is telling that the congressional record shows that the functional purpose of the CTA is really about allowing federal law enforcement agencies to sidestep the constitutional safeguards Plaintiffs reasonably expect are protected by the Fourth and Fifth Amendments. As then-Director of FinCEN Kenneth Blanco testified before Congress, without the CTA, gathering information of beneficial owners would require "human source information, grand jury subpoenas, surveillance operations, witness interviews, [and] search warrants." 87 Fed. Reg. at 59504. This sidestepping of constitutional rights with respect to how far Congress was willing to go in allowing federal law enforcement agencies to infringe on individual liberties with unfettered warrantless searches of FinCEN data is shocking when contrasted to the CTA's requirements for local access of the same data. Congress made no such allowance of

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[26] Eisinger, J., Ernsthausen, J. and Kiel, P., *"The Secret IRS Files: Trove of Never-Before-Seen Records Reveal How the Wealthiest Avoid Income Tax"* PROPUBLICA (June 8, 2021) *available at* https://www.propublica.org/article/the-secret-irs-files-trove-of-never-before-seen-records-reveal-how-the-wealthiest-avoid-income-tax

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

constitutional infringement by law enforcement agencies managed by State, local, or tribal entities. Instead, the CTA requires local entities to adhere to the constitutional framework of obtaining a warrant from a court of competent jurisdiction prior to a local agency accessing the same information the federal government has compelled Plaintiffs to provide for the federal government's own unlimited warrantless searches. 31 U.S.C. § 5336(c)(2)(B).

The federal government cannot on the one hand pass a law that seizes the constitutional rights of citizens by creating a compelled database of Plaintiffs' and others' personal and "sensitive" information for prospective and warrantless criminal searches, while on the other hand requiring local law enforcement to adhere to constitutional safeguards. This juxtaposition and then-Director Blanco's statements about why FinCEN should have this information make clear they understood its use might not withstand constitutional scrutiny.

For those reasons, the Court should find that Plaintiffs, and others similarly situated, will suffer irreparable harm if Defendants and their agents are not enjoined from enforcement of the CTA. Additionally, the Court should also enjoin Defendants from sharing with law enforcement, and other users authorized by FinCEN, any access to Plaintiffs' data or data already collected from Oregon covered entity filers who have already been subjected to CTA's reporting requirements.

III. THE BALANCE OF EQUITIES AND PUBLIC INTEREST WEIGH IN FAVOR OF ISSUANCE OF THIS TEMPORARY RESTRAINING ORDER

Defendants' enforcement of the CTA goes against both equitable considerations and the public interest. It is not lost on Plaintiffs that the entities exempted by the CTA from the burdensome costs of compliance with business and beneficial ownership reporting to the Financial Crimes Enforcement Network include some entities – big banks, insurance companies, and large corporations – that have proven to need the most government scrutiny. Meanwhile, businesses like the one owned by Plaintiff Hayward – formed in furtherance of bettering one's

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

life, but underbanked and without access to meaningful professional counsel – are immediately presumed by the CTA upon filing entity paperwork to be engaging in criminal activity at such a level that it warrants monitoring by numerous federal law enforcement entities, merely by walking through the Secretary of State's front door.

The CTA states that the Treasury Secretary "shall take reasonable steps to provide notice to persons of their obligations to report beneficial ownership information under this section, including by causing appropriate informational materials describing such obligations to be included in 1 or more forms or other information materials regularly distributed by the Internal Revenue Service and FinCEN."[27] The IRS buries the FinCEN lead when an applicant applies for an Employer Identification Number ("EIN"), and in fact, at the end of processing an EIN application the EIN letter itself contains no constructive information about the CTA. The Oregon Secretary of State, who cannot be commandeered under the law to carry out communications on behalf of the federal government, provides only a bare minimum of FinCEN reporting information to be new business filers.

While ignorance of the law is no excuse to not follow the law, at least with basic laws like wearing a seatbelt, drivers and passengers are routinely warned while driving en route to "Click it or Ticket" with the fine posted and conspicuous. A overreaching law that is already turning thousands of new Oregon business and entity filers into scofflaws should be put on pause until it is either (a) decided by courts in states[28] where the law is being challenged that the law is

[27] CTA at § 5536(e)(1).

[28] In addition to the decision in *Nat'l Small Bus. United v. Yellen* which found the CTA to be unconstitutional, Plaintiffs are aware of at least one other case where the CTA is being challenged on constitutional grounds (*see, Boyle v. Yellen*, Case No. 24CV00081 filed March 15, 2024, in the District Court of Maine). Plaintiffs are also aware that the federal government is appealing the *Nat'l Small Bus. United v. Yellen* but that such appeal and a possible final determination at some point by the United States Supreme Court will not come in time for Plaintiffs and other Oregon covered entities to be protected from harms to their civil rights if the CTA is allowed to be enforced in Oregon.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

in fact a valid constitutional exercise of Congress; and (b) if so found, paused until Defendants better follow the law as passed and do more than the current next-to-nothing to give covered entities and individuals better notice of the CTA and its requirements.

Therefore, because it is highly probable that new business filers in Oregon are both unaware of the CTA and the civil and criminal sanctions it imposes, and because the law is being lawfully challenged on the serious questions of the CTA's constitutionality, the balance of equities falls with the Plaintiffs in favor of maintaining the status quo. Even for those that might be peripherally aware, the cost burden of compliance is not inexpensive. FinCEN estimates that reporting could cost filers from hundreds of dollars to thousands of dollars, depending on the complexity of their entities. A temporary restraining order also serves in the public interest of protecting small businesses from burdensome costs of complying with a regulation that is vague and ambiguous. A temporary restraining order will also protect those small businesses and other entity filers from the CTA's harsh punishment scheme given that many of them are likely already in jeopardy due to Defendants' negligence in informing the public of the CTA as required by the Act.

Defendants cannot logically justify that there is a newly emergent need, or that without Plaintiffs' and others' personal and "sensitive" information, the federal government lacks the resources and capabilities to fight money laundering and other financial crimes. Plaintiffs are unaware of any such increase in these types of crimes that it warrants the compelled harvesting of the private data, under the threat of civil and criminal punishment, of more than 32 million Americans so that **only federal law enforcement agencies** – *not State, local, or tribal governments* – can conduct warrantless searches to root at these invisible actors.

The boundaries of the protections afforded by the Constitution might be inconvenient to Defendants, but they are necessary so that Plaintiffs and others are not subject to costly financial burdens incurred by complying with a law so overbroad and overreaching that the only way the

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

CTA can function for its purpose is by compelling speech under the threat of civil and criminal penalties so that the federal government might engage in unfettered warrantless searches of innocent Oregonians.

CONCLUSION

Plaintiffs have established a substantial likelihood of success on the merits of their claims that the CTA as applied to Plaintiffs, and similarly situated Oregon filers, is unconstitutional in that the compelled collection of Plaintiffs' personally identifiable and "sensitive" information, under threat of civil fines and criminal punishment, for federal law enforcement purposes, is a violation of their civil liberties. Like the plaintiffs in *National Small Business United v. Yellen,* here, Plaintiffs have also established a substantial likelihood of success on the merits of their claims that passage of the CTA exceeded Congress's authority under Article I, Section 8 of the U.S. Constitution, and that Congress violated the principles of State sovereignty under the Ninth and Tenth Amendments.

Plaintiffs have further shown that they will suffer irreparable harm, including (a) the financial costs and burdens of complying with a statutory scheme that is vague and ambiguous, where there has been little notice provided for who must comply, and where there is no safe harbor or meaningful right to appeal for someone who fails to comply; (b) the harm caused by being forced to cede their Constitutional rights in order to comply with the CTA; (c) the threat of civil and criminal penalties if they opt to not cede their Constitutional rights to comply with the CTA; (d) the possible threat of sanctions by the State against their professional licensure if the failure to comply with the CTA results in criminal penalties; and (e) the threat of criminal prosecution by federal law enforcement agencies if Plaintiffs self-incriminate to FinCEN that their business activities, though not unlawful under State law, would violate federal law and subject Plaintiffs to prosecution beyond FinCEN penalties.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

Defendants will not suffer any harm from being enjoined from collecting Plaintiffs' data as Defendants, with their vast resources, can combat criminal activity without criminalizing Oregon small businesses.

The balance of equities favors the preservation of Plaintiffs' constitutional rights, and Defendants will suffer no losses resulting from the Court maintaining the status quo. The public interest will be served by ensuring that Oregon small businesses are protected from costly and burdensome regulations, the threat of civil fines and criminalization, and confusion about who and what type of entities are required to comply with the CTA.[29]

Therefore, Plaintiffs ask that the Court should grant this temporary restraining order enjoining Defendants from requiring Plaintiffs, and those Oregon entity filers similarly situated, from being forced into transmitting their personally identifiable and "sensitive" information to FinCEN as required by the CTA. Plaintiffs further ask that the Court to enjoin Defendants and any employee, agency, or third party as authorized by the CTA from using without a warrant or consent the "sensitive" information of any required Oregon filer whose information has already been transmitted to FinCEN.

DATED this ___ day of June, 2024.

KELL, ALTERMAN & RUNSTEIN, L.L.P.

