



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

March 17, 2023

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

RE: Beneficial Ownership Information Reports (Docket No.: FINCEN-2023-0002)

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) request for comment (RFC) regarding the report that will be used to collect beneficial ownership information (BOI), as required by the beneficial ownership reporting requirements final rule that was issued in September 2022. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 134 million consumers with personal and small business financial service products. NAFCU appreciates the opportunity to comment on this RFC and urges FinCEN to remove the option for reporting companies to avoid answering the questions required by the Corporate Transparency Act (CTA) and the beneficial ownership reporting requirements final rule.

General Comments

Section 6403 of the CTA requires reporting companies to provide beneficial ownership information to FinCEN, which must maintain the information in a secure, non-public database.¹ In September 2022, FinCEN published a final rule implementing the first of three CTA requirements effective January 1, 2024. Under the beneficial ownership reporting final rule, reporting companies formed after the effective date, have 30 days to report their BOI and existing entities have one year after the effective date to come into compliance with the rule. Reporting companies are required to submit to FinCEN, for each beneficial owner and company applicant, either the individual's full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable identification document or a FinCEN identifier. A FinCEN identifier is a unique identifying number that FinCEN will issue to individuals

¹ Corporate Transparency Act of 2019, H.R.2513, 116th Cong. (2019), <https://www.congress.gov/bill/116th-congress/house-bill/2513/text>

or entities upon request. In certain instances, the FinCEN identifier may be reported instead of an individual's name, birth date, address, and unique identification number.

In December 2022, FinCEN published a notice of proposed rulemaking (NPRM) that will implement the second of the three CTA requirements, specifically the circumstances in which specified recipients would have access to BOI and the strict protocols on security and confidentiality required by the CTA to protect the BOI reported to FinCEN. As FIs, credit unions will have access to BOI, with the reporting company's consent, to fulfill customer due diligence (CDD) requirements.

Credit unions continue to play an important role in identifying and mitigating risks to our financial system by including CDD analysis as part of their robust Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance programs. This includes gathering and verifying BOI from legal entity members. Often, BOI can be difficult to obtain given the unique structure of some legal entities. Section 6403 of the CTA provides an opportunity for credit unions to obtain timely beneficial ownership information for CDD compliance. Reducing compliance burdens allows credit unions to devote staff and resources toward BSA's stated purpose of identifying and mitigating money laundering and terrorist financing.

NAFCU urges FinCEN to remove the opportunity for filers to answer the core questions with “unknown”.

As proposed, the BOI report can be completed without providing information about any individuals associated with the reporting company, which undermines the CTA and defeats the purpose of the beneficial ownership reporting final rule. Neither the CTA nor the final rule allow for reporting without the information that both explicitly state is required under the law. Under the CTA, Congress requires formed entities to provide the name, date of birth, address, and an identifying number for all of its beneficial owners and company applicants. But the proposed form makes this information optional by allowing a reporting company to answer “unknown” by checking a box if they are unable to obtain information. This direction to check a box in order to provide the answer of “unknown” is available for every question on the BOI report.

NAFCU understands that there may be some instances where obtaining BOI may not be possible for some reporting companies. In these instances, NAFCU recommends that FinCEN require the reporting company to attest that they have exhausted all options to obtain the core information. NAFCU further recommends that providing, at the very minimum, the name of beneficial owners and company applicants should be a requirement that cannot be avoided by the reporting company.

The option to not answer questions invites bad actors to operate under the radar by not reporting this information because they are able to claim that it is unknown. Additionally, reporting companies who may not be bad actors but want to simply check the box that they have

completed what is required of them may now answer every question with “unknown” because it is much faster to complete than actually providing the information. This option creates a beneficial ownership reporting regime ripe for abuse and undermines the reason the CDD rule and the CTA were created.

The CDD rule was implemented “to improve financial transparency and prevent criminals and terrorists from misusing companies to disguise their illicit activities and launder their ill-gotten gains.”² The CTA was then created by Congress to provide essential information to law enforcement, national security agencies, and others to help prevent bad actors from hiding illicit money or other property in the United States. Essentially shifting the burden of collecting BOI from financial institutions to reporting companies but, as proposed, the BOI report will do the opposite. Credit unions are expecting to rely on this information to satisfy their CDD requirements and if the search returns with all the information as “unknown,” the search is essentially useless and a waste of time. This will put the burden back on credit unions to obtain and verify the BOI of reporting companies even after conducting a search of FinCEN’s records, which in the case of the information not actually being reported is an unnecessary step.

Even if FinCEN follows NAFCU’s recommendation and allows consent to be obtained with a simple check the box, credit unions will need to complete some type of change to their system to add that option at account opening. Again, this change will be rendered unnecessary if the reporting company has answered “unknown” to all the core questions. Any change to a credit union’s system is going to require resources such as funds to make the change and training of employees who are tasked with implementing the change. If obtaining BOI from FinCEN instead of the reporting company is rendered useless due to a lack of information being available, not only is it a waste of time but a waste of valuable resources that can be used elsewhere in the credit union.

NAFCU urges FinCEN to remove this option from the BOI report and require reporting companies to answer every question on the report. Should the information in fact not be available or unknown, NAFCU recommends that FinCEN require the reporting company to first exercise due diligence in obtaining the information and then attest that they have done so. But this option should not be allowed for the core questions, specifically the full legal name, date of birth, current residential or business street address, and a unique identifying number from an acceptable identification document or a FinCEN identifier for the company applicant and beneficial owner(s).

Conclusion

NAFCU appreciates the opportunity to comment on this RFC and share our members’ views. NAFCU urges FinCEN to require reporting companies to exercise due diligence in obtaining the

² FinCEN, Information on Complying with the Customer Due Diligence (CDD) Final Rule.
<https://www.fincen.gov/resources/statutes-and-regulations/cdd-final-rule>

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information required to be provided to FinCEN and only be able to answer “unknown” after that has been done. Should you have any questions or require additional information, please do not hesitate to contact me at (703)842-2268 or amoore@nafcu.org.

Sincerely,

A handwritten signature in black ink, appearing to read "A. Moore".

Aminah Moore
Senior Regulatory Affairs Counsel