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02/14/2023

Mr. Himamauli Das  
Director, Financial Crimes Enforcement Network  
P.O. Box 39  
Vienna, VA 22183

Re: Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities  
[RIN 1506–AB59]

To Director Das:

The League of Southeastern Credit Unions (“LSCU”), representing 302 credit unions with a collective asset size over \$170 billion, is always looking for items to comment on that might have an impact on our member credit unions. LSCU has been closely following the developments around the Beneficial Ownership Rule that the Financial Crimes Enforcement Network (“FinCEN”) has been working on for several years now. We have voiced our concerns around this program before and again we have concerns regarding who will have access to this information. This data will largely be collected by financial institutions with the intention of aiding FinCEN and other federal agencies in better understanding corporate structures with the intention to make it onerous for a criminal to launder money through shell companies. We are naturally supportive of FinCEN with its goal to reduce money laundering throughout the United States, however, having access to this information for certain parties would be greatly beneficial for law enforcement across the US.

As it is proposed, this rule will prohibit the disclosure of this information to the following parties:

- A. An officer, employee, contractor, or agent of the United States;
- B. An officer, employee, contractor, or agent of any State, local, or Tribal agency; or
- C. A director, officer, employee, contractor, or agent of any financial institution.

Regarding access to this information and financial institutions, we are thankful that FinCEN has added the carve out below so that this rule can be implemented in a much more efficient manner than if there was no access to this data at all for financial institutions.

*4. Disclosure to facilitate compliance with customer due diligence requirements—(i) Financial institutions.*

Upon receipt of a request from a financial institution subject to customer due diligence requirements under applicable law for information to be used in facilitating such compliance, FinCEN may disclose information reported pursuant to § 1010.380 to such financial institution, provided each reporting company that reported such information consents to such disclosure. For purposes of this section, customer due diligence requirements under applicable law are the beneficial ownership requirements for legal entity customers at § 1010.230, as those requirements may be amended or superseded.

While this access will be beneficial to the system that FinCEN is building, there is one major flaw in this. Notifying the reporting company of the disclosure of their information to another financial institution represents a reputational risk for our member credit unions. There are certain situations where it would be fair to notify the reporting company that their information is being shared, this however is the exception and not the rule. In the day-to-day operations of a financial institution, there is a need to know your member for the purposes of opening an account, making a loan or other business that naturally arises from the operation of a financial institution. By making it necessary to inform and request the consent of a company who is having their information pulled from the data base, some business owners may respond poorly to such a request and seek out financing through alternative means. Furthermore, this could impede the efficiency of the lending process. The value of this data to our member credit unions is the ability to enhance the process of lending and account opening. Creating a database that would hold the beneficial ownership information of almost all companies in the US would reduce the amount of time financial institutions would have to spend on KYM activities, though these efficiencies could only be realized by having a seamless exchange of data for legitimate reasons. We would understand informing a business of the request for their information if there is no legitimate business reason for it. The rule as it is proposed will create a slow and inefficient system for financial institutions to use, and while its efficiency is not the purpose of the data base, it would represent a greater value to our member credit unions if it was altered in this way.

Regarding the limitation on the disclosure of BOI to financial institution directors, officers, employees, contractors, and agents, we feel that this prohibition is too broad and will impose an undue burden on our member credit unions. We believe that this data should be made available to at least the officers and directors of financial institutions. As stated earlier, this data holds tremendous value to our member credit unions so long as they are able to access this information. It appears FinCEN is looking at this matter from a law enforcement perspective. Giving some limited access to this information would greatly aid credit unions in their mission to serve their members, improving credit union support for this rule. FinCEN should not be concerned about the spreading of this information as credit unions and other financial institutions must already follow section 501 of the Gramm-Leach-Bliley Act which holds all financial institutions to strict standards regarding the security of a member's nonpublic information. Over the years and through the interpretation of the regulatory bodies for financial institutions, these protections have become a robust way of insuring the safety of this information. We agree that pulling information from the database should be narrowed as much as is feasible in order to ensure the security of the database so that bad actors do not gain access to this information. If possible, FinCEN should design explicit protocols and procedures around this in order to limit confusion about what to request and when.

We also believe that FinCEN should create a concise definition of what constitutes a "trusted foreign country." Under an ideal scenario, there would be an easily searchable list of nations that FinCEN would consider trusted. Leaving this definition vague will reduce the security of the system and could lead to potential BSA violations. The nations that FinCEN is willing to share this data with will need to be carefully curated to ensure that sensitive information does not fall into the hands of America's enemies. Of chief concern to us is preventing this information being acquired by China or other economic rivals of the US. The companies that have accounts at our member credit unions will do business in our three state footprint, the nation at large, and in some cases across the world. Given the adversarial nature that can be seen in nations like China and Russia, this data could be used to target American businesspeople who are abroad and, as such, the security of this data is a top priority for us.

We would like to thank FinCEN for giving us the opportunity to comment on this matter. Should FinCEN want to discuss our letter further, please feel free to reach out to us.

Sincerely,

David Pace  
Manager of Regulatory Advocacy