[29] The CTA at § 5336(a)(3)(A)(i) describes as a "Beneficial Owner" not just someone who "owns or controls" an ownership interest in the covered entity, but also those who "exercises[s] substantial control over the entity." As described, this could include entities formed and "substantially controlled" by volunteers managing Homeowners' Associations, youth athletic clubs, and any other volunteer-run entity formed with an EIN and a State corporation filing for the purpose of banking but are also not exempt under IRS code 501(c). In these organizations, not only would volunteers be required to give their information to FinCEN, but after their volunteerism ends, FinCEN would be able to keep and use their data for a period of five additional years.

KELL, ALTERMAN & RUNSTEIN, L.L.P.
ATTORNEYS AT LAW
520 SW YAMHILL, SUITE 600
PORTLAND, OR 97204
TELEPHONE (503) 222-3531
FACSIMILE (503) 227-2980

BY s/ Thomas R. Rask, III

Thomas R. Rask, III, OSB No. 934031
trask@kelrun.com
Julie Parrish, OSB No. 233864
jparrish@kelrun.com
520 SW Yamhill St., Suite 600
Portland, OR 97204-1329
Telephone: (503) 222-3531
Fax: (503) 227-2980
Of Attorneys for Plaintiffs
Trial Attorney: Thomas R. Rask, III

Corporate Transparency Act.

TITLE LXIV—ESTABLISHING BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS

31 USC 5301 note.

SEC. 6401. SHORT TITLE.

This title may be cited as the "Corporate Transparency Act".

31 USC 5336 note.

SEC. 6402. SENSE OF CONGRESS.

It is the sense of Congress that—

(1) more than 2,000,000 corporations and limited liability companies are being formed under the laws of the States each year;

(2) most or all States do not require information about the beneficial owners of the corporations, limited liability companies, or other similar entities formed under the laws of the State;

(3) malign actors seek to conceal their ownership of corporations, limited liability companies, or other similar entities in the United States to facilitate illicit activity, including money laundering, the financing of terrorism, proliferation financing, serious tax fraud, human and drug trafficking, counterfeiting, piracy, securities fraud, financial fraud, and acts of foreign corruption, harming the national security interests of the United States and allies of the United States;

(4) money launderers and others involved in commercial activity intentionally conduct transactions through corporate structures in order to evade detection, and may layer such structures, much like Russian nesting "Matryoshka" dolls, across various secretive jurisdictions such that each time an investigator obtains ownership records for a domestic or foreign entity, the newly identified entity is yet another corporate entity, necessitating a repeat of the same process;

(5) Federal legislation providing for the collection of beneficial ownership information for corporations, limited liability companies, or other similar entities formed under the laws of the States is needed to—

(A) set a clear, Federal standard for incorporation practices;

(B) protect vital Unites States national security interests;

(C) protect interstate and foreign commerce;

(D) better enable critical national security, intelligence, and law enforcement efforts to counter money laundering, the financing of terrorism, and other illicit activity; and

(E) bring the United States into compliance with international anti-money laundering and countering the financing of terrorism standards;

(6) beneficial ownership information collected under the amendments made by this title is sensitive information and will be directly available only to authorized government authorities, subject to effective safeguards and controls, to—

(A) facilitate important national security, intelligence, and law enforcement activities; and

(B) confirm beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law;

(7) consistent with applicable law, the Secretary of the Treasury shall—

(A) maintain the information described in paragraph (1) in a secure, nonpublic database, using information security methods and techniques that are appropriate to protect nonclassified information systems at the highest security level; and

(B) take all steps, including regular auditing, to ensure that government authorities accessing beneficial ownership information do so only for authorized purposes consistent with this title; and

(8) in prescribing regulations to provide for the reporting of beneficial ownership information, the Secretary shall, to the greatest extent practicable consistent with the purposes of this title—

(A) seek to minimize burdens on reporting companies associated with the collection of beneficial ownership information;

(B) provide clarity to reporting companies concerning the identification of their beneficial owners; and

(C) collect information in a form and manner that is reasonably designed to generate a database that is highly useful to national security, intelligence, and law enforcement agencies and Federal functional regulators.

SEC. 6403. BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, as amended by sections 6306(a)(1), 6307(a), and 6313(a) of this division, is amended by adding at the end the following:

"§ 5336. Beneficial ownership information reporting requirements 31 USC 5336.

"(a) DEFINITIONS.—In this section:

"(1) ACCEPTABLE IDENTIFICATION DOCUMENT.—The term 'acceptable identification document' means, with respect to an individual—

"(A) a nonexpired passport issued by the United States;

"(B) a nonexpired identification document issued by a State, local government, or Indian Tribe to the individual acting for the purpose of identification of that individual;

"(C) a nonexpired driver's license issued by a State; or

"(D) if the individual does not have a document described in subparagraph (A), (B), or (C), a nonexpired passport issued by a foreign government.

"(2) APPLICANT.—The term 'applicant' means any individual who—

"(A) files an application to form a corporation, limited liability company, or other similar entity under the laws of a State or Indian Tribe; or

"(B) registers or files an application to register a corporation, limited liability company, or other similar entity formed under the laws of a foreign country to do business in the United States by filing a document with the secretary of state or similar office under the laws of a State or Indian Tribe.

"(3) BENEFICIAL OWNER.—The term 'beneficial owner'—

"(A) means, with respect to an entity, an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—

"(i) exercises substantial control over the entity; or

"(ii) owns or controls not less than 25 percent of the ownership interests of the entity; and

"(B) does not include—

"(i) a minor child, as defined in the State in which the entity is formed, if the information of the parent or guardian of the minor child is reported in accordance with this section;

"(ii) an individual acting as a nominee, intermediary, custodian, or agent on behalf of another individual;

"(iii) an individual acting solely as an employee of a corporation, limited liability company, or other similar entity and whose control over or economic benefits from such entity is derived solely from the employment status of the person;

"(iv) an individual whose only interest in a corporation, limited liability company, or other similar entity is through a right of inheritance; or

"(v) a creditor of a corporation, limited liability company, or other similar entity, unless the creditor meets the requirements of subparagraph (A).

"(4) DIRECTOR.—The term 'Director' means the Director of FinCEN.

"(5) FINCEN.—The term 'FinCEN' means the Financial Crimes Enforcement Network of the Department of the Treasury.

"(6) FINCEN IDENTIFIER.—The term 'FinCEN identifier' means the unique identifying number assigned by FinCEN to a person under this section.

"(7) FOREIGN PERSON.—The term 'foreign person' means a person who is not a United States person, as defined in section 7701(a) of the Internal Revenue Code of 1986.

"(8) INDIAN TRIBE.—The term 'Indian Tribe' has the meaning given the term 'Indian tribe' in section 102 of the Federally Recognized Indian Tribe List Act of 1994 (25 U.S.C. 5130).

"(9) LAWFULLY ADMITTED FOR PERMANENT RESIDENCE.—The term 'lawfully admitted for permanent residence' has the meaning given the term in section 101(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)).

"(10) POOLED INVESTMENT VEHICLE.—The term 'pooled investment vehicle' means—

"(A) any investment company, as defined in section 3(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–3(a)); or

"(B) any company that—

"(i) would be an investment company under that section but for the exclusion provided from that definition by paragraph (1) or (7) of section 3(c) of that Act (15 U.S.C. 80a–3(c)); and

"(ii) is identified by its legal name by the applicable investment adviser in its Form ADV (or successor form) filed with the Securities and Exchange Commission.

"(11) REPORTING COMPANY.—The term 'reporting company'—

"(A) means a corporation, limited liability company, or other similar entity that is—

"(i) created by the filing of a document with a secretary of state or a similar office under the law of a State or Indian Tribe; or

"(ii) formed under the law of a foreign country and registered to do business in the United States by the filing of a document with a secretary of state or a similar office under the laws of a State or Indian Tribe; and

"(B) does not include—

"(i) an issuer—

"(I) of a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 78l); or

"(II) that is required to file supplementary and periodic information under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o(d));

"(ii) an entity—

"(I) established under the laws of the United States, an Indian Tribe, a State, or a political subdivision of a State, or under an interstate compact between 2 or more States; and

"(II) that exercises governmental authority on behalf of the United States or any such Indian Tribe, State, or political subdivision;

"(iii) a bank, as defined in—

"(I) section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813);

"(II) section 2(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)); or

"(III) section 202(a) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2(a));

"(iv) a Federal credit union or a State credit union (as those terms are defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752));

"(v) a bank holding company (as defined in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841)) or a savings and loan holding company (as defined in section 10(a) of the Home Owners' Loan Act (12 U.S.C. 1467a(a)));

"(vi) a money transmitting business registered with the Secretary of the Treasury under section 5330;

"(vii) a broker or dealer (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered under section 15 of that Act (15 U.S.C. 78o);

"(viii) an exchange or clearing agency (as those terms are defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c)) that is registered under section 6 or 17A of that Act (15 U.S.C. 78f, 78q–1);

"(ix) any other entity not described in clause (i), (vii), or (viii) that is registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);

"(x) an entity that—

"(I) is an investment company (as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3)) or an investment adviser (as defined in section 202 of the Investment Advisers Act of 1940 (15 U.S.C. 80b–2)); and

"(II) is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a–1 et seq.) or the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 et seq.);

