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National Association of Federally-Insured Credit Unions

February 14, 2023

Policy Division
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 (Docket No.: FINCEN-2021-005; RIN No.: 1506-AB49)

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) notice of proposed rulemaking (NPRM) regarding implementation of section 6403 of the Corporate Transparency Act (CTA). 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. This NPRM describes who may access the beneficial ownership information (BOI) that will be reported to FinCEN. NAFCU appreciates FinCEN's prompt implementation of the CTA and recommends that FinCEN independently verify the BOI, be clear and specific in its definitions within the final rule, and allow consent by reporting companies to be completed by checking a box.

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. Under the CTA, FinCEN is authorized to disclose BOI to five categories of recipients: (1) federal agencies engaged in national security, intelligence, or law enforcement activity if the requested BOI is for use in furtherance of such activity and state, local, and tribal law enforcement agencies through the authorization of "a court of competent jurisdiction" in order to seek information in a criminal or civil investigation; (2) foreign law enforcement agencies, judges, prosecutors, central authorities, and competent authorities through a request through an intermediary federal agency that meets certain additional criteria; (3) Financial Institutions (FIs) using BOI to facilitate compliance with customer due diligence (CDD) requirements provided the reporting company has given consent for the disclosure to the specific FI; (4) federal functional regulators and other appropriate regulating agencies acting in supervisory capacity assessing FIs for compliance with CDD requirements, limited to the information that the FIs received from FinCEN; and (5) the U.S. Department of the Treasury (Treasury) for BOI inspection or disclosure, including

for tax administration. NAFCU recommends that FinCEN define “other appropriate regulator” as this categorization is too broad and leaves a large portion of the rule open for misinterpretation.

In September 2022, FinCEN published a final rule implementing the first of three CTA requirements effective January 1, 2024. Under the final beneficial ownership reporting 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 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.

This NPRM 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 CDD requirements. NAFCU appreciates this proposal, which will hopefully lessen the regulatory burden on credit unions when opening accounts. NAFCU applauds FinCEN for its careful attention to detail and clarity in its explanation of what has been included in the proposal and why. NAFCU additionally appreciates FinCEN's awareness of details that may lack clarity and its willingness to correct that at commentors request. A core component of this rule and the usefulness of the BOI to FIs is the verification of the information provided. If the BOI is not verified by FinCEN before being provided to FIs or any of the other categories of recipients, there is no use for the information.

Verification

NAFCU agrees that FinCEN should require the individual filing the report to certify that the information is accurate and complete, but also urges FinCEN to independently verify the information as well. The CTA provides that it is unlawful for any person to “willfully provide, or attempt to provide, false or fraudulent beneficial ownership information” or to willfully fail to “report complete or updated beneficial ownership information to FinCEN.” These reporting violations are an important component of ensuring credit unions and others have access to accurate information. NAFCU applauds FinCEN for including civil and criminal penalties, for violations of the reporting rule, in the final beneficial ownership reporting rule.

Credit unions should be able to reasonably rely on the information provided by a reporting company to FinCEN for CDD compliance without worrying about supervisory repercussions. Accordingly, NAFCU urges FinCEN to consult with the National Credit Union Administration and other federal banking regulators to ensure there are consistent examination and supervisory

expectations for the use of BOI from FinCEN. Along the lines of regulatory oversight and examinations, NAFCU further urges FinCEN to explicitly state in its CDD rule that the BOI provided to institutions from FinCEN is enough to satisfy the CDD rule.

As proposed in this NPRM, FIs are only able to use BOI for “customer due diligence requirements under applicable law.” This presumably means that BOI cannot be used by FIs for, among other things, transaction monitoring, filing suspicious activity reports (SARs), sanctions compliance, or fraud compliance. NAFCU urges FinCEN to more specifically itemize exactly what BOI may be used for, including whether the use of BOI information for the above-mentioned compliance efforts is permissible. Including Bank Secrecy Act (BSA) compliance efforts in the stated uses of BOI would be beneficial in assisting institutions to carry out the intent of the BSA more efficiently.

Access

In this NPRM, FinCEN proposes that FIs be required to obtain the reporting company's consent to request its BOI from FinCEN. NAFCU agrees with FinCEN that FIs are best situated to obtain and track consent given that they maintain direct relationships with their customers/members and can leverage existing onboarding and account maintenance processes to obtain reporting company consent. NAFCU’s members have reported that obtaining consent will not add a significant burden as they are already directly interacting with the member at account opening or during a triggering event.

In fulfilling this requirement, NAFCU and its members anticipate there being some barriers and challenges, specifically resistance by credit union members in providing this consent to share BOI. Additionally, challenges may be presented if there are specific parameters for how that consent is required by FinCEN. NAFCU discourages FinCEN from requiring the consent to be in writing and instead recommend

s that the simple checking of a box be acceptable. If the consent is required to be more than a check the box, that may be faced with reluctance from the applicant and can become time-consuming and burdensome to FIs. NAFCU also recommends that FinCEN issue guidance to FIs for steps to take if a reporting company declines to grant the FI access to its BOI.

It is important that FinCEN provide BOI to those credit unions with the consent of a reporting company in a timely and efficient manner, as credit unions must conduct CDD analysis at account opening. NAFCU discourages FinCEN from making the return of BOI a lengthy process and recommends that FinCEN use the latest available technology to mirror the speed of a Google search. Any delay in the transfer of BOI will frustrate the new account opening process and may cause credit unions to duplicate efforts, collecting the same information and only furthering compliance burdens. Additionally, NAFCU discourages FinCEN from requiring FIs to purchase or download any new software to be able to search for and receive BOI. This would be unduly burdensome on not only smaller credit unions but all FIs because compatibility with existing software then becomes an issue. Not to mention, the purchase and maintenance expenses

associated with new software could be financially burdensome for smaller credit unions. NAFCU also recommends that FinCEN develop a user-friendly website to be used by FIs.

Updates

Currently, the language of the CTA provides for the use of beneficial ownership information for CDD analysis. A robust CDD program includes not only the collection and reporting of beneficial ownership information at account opening, but also throughout the course of the relationship with the member. Therefore, credit unions must continue to have access to accurate beneficial ownership information as it is updated by the reporting company in the FinCEN Database.

Updates on BOI that a FI has already requested would also assist credit union compliance efforts, as updating the CDD analysis for a member occurs either when there is a triggering event or in circumstances where the credit union is not yet aware of any beneficial ownership changes because no triggering event has occurred. NAFCU encourages FinCEN to push updates, as they are reported, to FIs that have requested BOI on a reporting company. FinCEN should be able to track and maintain the reporting companies that a FI has requested BOI for and notify that FI when those reporting companies submit a change in BOI to FinCEN.

Conclusion

NAFCU appreciates the opportunity to comment on this NPRM and share our members' views. NAFCU looks forward to the additional opportunities to comment on credit union access to the amended CDD proposal. NAFCU applauds FinCEN's attention to detail and explanations in this proposal and recommends that FinCEN maintain that clarity in its final rule. 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