"(xi) an investment adviser—

"(I) described in section 203(l) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(l)); and

"(II) that has filed Item 10, Schedule A, and Schedule B of Part 1A of Form ADV, or any successor thereto, with the Securities and Exchange Commission;

"(xii) an insurance company (as defined in section 2 of the Investment Company Act of 1940 (15 U.S.C. 80a–2));

"(xiii) an entity that—

"(I) is an insurance producer that is authorized by a State and subject to supervision by the insurance commissioner or a similar official or agency of a State; and

"(II) has an operating presence at a physical office within the United States;

"(xiv)(I) a registered entity (as defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

"(II) an entity that is—

"(aa)(AA) a futures commission merchant, introducing broker, swap dealer, major swap participant, commodity pool operator, or commodity trading advisor (as those terms are defined in section 1a of the Commodity Exchange Act (7 U.S.C. 1a)); or

"(BB) a retail foreign exchange dealer, as described in section 2(c)(2)(B) of that Act (7 U.S.C. 2(c)(2)(B)); and

"(bb) registered with the Commodity Futures Trading Commission under the Commodity Exchange Act (7 U.S.C. 1 et seq.);

"(xv) a public accounting firm registered in accordance with section 102 of the Sarbanes-Oxley Act of 2002 (15 U.S.C. 7212);

"(xvi) a public utility that provides telecommunications services, electrical power, natural gas, or water and sewer services within the United States;

"(xvii) a financial market utility designated by the Financial Stability Oversight Council under section 804 of the Payment, Clearing, and Settlement Supervision Act of 2010 (12 U.S.C. 5463);

"(xviii) any pooled investment vehicle that is operated or advised by a person described in clause (iii), (iv), (vii), (x), or (xi);

"(xix) any—

"(I) organization that is described in section 501(c) of the Internal Revenue Code of 1986 (determined without regard to section 508(a) of such Code) and exempt from tax under section 501(a) of such Code, except that in the case of any such organization that loses an exemption from tax, such organization shall be considered to be continued to be described in this subclause for the 180-day period beginning on the date of the loss of such tax-exempt status;

"(II) political organization (as defined in section 527(e)(1) of such Code) that is exempt from tax under section 527(a) of such Code; or

"(III) trust described in paragraph (1) or (2) of section 4947(a) of such Code;

"(xx) any corporation, limited liability company, or other similar entity that—

"(I) operates exclusively to provide financial assistance to, or hold governance rights over, any entity described in clause (xix);

"(II) is a United States person;

"(III) is beneficially owned or controlled exclusively by 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence; and

"(IV) derives at least a majority of its funding or revenue from 1 or more United States persons that are United States citizens or lawfully admitted for permanent residence;

"(xxi) any entity that—

"(I) employs more than 20 employees on a full-time basis in the United States;

"(II) filed in the previous year Federal income tax returns in the United States demonstrating more than $5,000,000 in gross receipts or sales in the aggregate, including the receipts or sales of—

"(aa) other entities owned by the entity; and

"(bb) other entities through which the entity operates; and

"(III) has an operating presence at a physical office within the United States;

"(xxii) any corporation, limited liability company, or other similar entity of which the ownership interests are owned or controlled, directly or indirectly, by 1 or more entities described in clause (i), (ii), (iii), (iv), (v), (vii), (viii), (ix), (x), (xi), (xii), (xiii), (xiv), (xv), (xvi), (xvii) (xix), or (xxi);

"(xxiii) any corporation, limited liability company, or other similar entity—

"(I) in existence for over 1 year;

"(II) that is not engaged in active business;

"(III) that is not owned, directly or indirectly, by a foreign person;

"(IV) that has not, in the preceding 12-month period, experienced a change in ownership or sent or received funds in an amount greater than $1,000 (including all funds sent to or received from any source through a financial account or accounts in which the entity, or an affiliate of the entity, maintains an interest); and

"(V) that does not otherwise hold any kind or type of assets, including an ownership interest in any corporation, limited liability company, or other similar entity;

"(xxiv) any entity or class of entities that the Secretary of the Treasury, with the written concurrence of the Attorney General and the Secretary of Homeland Security, has, by regulation, determined should be exempt from the requirements of subsection (b) because requiring beneficial ownership information from the entity or class of entities—

"(I) would not serve the public interest; and

"(II) would not be highly useful in national security, intelligence, and law enforcement agency efforts to detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.

"(12) STATE.—The term 'State' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the United States Virgin Islands, and any other commonwealth, territory, or possession of the United States.

"(13) UNIQUE IDENTIFYING NUMBER.—The term 'unique identifying number' means, with respect to an individual or an entity with a sole member, the unique identifying number from an acceptable identification document.

"(14) UNITED STATES PERSON.—The term 'United States person' has the meaning given the term in section 7701(a) of the Internal Revenue Code of 1986.

"(b) BENEFICIAL OWNERSHIP INFORMATION REPORTING.—

Regulations.

"(1) REPORTING.—

"(A) IN GENERAL.—In accordance with regulations prescribed by the Secretary of the Treasury, each reporting

company shall submit to FinCEN a report that contains the information described in paragraph (2).

"(B) REPORTING OF EXISTING ENTITIES.—In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered before the effective date of the regulations prescribed under this subsection shall, in a timely manner, and not later than 2 years after the effective date of the regulations prescribed under this subsection, submit to FinCEN a report that contains the information described in paragraph (2).

"(C) REPORTING AT TIME OF FORMATION OR REGISTRATION.—In accordance with regulations prescribed by the Secretary of the Treasury, any reporting company that has been formed or registered after the effective date of the regulations promulgated under this subsection shall, at the time of formation or registration, submit to FinCEN a report that contains the information described in paragraph (2).

"(D) UPDATED REPORTING FOR CHANGES IN BENEFICIAL OWNERSHIP.—In accordance with regulations prescribed by the Secretary of the Treasury, a reporting company shall, in a timely manner, and not later than 1 year after the date on which there is a change with respect to any information described in paragraph (2), submit to FinCEN a report that updates the information relating to the change.

"(E) TREASURY REVIEW OF UPDATED REPORTING FOR CHANGES IN BENEFICIAL OWNERSHIP.—The Secretary of the Treasury, in consultation with the Attorney General and the Secretary of Homeland Security, shall conduct a review to evaluate— Consultation.

"(i) the necessity of a requirement for corporations, limited liability companies, or other similar entities to update the report on beneficial ownership information in paragraph (2), related to a change in ownership, within a shorter period of time than required under subparagraph (D), taking into account the updating requirements under subparagraph (D) and the information contained in the reports;

"(ii) the benefit to law enforcement and national security officials that might be derived from, and the burden that a requirement to update the list of beneficial owners within a shorter period of time after a change in the list of beneficial owners would impose on corporations, limited liability companies, or other similar entities; and

"(iii) not later than 2 years after the date of enactment of this section, incorporate into the regulations, as appropriate, any changes necessary to implement the findings and determinations based on the review required under this subparagraph. Deadline.

"(F) REGULATION REQUIREMENTS.—In promulgating the regulations required under subparagraphs (A) through (D), the Secretary of the Treasury shall, to the greatest extent practicable—

"(i) establish partnerships with State, local, and Tribal governmental agencies;

"(ii) collect information described in paragraph (2) through existing Federal, State, and local processes and procedures;

"(iii) minimize burdens on reporting companies associated with the collection of the information described in paragraph (2), in light of the private compliance costs placed on legitimate businesses, including by identifying any steps taken to mitigate the costs relating to compliance with the collection of information; and

"(iv) collect information described in paragraph (2) in a form and manner that ensures the information is highly useful in—

"(I) facilitating important national security, intelligence, and law enforcement activities; and

"(II) confirming beneficial ownership information provided to financial institutions to facilitate the compliance of the financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law.

"(G) REGULATORY SIMPLIFICATION.—To simplify compliance with this section for reporting companies and financial institutions, the Secretary of the Treasury shall ensure that the regulations prescribed by the Secretary under this subsection are added to part 1010 of title 31, Code of Federal Regulations, or any successor thereto.

"(2) REQUIRED INFORMATION.—

Regulations.

"(A) IN GENERAL.—In accordance with regulations prescribed by the Secretary of the Treasury, a report delivered under paragraph (1) shall, except as provided in subparagraph (B), identify each beneficial owner of the applicable reporting company and each applicant with respect to that reporting company by—

"(i) full legal name;

"(ii) date of birth;

"(iii) current, as of the date on which the report is delivered, residential or business street address; and

"(iv)(I) unique identifying number from an acceptable identification document; or

"(II) FinCEN identifier in accordance with requirements in paragraph (3).

"(B) REPORTING REQUIREMENT FOR EXEMPT ENTITIES HAVING AN OWNERSHIP INTEREST.—If an exempt entity described in subsection (a)(11)(B) has or will have a direct or indirect ownership interest in a reporting company, the reporting company or the applicant—

List.

"(i) shall, with respect to the exempt entity, only list the name of the exempt entity; and

"(ii) shall not be required to report the information with respect to the exempt entity otherwise required under subparagraph (A).

Certification.

"(C) REPORTING REQUIREMENT FOR CERTAIN POOLED INVESTMENT VEHICLES.—Any corporation, limited liability company, or other similar entity that is an exempt entity

described in subsection (a)(11)(B)(xviii) and is formed under the laws of a foreign country shall file with FinCEN a written certification that provides identification information of an individual that exercises substantial control over the pooled investment vehicle in the same manner as required under this subsection.

"(D) REPORTING REQUIREMENT FOR EXEMPT SUBSIDIARIES.—In accordance with the regulations promulgated by the Secretary, any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(11)(B)(xxii), shall, at the time such entity no longer meets the criteria described in subsection (a)(11)(B)(xxii), submit to FinCEN a report containing the information required under subparagraph (A). Regulations.

"(E) REPORTING REQUIREMENT FOR EXEMPT GRANDFATHERED ENTITIES.—In accordance with the regulations promulgated by the Secretary, any corporation, limited liability company, or other similar entity that is an exempt entity described in subsection (a)(11)(B)(xxiii), shall, at the time such entity no longer meets the criteria described in subsection (a)(11)(B)(xxiii), submit to FinCEN a report containing the information required under subparagraph (A). Regulations.

"(3) FINCEN IDENTIFIER.—

"(A) ISSUANCE OF FINCEN IDENTIFIER.—

"(i) IN GENERAL.—Upon request by an individual who has provided FinCEN with the information described in paragraph (2)(A) pertaining to the individual, or by an entity that has reported its beneficial ownership information to FinCEN in accordance with this section, FinCEN shall issue a FinCEN identifier to such individual or entity.

"(ii) UPDATING OF INFORMATION.—An individual or entity with a FinCEN identifier shall submit filings with FinCEN pursuant to paragraph (1) updating any information described in paragraph (2) in a timely manner consistent with paragraph (1)(D).

"(iii) EXCLUSIVE IDENTIFIER.—FinCEN shall not issue more than 1 FinCEN identifier to the same individual or to the same entity (including any successor entity).

"(B) USE OF FINCEN IDENTIFIER FOR INDIVIDUALS.—Any person required to report the information described in paragraph (2) with respect to an individual may instead report the FinCEN identifier of the individual.

"(C) USE OF FINCEN IDENTIFIER FOR ENTITIES.—If an individual is or may be a beneficial owner of a reporting company by an interest held by the individual in an entity that, directly or indirectly, holds an interest in the reporting company, the reporting company may report the FinCEN identifier of the entity in lieu of providing the information required by paragraph (2)(A) with respect to the individual.

"(4) REGULATIONS.—The Secretary of the Treasury shall—

"(A) by regulation prescribe procedures and standards governing any report under paragraph (2) and any FinCEN identifier under paragraph (3); and Procedures. Standards.

"(B) in promulgating the regulations under subparagraph (A) to the extent practicable, consistent with the purposes of this section—

"(i) minimize burdens on reporting companies associated with the collection of beneficial ownership information, including by eliminating duplicative requirements; and

"(ii) ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

Deadline.

"(5) EFFECTIVE DATE.—The requirements of this subsection shall take effect on the effective date of the regulations prescribed by the Secretary of the Treasury under this subsection, which shall be promulgated not later than 1 year after the date of enactment of this section.

Time period.
Assessments.

"(6) REPORT.—Not later than 1 year after the effective date described in paragraph (5), and annually thereafter for 2 years, the Secretary of the Treasury shall submit to Congress a report describing the procedures and standards prescribed to carry out paragraph (2), which shall include an assessment of—

"(A) the effectiveness of those procedures and standards in minimizing reporting burdens (including through the elimination of duplicative requirements) and strengthening the accuracy of reports submitted under paragraph (2); and

"(B) any alternative procedures and standards prescribed to carry out paragraph (2).

"(c) RETENTION AND DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION BY FINCEN.—

Time period.

"(1) RETENTION OF INFORMATION.—Beneficial ownership information required under subsection (b) relating to each reporting company shall be maintained by FinCEN for not fewer than 5 years after the date on which the reporting company terminates.

"(2) DISCLOSURE.—

"(A) PROHIBITION.—Except as authorized by this subsection and the protocols promulgated under this subsection, beneficial ownership information reported under this section shall be confidential and may not be disclosed by—

"(i) an officer or employee of the United States;

"(ii) an officer or employee of any State, local, or Tribal agency; or

"(iii) an officer or employee of any financial institution or regulatory agency receiving information under this subsection.

"(B) SCOPE OF DISCLOSURE BY FINCEN.—FinCEN may disclose beneficial ownership information reported pursuant to this section only upon receipt of—

"(i) a request, through appropriate protocols—

"(I) from a Federal agency engaged in national security, intelligence, or law enforcement activity, for use in furtherance of such activity; or

"(II) from a State, local, or Tribal law enforcement agency, 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 investigation;

"(ii) a request from a Federal agency on behalf of a law enforcement agency, prosecutor, or judge of another country, including a foreign central authority or competent authority (or like designation), under an international treaty, agreement, convention, or official request made by law enforcement, judicial, or prosecutorial authorities in trusted foreign countries when no treaty, agreement, or convention is available—

"(I) issued in response to a request for assistance in an investigation or prosecution by such foreign country; and

"(II) that—

"(aa) requires compliance with the disclosure and use provisions of the treaty, agreement, or convention, publicly disclosing any beneficial ownership information received; or Compliance.

"(bb) limits the use of the information for any purpose other than the authorized investigation or national security or intelligence activity;

"(iii) a request made by a financial institution subject to customer due diligence requirements, with the consent of the reporting company, to facilitate the compliance of the financial institution with customer due diligence requirements under applicable law; or

"(iv) a request made by a Federal functional regulator or other appropriate regulatory agency consistent with the requirements of subparagraph (C).

"(C) FORM AND MANNER OF DISCLOSURE TO FINANCIAL INSTITUTIONS AND REGULATORY AGENCIES.—The Secretary of the Treasury shall, by regulation, prescribe the form and manner in which information shall be provided to a financial institution under subparagraph (B)(iii), which regulation shall include that the information shall also be available to a Federal functional regulator or other appropriate regulatory agency, as determined by the Secretary, if the agency— Regulations. Determination. Assessments.

"(i) is authorized by law to assess, supervise, enforce, or otherwise determine the compliance of the financial institution with the requirements described in that subparagraph; Compliance.

"(ii) uses the information solely for the purpose of conducting the assessment, supervision, or authorized investigation or activity described in clause (i); and

"(iii) enters into an agreement with the Secretary providing for appropriate protocols governing the safekeeping of the information. Contracts.

"(3) APPROPRIATE PROTOCOLS.—The Secretary of the Treasury shall establish by regulation protocols described in paragraph (2)(A) that— Regulations. Requirements.

"(A) protect the security and confidentiality of any beneficial ownership information provided directly by the Secretary;

Approval.
Standards.
Procedures.
Certification.
Time period.
Compliance.

"(B) require the head of any requesting agency, on a non-delegable basis, to approve the standards and procedures utilized by the requesting agency and certify to the Secretary semi-annually that such standards and procedures are in compliance with the requirements of this paragraph;

"(C) require the requesting agency to establish and maintain, to the satisfaction of the Secretary, a secure system in which such beneficial ownership information provided directly by the Secretary shall be stored;

"(D) require the requesting agency to furnish a report to the Secretary, at such time and containing such information as the Secretary may prescribe, that describes the procedures established and utilized by such agency to ensure the confidentiality of the beneficial ownership information provided directly by the Secretary;

Certification.

"(E) require a written certification for each authorized investigation or other activity described in paragraph (2) from the head of an agency described in paragraph (2)(B)(i)(I), or their designees, that—

"(i) states that applicable requirements have been met, in such form and manner as the Secretary may prescribe; and

"(ii) at a minimum, sets forth the specific reason or reasons why the beneficial ownership information is relevant to an authorized investigation or other activity described in paragraph (2);

"(F) require the requesting agency to limit, to the greatest extent practicable, the scope of information sought, consistent with the purposes for seeking beneficial ownership information;

"(G) restrict, to the satisfaction of the Secretary, access to beneficial ownership information to whom disclosure may be made under the provisions of this section to only users at the requesting agency—

"(i) who are directly engaged in the authorized investigation or activity described in paragraph (2);

"(ii) whose duties or responsibilities require such access;

"(iii) who—

"(I) have undergone appropriate training; or

"(II) use staff to access the database who have undergone appropriate training;

"(iv) who use appropriate identity verification mechanisms to obtain access to the information; and

"(v) who are authorized by agreement with the Secretary to access the information;

Records.

"(H) require the requesting agency to establish and maintain, to the satisfaction of the Secretary, a permanent system of standardized records with respect to an auditable trail of each request for beneficial ownership information submitted to the Secretary by the agency, including the reason for the request, the name of the individual who made the request, the date of the request, any disclosure of beneficial ownership information made by or to the agency, and any other information the Secretary of the Treasury determines is appropriate;

"(I) require that the requesting agency receiving beneficial ownership information from the Secretary conduct an annual audit to verify that the beneficial ownership information received from the Secretary has been accessed and used appropriately, and in a manner consistent with this paragraph and provide the results of that audit to the Secretary upon request; Audits. Verification.

"(J) require the Secretary to conduct an annual audit of the adherence of the agencies to the protocols established under this paragraph to ensure that agencies are requesting and using beneficial ownership information appropriately; and Audits.

"(K) provide such other safeguards which the Secretary determines (and which the Secretary prescribes in regulations) to be necessary or appropriate to protect the confidentiality of the beneficial ownership information. Regulations. Determination.

"(4) VIOLATION OF PROTOCOLS.—Any employee or officer of a requesting agency under paragraph (2)(B) that violates the protocols described in paragraph (3), including unauthorized disclosure or use, shall be subject to criminal and civil penalties under subsection (h)(3)(B). Penalties.

"(5) DEPARTMENT OF THE TREASURY ACCESS.—

"(A) IN GENERAL.—Beneficial ownership information shall be accessible for inspection or disclosure to officers and employees of the Department of the Treasury whose official duties require such inspection or disclosure subject to procedures and safeguards prescribed by the Secretary of the Treasury. Procedures.

"(B) TAX ADMINISTRATION PURPOSES.—Officers and employees of the Department of the Treasury may obtain access to beneficial ownership information for tax administration purposes in accordance with this subsection.

"(6) REJECTION OF REQUEST.—The Secretary of the Treasury—

"(A) shall reject a request not submitted in the form and manner prescribed by the Secretary under paragraph (2)(C); and

"(B) may decline to provide information requested under this subsection upon finding that—

"(i) the requesting agency has failed to meet any other requirement of this subsection;

"(ii) the information is being requested for an unlawful purpose; or

"(iii) other good cause exists to deny the request.

"(7) SUSPENSION.—The Secretary of the Treasury may suspend or debar a requesting agency from access for any of the grounds set forth in paragraph (6), including for repeated or serious violations of any requirement under paragraph (2). Debarment.

"(8) SECURITY PROTECTIONS.—The Secretary of the Treasury shall maintain information security protections, including encryption, for information reported to FinCEN under subsection (b) and ensure that the protections—

"(A) are consistent with standards and guidelines developed under subchapter II of chapter 35 of title 44; and

"(B) incorporate Federal information system security controls for high-impact systems, excluding national security systems, consistent with applicable law to prevent the loss of confidentiality, integrity, or availability of information that may have a severe or catastrophic adverse effect.

Time period.

"(9) REPORT BY THE SECRETARY.—Not later than 1 year after the effective date of the regulations prescribed under this subsection, and annually thereafter for 5 years, the Secretary of the Treasury shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report, which—

Classified information.

"(A) may include a classified annex; and

"(B) shall, with respect to each request submitted under paragraph (2)(B)(i)(II) during the period covered by the report, and consistent with protocols established by the Secretary that are necessary to protect law enforcement sensitive, tax-related, or classified information, include—

"(i) the date on which the request was submitted;

"(ii) the source of the request;

"(iii) whether the request was accepted or rejected or is pending; and

"(iv) a general description of the basis for rejecting the such request, if applicable.

Deadline. Time period.

"(10) AUDIT BY THE COMPTROLLER GENERAL.—Not later than 1 year after the effective date of the regulations prescribed under this subsection, and annually thereafter for 6 years, the Comptroller General of the United States shall—

Determination. Verification.

"(A) audit the procedures and safeguards established by the Secretary of the Treasury under those regulations, including duties for verification of requesting agencies systems and adherence to the protocols established under this subsection, to determine whether such safeguards and procedures meet the requirements of this subsection and that the Department of the Treasury is using beneficial ownership information appropriately in a manner consistent with this subsection; and

"(B) submit to the Secretary of the Treasury, the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Financial Services of the House of Representatives a report that contains the findings and determinations with respect to any audit conducted under this paragraph.

"(11) DEPARTMENT OF THE TREASURY TESTIMONY.—

Deadlines. Time period.

"(A) IN GENERAL.—Not later than March 31 of each year for 5 years beginning in 2022, the Director shall be made available to testify before the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives, or an appropriate subcommittee thereof, regarding FinCEN issues, including, specifically, issues relating to—

"(i) anticipated plans, goals, and resources necessary for operations of FinCEN in implementing the requirements of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

"(ii) the adequacy of appropriations for FinCEN in the current and the previous fiscal year to—

"(I) ensure that the requirements and obligations imposed upon FinCEN by the Anti-Money Laundering Act of 2020 and the amendments made by that Act are completed as efficiently, effectively, and expeditiously as possible; and

"(II) provide for robust and effective implementation and enforcement of the provisions of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

"(iii) strengthen FinCEN management efforts, as necessary and as identified by the Director, to meet the requirements of the Anti-Money Laundering Act of 2020 and the amendments made by that Act;

"(iv) provide for the necessary public outreach to ensure the broad dissemination of information regarding any new program requirements provided for in the Anti-Money Laundering Act of 2020 and the amendments made by that Act, including—

"(I) educating the business community on the goals and operations of the new beneficial ownership database; and

"(II) disseminating to the governments of countries that are allies or partners of the United States information on best practices developed by FinCEN related to beneficial ownership information retention and use;

Recommendations.

"(v) any policy recommendations that could facilitate and improve communication and coordination between the private sector, FinCEN, and the Federal, State, and local agencies and entities involved in implementing innovative approaches to meet their obligations under the Anti-Money Laundering Act of 2020 and the amendments made by that Act, the Bank Secrecy Act (as defined in section 6003 of the Anti-Money Laundering Act of 2020), and other anti-money laundering compliance laws; and

"(vi) any other matter that the Director determines is appropriate.

"(B) TESTIMONY CLASSIFICATION.—The testimony required under subparagraph (A)—

"(i) shall be submitted in unclassified form; and

"(ii) may include a classified portion.

Classified information.

"(d) AGENCY COORDINATION.—

"(1) IN GENERAL.—The Secretary of the Treasury shall, to the greatest extent practicable, update the information described in subsection (b) by working collaboratively with other relevant Federal, State, and Tribal agencies.

Updates.

"(2) INFORMATION FROM RELEVANT FEDERAL, STATE, AND TRIBAL AGENCIES.—Relevant Federal, State, and Tribal agencies, as determined by the Secretary of the Treasury, shall, to the extent practicable, and consistent with applicable legal protections, cooperate with and provide information requested by FinCEN for purposes of maintaining an accurate, complete, and highly useful database for beneficial ownership information.

Determination.

Consultation.

"(3) REGULATIONS.—The Secretary of the Treasury, in consultation with the heads of other relevant Federal agencies, may promulgate regulations as necessary to carry out this subsection.

"(e) NOTIFICATION OF FEDERAL OBLIGATIONS.—

"(1) FEDERAL.—The Secretary of the Treasury shall take reasonable steps to provide notice to persons of their obligations to report beneficial ownership information under this section, including by causing appropriate informational materials describing such obligations to be included in 1 or more forms or other informational materials regularly distributed by the Internal Revenue Service and FinCEN.

"(2) STATES AND INDIAN TRIBES.—

Deadline.

"(A) IN GENERAL.—As a condition of the funds made available under this section, each State and Indian Tribe shall, not later than 2 years after the effective date of the regulations promulgated under subsection (b)(4), take the following actions:

Assessment.

"(i) The secretary of a State or a similar office in each State or Indian Tribe responsible for the formation or registration of entities created by the filing of a public document with the office under the law of the State or Indian Tribe shall periodically, including at the time of any initial formation or registration of an entity, assessment of an annual fee, or renewal of any license to do business in the United States and in connection with State or Indian Tribe corporate tax assessments or renewals—

"(I) notify filers of their requirements as reporting companies under this section, including the requirements to file and update reports under paragraphs (1) and (2) of subsection (b); and

Records.

"(II) provide the filers with a copy of the reporting company form created by the Secretary of the Treasury under this subsection or an internet link to that form.

Updates.
Website.

"(ii) The secretary of a State or a similar office in each State or Indian Tribe responsible for the formation or registration of entities created by the filing of a public document with the office under the law of the State or Indian Tribes shall update the websites, forms relating to incorporation, and physical premises of the office to notify filers of their requirements as reporting companies under this section, including providing an internet link to the reporting company form created by the Secretary of the Treasury under this section.

"(B) NOTIFICATION FROM THE DEPARTMENT OF THE TREASURY.—A notification under clause (i) or (ii) of subparagraph (A) shall explicitly state that the notification is on behalf of the Department of the Treasury for the purpose of preventing money laundering, the financing of terrorism, proliferation financing, serious tax fraud, and other financial crime by requiring nonpublic registration of business entities formed or registered to do business in the United States.

"(f) NO BEARER SHARE CORPORATIONS OR LIMITED LIABILITY COMPANIES.—A corporation, limited liability company, or other similar entity formed under the laws of a State or Indian Tribe may not issue a certificate in bearer form evidencing either a whole or fractional interest in the entity.

"(g) REGULATIONS.—In promulgating regulations carrying out this section, the Director shall reach out to members of the small business community and other appropriate parties to ensure efficiency and effectiveness of the process for the entities subject to the requirements of this section.

"(h) PENALTIES.—

"(1) REPORTING VIOLATIONS.—It shall be unlawful for any person to—

"(A) willfully provide, or attempt to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph or document, to FinCEN in accordance with subsection (b); or

"(B) willfully fail to report complete or updated beneficial ownership information to FinCEN in accordance with subsection (b).

"(2) UNAUTHORIZED DISCLOSURE OR USE.—Except as authorized by this section, it shall be unlawful for any person to knowingly disclose or knowingly use the beneficial ownership information obtained by the person through—

"(A) a report submitted to FinCEN under subsection (b); or

"(B) a disclosure made by FinCEN under subsection (c).

"(3) CRIMINAL AND CIVIL PENALTIES.—

"(A) REPORTING VIOLATIONS.—Any person that violates subparagraph (A) or (B) of paragraph (1)—

"(i) shall be liable to the United States for a civil penalty of not more than $500 for each day that the violation continues or has not been remedied; and

"(ii) may be fined not more than $10,000, imprisoned for not more than 2 years, or both. Time period.

"(B) UNAUTHORIZED DISCLOSURE OR USE VIOLATIONS.—Any person that violates paragraph (2)—

"(i) shall be liable to the United States for a civil penalty of not more than $500 for each day that the violation continues or has not been remedied; and

"(ii)(I) shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both; or Time periods.

"(II) while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

"(C) SAFE HARBOR.—

"(i) SAFE HARBOR.—

"(I) IN GENERAL.—Except as provided in subclause (II), a person shall not be subject to civil or criminal penalty under subparagraph (A) if the person—

"(aa) has reason to believe that any report submitted by the person in accordance with

subsection (b) contains inaccurate information; and

"(bb) in accordance with regulations issued by the Secretary, voluntarily and promptly, and in no case later than 90 days after the date on which the person submitted the report, submits a report containing corrected information.

"(II) EXCEPTIONS.—A person shall not be exempt from penalty under clause (i) if, at the time the person submits the report required by subsection (b), the person—

"(aa) acts for the purpose of evading the reporting requirements under subsection (b); and

"(bb) has actual knowledge that any information contained in the report is inaccurate.

"(ii) ASSISTANCE.—FinCEN shall provide assistance to any person seeking to submit a corrected report in accordance with clause (i)(I).

"(4) USER COMPLAINT PROCESS.—

Coordination.

"(A) IN GENERAL.—The Inspector General of the Department of the Treasury, in coordination with the Secretary of the Treasury, shall provide public contact information to receive external comments or complaints regarding the beneficial ownership information notification and collection process or regarding the accuracy, completeness, or timeliness of such information.

"(B) REPORT.—The Inspector General of the Department of the Treasury shall submit to Congress a periodic report that—

Summaries.

"(i) summarizes external comments or complaints and related investigations conducted by the Inspector General related to the collection of beneficial ownership information; and

Recommendations. Coordination.

"(ii) includes recommendations, in coordination with FinCEN, to improve the form and manner of the notification, collection and updating processes of the beneficial ownership information reporting requirements to ensure the beneficial ownership information reported to FinCEN is accurate, complete, and highly useful.

"(5) TREASURY OFFICE OF INSPECTOR GENERAL INVESTIGATION IN THE EVENT OF A CYBERSECURITY BREACH.—

Determination. Recommendations.

"(A) IN GENERAL.—In the event of a cybersecurity breach that results in substantial unauthorized access and disclosure of sensitive beneficial ownership information, the Inspector General of the Department of the Treasury shall conduct an investigation into FinCEN cybersecurity practices that, to the extent possible, determines any vulnerabilities within FinCEN information security and confidentiality protocols and provides recommendations for fixing those deficiencies.

"(B) REPORT.—The Inspector General of the Department of the Treasury shall submit to the Secretary of

the Treasury a report on each investigation conducted under subparagraph (A).

"(C) ACTIONS OF THE SECRETARY.—Upon receiving a report submitted under subparagraph (B), the Secretary of the Treasury shall— Determinations.

"(i) determine whether the Director had any responsibility for the cybersecurity breach or whether policies, practices, or procedures implemented at the direction of the Director led to the cybersecurity breach; and

"(ii) submit to Congress a written report outlining the findings of the Secretary, including a determination by the Secretary on whether to retain or dismiss the individual serving as the Director.

"(6) DEFINITION.—In this subsection, the term 'willfully' means the voluntary, intentional violation of a known legal duty.

"(i) CONTINUOUS REVIEW OF EXEMPT ENTITIES.—

"(1) IN GENERAL.—On and after the effective date of the regulations promulgated under subsection (b)(4), if the Secretary of the Treasury makes a determination, which may be based on information contained in the report required under section 6502(c) of the Anti-Money Laundering Act of 2020 or on any other information available to the Secretary, that an entity or class of entities described in subsection (a)(11)(B) has been involved in significant abuse relating to money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or any other financial crime, not later than 90 days after the date on which the Secretary makes the determination, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that explains the reasons for the determination and any administrative or legislative recommendations to prevent such abuse. Effective date. Determination. Deadline. Recommendations.

"(2) CLASSIFIED ANNEX.—The report required by paragraph (1)—

"(A) shall be submitted in unclassified form; and

"(B) may include a classified annex.".

(b) CONFORMING AMENDMENTS.—Title 31, United States Code, is amended—

(1) in section 5321(a)—

(A) in paragraph (1), by striking "sections 5314 and 5315" each place that term appears and inserting "sections 5314, 5315, and 5336"; and

(B) in paragraph (6), by inserting "(except section 5336)" after "subchapter" each place that term appears;

(2) in section 5322, by striking "section 5315 or 5324" each place that term appears and inserting "section 5315, 5324, or 5336"; and

(3) in the table of sections for chapter 53, as amended by sections 6306(b)(1), 6307(b), and 6313(b) of this division, by adding at the end the following: 31 USC 5301 prec.

"5336. Beneficial ownership information reporting requirements.".

(c) REPORTING REQUIREMENTS FOR FEDERAL CONTRACTORS.— 31 USC 5336 note.

Deadline. Revision. Requirements. Disclosure.

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Administrator for Federal Procurement Policy shall revise the Federal Acquisition Regulation maintained under section 1303(a)(1) of title 41, United States Code, to require any contractor or subcontractor that is subject to the requirement to disclose beneficial ownership information under section 5336 of title 31, United States Code, as added by subsection (a) of this section, to provide the information required to be disclosed under such section to the Federal Government as part of any bid or proposal for a contract with a value threshold in excess of the simplified acquisition threshold under section 134 of title 41, United States Code.

(2) APPLICABILITY.—The revision required under paragraph (1) shall not apply to a covered contractor or subcontractor, as defined in section 847 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116–92), that is subject to the beneficial ownership disclosure and review requirements under that section.

31 USC 5311 note. Deadline.

(d) REVISED DUE DILIGENCE RULEMAKING.—

(1) IN GENERAL.—Not later than 1 year after the effective date of the regulations promulgated under section 5336(b)(4) of title 31, United States Code, as added by subsection (a) of this section, the Secretary of the Treasury shall revise the final rule entitled "Customer Due Diligence Requirements for Financial Institutions" (81 Fed. Reg. 29397 (May 11, 2016)) to—

(A) bring the rule into conformance with this division and the amendments made by this division;

Compliance.

(B) account for the access of financial institutions to beneficial ownership information filed by reporting companies under section 5336, and provided in the form and manner prescribed by the Secretary, in order to confirm the beneficial ownership information provided directly to the financial institutions to facilitate the compliance of those financial institutions with anti-money laundering, countering the financing of terrorism, and customer due diligence requirements under applicable law; and

(C) reduce any burdens on financial institutions and legal entity customers that are, in light of the enactment of this division and the amendments made by this division, unnecessary or duplicative.

(2) CONFORMANCE.—

Rescissions.

(A) IN GENERAL.—In carrying out paragraph (1), the Secretary of the Treasury shall rescind paragraphs (b) through (j) of section 1010.230 of title 31, Code of Federal Regulations upon the effective date of the revised rule promulgated under this subsection.

(B) RULE OF CONSTRUCTION.—Nothing in this section may be construed to authorize the Secretary of the Treasury to repeal the requirement that financial institutions identify and verify beneficial owners of legal entity customers under section 1010.230(a) of title 31, Code of Federal Regulations.

(3) CONSIDERATIONS.—In fulfilling the requirements under this subsection, the Secretary of the Treasury shall consider—

(A) the use of risk-based principles for requiring reports of beneficial ownership information;

(B) the degree of reliance by financial institutions on information provided by FinCEN for purposes of obtaining and updating beneficial ownership information;

(C) strategies to improve the accuracy, completeness, and timeliness of the beneficial ownership information reported to the Secretary; and

(D) any other matter that the Secretary determines is appropriate.

TITLE LXV—MISCELLANEOUS

SEC. 6501. INVESTIGATIONS AND PROSECUTION OF OFFENSES FOR VIOLATIONS OF THE SECURITIES LAWS.

(a) IN GENERAL.—Section 21(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78u(d)) is amended—

(1) in paragraph (3)—

(A) in the paragraph heading—

(i) by inserting "CIVIL" before "MONEY PENALTIES"; and

(ii) by striking "IN CIVIL ACTIONS" and inserting "AND AUTHORITY TO SEEK DISGORGEMENT";

(B) in subparagraph (A), by striking "jurisdiction to impose" and all that follows through the period at the end and inserting the following: "jurisdiction to—

"(i) impose, upon a proper showing, a civil penalty to be paid by the person who committed such violation; and

"(ii) require disgorgement under paragraph (7) of any unjust enrichment by the person who received such unjust enrichment as a result of such violation."; and

(C) in subparagraph (B)—

(i) in clause (i), in the first sentence, by striking "the penalty" and inserting "a civil penalty imposed under subparagraph (A)(i)";

(ii) in clause (ii), by striking "amount of penalty" and inserting "amount of a civil penalty imposed under subparagraph (A)(i)"; and

(iii) in clause (iii), in the matter preceding item (aa), by striking "amount of penalty for each such violation" and inserting "amount of a civil penalty imposed under subparagraph (A)(i) for each violation described in that subparagraph";

(2) in paragraph (4), by inserting "under paragraph (7)" after "funds disgorged"; and

(3) by adding at the end the following:

"(7) DISGORGEMENT.—In any action or proceeding brought by the Commission under any provision of the securities laws, the Commission may seek, and any Federal court may order, disgorgement.

Deadlines.

"(8) LIMITATIONS PERIODS.—

"(A) DISGORGEMENT.—The Commission may bring a claim for disgorgement under paragraph (7)—

"(i) not later than 5 years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim occurs; or

"(ii) not later than 10 years after the latest date of the violation that gives rise to the action or proceeding in which the Commission seeks the claim if the violation involves conduct that violates—

"(I) section 10(b);

"(II) section 17(a)(1) of the Securities Act of 1933 (15 U.S.C. 77q(a)(1));

"(III) section 206(1) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–6(1)); or

"(IV) any other provision of the securities laws for which scienter must be established.

"(B) EQUITABLE REMEDIES.—The Commission may seek a claim for any equitable remedy, including for an injunction or for a bar, suspension, or cease and desist order, not later than 10 years after the latest date on which a violation that gives rise to the claim occurs.

"(C) CALCULATION.—For the purposes of calculating any limitations period under this paragraph with respect to an action or claim, any time in which the person against which the action or claim, as applicable, is brought is outside of the United States shall not count towards the accrual of that period.

"(9) RULE OF CONSTRUCTION.—Nothing in paragraph (7) may be construed as altering any right that any private party may have to maintain a suit for a violation of this Act.".

Effective date.
15 USC 78u note.

(b) APPLICABILITY.—The amendments made by subsection (a) shall apply with respect to any action or proceeding that is pending on, or commenced on or after, the date of enactment of this Act.

SEC. 6502. GAO AND TREASURY STUDIES ON BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS.

Assessments.

(a) EFFECTIVENESS OF INCORPORATION PRACTICES STUDY.—Not later than 2 years after the effective date of the regulations promulgated under section 5336(b)(4) of title 31, United States Code, as added by section 6403(a) of this division, the Comptroller General of the United States shall conduct a study and submit to Congress a report assessing the effectiveness of incorporation practices implemented under this division, and the amendments made by this division, in—

(1) providing national security, intelligence, and law enforcement agencies with prompt access to reliable, useful, and complete beneficial ownership information; and

(2) strengthening the capability of national security, intelligence, and law enforcement agencies to—

(A) combat incorporation abuses and civil and criminal misconduct; and

(B) detect, prevent, or prosecute money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or other crimes.

(b) USING TECHNOLOGY TO AVOID DUPLICATIVE LAYERS OF REPORTING OBLIGATIONS AND INCREASE ACCURACY OF BENEFICIAL OWNERSHIP INFORMATION.—

(1) IN GENERAL.—The Secretary, in consultation with the Attorney General, shall conduct a study to evaluate— Consultation. Evaluation.

(A) the effectiveness of using FinCEN identifiers, as defined in section 5336 of title 31, United States Code, as added by section 6403(a) of this division, or other simplified reporting methods in order to facilitate a simplified beneficial ownership regime for reporting companies;

(B) whether a reporting regime, whereby only company shareholders are reported within the ownership chain of a reporting company, could effectively track beneficial ownership information and increase information to law enforcement;

(C) the costs associated with imposing any new verification requirements on FinCEN; and Costs.

(D) the resources necessary to implement any such changes.

(2) FINDINGS.—The Secretary shall submit to the relevant committees of jurisdiction—

(A) the findings of the study conducted under paragraph (1); and

(B) recommendations for carrying out the findings described in subparagraph (A). Recommendations.

(c) EXEMPT ENTITIES.—Not later than 2 years after the effective date of regulations promulgated under section 5336(b)(4) of title 31, United States Code, as added by section 6403(a) of this division, the Comptroller General of the United States, in consultation with the Secretary, Federal functional regulators, the Attorney General, the Secretary of Homeland Security, and the intelligence community, shall conduct a study and submit to Congress a report that— Consultation.

(1) reviews the regulated status, related reporting requirements, quantity, and structure of each class of corporations, limited liability companies, and similar entities that have been explicitly excluded from the definition of reporting company and the requirement to report beneficial ownership information under section 5336 of title 31, United States Code, as added by section 6403(a) of this division; Reviews.

(2) assesses the extent to which any excluded entity or class of entities described in paragraph (1) pose significant risks of money laundering, the financing of terrorism, proliferation finance, serious tax fraud, and other financial crime; and Assessments.

(3) identifies other policy areas related to the risks of exempt entities described in paragraph (1) for Congress to consider as Congress is conducting oversight of the new beneficial ownership information reporting requirements established by this division and amendments made by this division.

(d) OTHER LEGAL ENTITIES STUDY.—Not later than 2 years after the effective date of the regulations promulgated under section

5336(b)(4) of title 31, United States Code, as added by section 6403(a) of this division, the Comptroller General of the United States shall conduct a study and submit to Congress a report—

(1) identifying each State that has procedures that enable persons to form or register under the laws of the State partnerships, trusts, or other legal entities, and the nature of those procedures;

(2) identifying each State that requires persons seeking to form or register partnerships, trusts, or other legal entities under the laws of the State to provide beneficial owners (as defined in section 5336(a) of title 31, United States Code, as added by section 6403 of this division) or beneficiaries of those entities, and the nature of the required information;

Evaluations.

(3) evaluating whether the lack of available beneficial ownership information for partnerships, trusts, or other legal entities—

(A) raises concerns about the involvement of those entities in terrorism, money laundering, tax evasion, securities fraud, or other misconduct; and

(B) has impeded investigations into entities suspected of the misconduct described in subparagraph (A);

Evaluations.

(4) evaluating whether the failure of the United States to require beneficial ownership information for partnerships and trusts formed or registered in the United States has elicited international criticism; and

(5) including what steps, if any, the United States has taken, is planning to take, or should take in response to the criticism described in paragraph (4).

SEC. 6503. GAO STUDY ON FEEDBACK LOOPS.

(a) DEFINITION.—In this section, the term "feedback loop" means feedback provided by the United States Government to relevant parties.

(b) STUDY.—The Comptroller General of the United States shall conduct a study on—

(1) best practices within the United States Government for feedback loops, including regulated private entities, on the usage and usefulness of personally identifiable information, sensitive-but-unclassified data, or similar information provided by the parties to United States Government users of the information and data, including law enforcement agencies and regulators; and

(2) any practice or standard inside or outside the United States for providing feedback through sensitive information and public-private partnership information sharing efforts, specifically related to efforts to combat money laundering and other forms of illicit finance.

(c) REPORT.—Not later than 18 months after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report containing—

Determinations.

(1) all findings and determinations made in carrying out the study required under subsection (b);

(2) with respect to each of paragraphs (1) and (2) of subsection (b), any best practice or significant concern identified by the Comptroller General, and the applicability to public-

private partnerships and feedback loops with respect to efforts by the United States Government to combat money laundering and other forms of illicit finance; and

(3) recommendations of the Comptroller General to reduce or eliminate any unnecessary collection by the United States Government of the information described in subsection (b)(1). Recommendations.

SEC. 6504. GAO CTR STUDY AND REPORT.

The Comptroller General of the United States shall—

(1) not later than January 1, 2025, commence a study of currency transaction reports, which shall include— Analyses.

(A) a review, carried out in consultation with the Secretary, FinCEN, the Attorney General, the State attorneys general, and State, Tribal, and local law enforcement, of the effectiveness of the currency transaction reporting regime in effect as of the date of the study; Review. Consultation.

(B) an analysis of the importance of currency transaction reports to law enforcement; and

(C) an analysis of the effects of raising the currency transaction report threshold; and

(2) not later than December 31, 2025, submit to the Secretary and Congress a report that includes—

(A) all findings and determinations made in carrying out the study required under paragraph (1); and Determinations.

(B) recommendations for improving the currency transaction reporting regime. Recommendations.

SEC. 6505. GAO STUDIES ON TRAFFICKING.

(a) DEFINITION OF HUMAN TRAFFICKING.—In this section, the term "human trafficking" has the meaning given the term "severe forms of trafficking in persons" in section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102).

(b) GAO STUDY AND REPORT ON STOPPING TRAFFICKING, ILLICIT FLOWS, LAUNDERING, AND EXPLOITATION.—

(1) STUDY.—The Comptroller General of the United States shall carry out a study, in consultation with law enforcement, relevant Federal agencies, appropriate private sector stakeholders (including financial institutions and data and technology companies), academic and other research organizations (including survivor and victim advocacy organizations), and any other group that the Comptroller General determines is appropriate on— Consultation. Determination.

(A) the major trafficking routes used by transnational criminal organizations, terrorists, and others, and to what extent the trafficking routes for people (including children), drugs, weapons, cash, child sexual exploitation materials, or other illicit goods are similar, related, or contiguous;

(B) commonly used methods to launder and move the proceeds of trafficking;

(C) the types of suspicious financial activity that are associated with illicit trafficking networks, and how financial institutions identify and report such activity;

(D) the nexus between the identities and finances of trafficked persons and fraud;

(E) the tools, guidance, training, partnerships, supervision, or other mechanisms that Federal agencies, including FinCEN, the Federal financial regulators, and

law enforcement, provide to help financial institutions identify techniques and patterns of transactions that may involve the proceeds of trafficking;

(F) what steps financial institutions are taking to detect and prevent bad actors who are laundering the proceeds of illicit trafficking, including data analysis, policies, training procedures, rules, and guidance;

(G) what role gatekeepers, such as lawyers, notaries, accountants, investment advisors, logistics agents, and trust and company service providers, play in facilitating trafficking networks and the laundering of illicit proceeds; and

(H) the role that emerging technologies, including artificial intelligence, digital identity technologies, distributed ledger technologies, virtual assets, and related exchanges and online marketplaces, and other innovative technologies, can play in assisting with and potentially enabling the laundering of proceeds from trafficking.

(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report—

(A) summarizing the results of the study required under paragraph (1); and

(B) that contains any recommendations for legislative or regulatory action that would improve the efforts of Federal agencies to combat trafficking or the laundering of proceeds from such activity.

(c) GAO STUDY AND REPORT ON FIGHTING ILLICIT NETWORKS AND DETECTING TRAFFICKING.—

(1) STUDY.—The Comptroller General of the United States shall conduct a study on how a range of payment systems and methods, including virtual currencies in online marketplaces, are used to facilitate human trafficking and drug trafficking, which shall consider—

(A) how online marketplaces, including the dark web, may be used as platforms to buy, sell, or facilitate the financing of goods or services associated with human trafficking or drug trafficking, specifically, opioids and synthetic opioids, including fentanyl, fentanyl analogues, and any precursor chemical associated with manufacturing fentanyl or fentanyl analogues, destined for, originating from, or within the United States;

(B) how financial payment methods, including virtual currencies and peer-to-peer mobile payment services, may be utilized by online marketplaces to facilitate the buying, selling, or financing of goods and services associated with human trafficking or drug trafficking destined for, originating from, or within the United States;

(C) how virtual currencies may be used to facilitate the buying, selling, or financing of goods and services associated with human trafficking or drug trafficking, destined for, originating from, or within the United States, when an online platform is not otherwise involved;

(D) how illicit funds that have been transmitted online and through virtual currencies are repatriated into the

formal banking system of the United States through money laundering or other means;

(E) the participants, including State and non-State actors, throughout the entire supply chain that may participate in or benefit from the buying, selling, or financing of goods and services associated with human trafficking or drug trafficking, including through online marketplaces or using virtual currencies, destined for, originating from, or within the United States;

(F) Federal and State agency efforts to impede the buying, selling, or financing of goods and services associated with human trafficking or drug trafficking destined for, originating from, or within the United States, including efforts to prevent the proceeds from human trafficking or drug trafficking from entering the United States banking system;

(G) how virtual currencies and their underlying technologies can be used to detect and deter these illicit activities; and

(H) to what extent immutability and traceability of virtual currencies can contribute to the tracking and prosecution of illicit funding.

(2) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of this Act, the Comptroller General of the United States shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report—

Summaries.

(A) summarizing the results of the study required under paragraph (1); and

Recommendations.

(B) that contains any recommendations for legislative or regulatory action that would improve the efforts of Federal agencies to impede the use of virtual currencies and online marketplaces in facilitating human trafficking and drug trafficking.

SEC. 6506. TREASURY STUDY AND STRATEGY ON TRADE-BASED MONEY LAUNDERING.

(a) STUDY REQUIRED.—

Consultation.

(1) IN GENERAL.—The Secretary shall carry out a study, in consultation with appropriate private sector stakeholders, academic and other international trade experts, and Federal agencies, on trade-based money laundering.

(2) CONTRACTING AUTHORITY.—The Secretary may enter into a contract with a private third-party entity to carry out the study required by paragraph (1).

(b) REPORT REQUIRED.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report that includes—

Determinations.

(A) all findings and determinations made in carrying out the study required under subsection (a); and

(B) proposed strategies to combat trade-based money laundering.

(2) CLASSIFIED ANNEX.—The report required under paragraph (1)—

(A) shall be submitted in unclassified form; and

(B) may include a classified annex.

SEC. 6507. TREASURY STUDY AND STRATEGY ON MONEY LAUNDERING BY THE PEOPLE'S REPUBLIC OF CHINA.

(a) STUDY.—The Secretary shall carry out a study, which shall rely substantially on information obtained through the trade-based money laundering analyses conducted by the Comptroller General of the United States, on—

(1) the extent and effect of illicit finance risk relating to the Government of the People's Republic of China and Chinese firms, including financial institutions;

Assessment.

(2) an assessment of the illicit finance risks emanating from the People's Republic of China;

(3) those risks allowed, directly or indirectly, by the Government of the People's Republic of China, including those enabled by weak regulatory or administrative controls of that government; and

(4) the ways in which the increasing amount of global trade and investment by the Government of the People's Republic of China and Chinese firms exposes the international financial system to increased risk relating to illicit finance.

(b) STRATEGY TO COUNTER CHINESE MONEY LAUNDERING.—

Consultation.
Determination.

Upon the completion of the study required under subsection (a), the Secretary, in consultation with such other Federal agencies as the Secretary determines appropriate, shall develop a strategy to combat Chinese money laundering activities.

(c) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary shall submit to Congress a report containing—

(1) all findings and determinations made in carrying out the study required under subsection (a); and

(2) the strategy developed under subsection (b).

(d) CLASSIFIED ANNEX.—The report required by subsection (c)—

(1) shall be submitted in unclassified form; and

(2) may include a classified annex.

SEC. 6508. TREASURY AND JUSTICE STUDY ON THE EFFORTS OF AUTHORITARIAN REGIMES TO EXPLOIT THE FINANCIAL SYSTEM OF THE UNITED STATES.

Deadline.
Consultation.

(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the Secretary and the Attorney General, in consultation with the heads of other relevant national security, intelligence, and law enforcement agencies, shall conduct a study that considers how authoritarian regimes in foreign countries and their proxies use the financial system of the United States to—

(1) conduct political influence operations;

(2) sustain kleptocratic methods of maintaining power;

(3) export corruption;

(4) fund nongovernmental organizations, media organizations, or academic initiatives in the United States to advance the interests of those regimes; and

(5) otherwise undermine democratic governance in the United States and the partners and allies of the United States.

(b) REPORT.—Not later than 2 years after the date of enactment of this Act, the Secretary shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report that contains—

(1) the results of the study required under subsection (a); and

(2) any recommendations for legislative or regulatory action, or steps to be taken by United States financial institutions, that would address exploitation of the financial system of the United States by foreign authoritarian regimes. Recommendations.

SEC. 6509. AUTHORIZATION OF APPROPRIATIONS.

(a) IN GENERAL.—Subsection (l) of section 310, of title 31, United States Code, as redesignated by section 6103(1) of this division, is amended by striking paragraph (1) and inserting the following:

"(1) IN GENERAL.—There are authorized to be appropriated to FinCEN to carry out this section, to remain available until expended—

"(A) $136,000,000 for fiscal year 2021;

"(B) $60,000,000 for fiscal year 2022; and

"(C) $35,000,000 for each of fiscal years 2023 through 2026.".

(b) BENEFICIAL OWNERSHIP INFORMATION REPORTING REQUIREMENTS.—Section 5336 of title 31, United States Code, as added by section 6403(a) of this division, is amended by adding at the end the following:

"(j) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to FinCEN for each of the 3 fiscal years beginning on the effective date of the regulations promulgated under subsection (b)(4), such sums as may be necessary to carry out this section, including allocating funds to the States to pay reasonable costs relating to compliance with the requirements of such section.".

SEC. 6510. DISCRETIONARY SURPLUS FUNDS. 12 USC 289 note.

The dollar amount specified under section 7(a)(3)(A) of the Federal Reserve Act (12 U.S.C. 289(a)(3)(A)) is reduced by $40,000,000.

SEC. 6511. SEVERABILITY. 31 USC 5311 note.

If any provision of this division, an amendment made by this division, or the application of such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this division, the amendments made by this division, and the application of the provisions of such to any person or circumstance shall not be affected thereby.

DIVISION G—ELIJAH E. CUMMINGS COAST GUARD AUTHORIZATION ACT OF 2020

Elijah E. Cummings Coast Guard Authorization Act of 2020.

SEC. 8001. SHORT TITLE.

This division may be cited as the "Elijah E. Cummings Coast Guard Authorization Act of 2020".

SEC. 8002. DEFINITION OF COMMANDANT. 14 USC 106 note.

In this division, the term "Commandant" means the Commandant of the Coast Guard.