

Cooperative Credit Union Association

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Creating Cooperative Power

February 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]**

Dear Director Das,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. (“Association”) appreciates the opportunity to comment on the Financial Crimes Enforcement Network (FinCEN) proposed regulation on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities to implement the Corporate Transparency Act (CTA). The CTA requires FinCEN to establish reporting and a database of beneficial ownership information (BOI) for legal entities that do business with financial institutions to be used for anti-money laundering/countering the financing of terrorism (AML/CFT) compliance. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 3.6 million consumer members. The Association has developed these comments in consultation with our members.

The Association’s High-Level Comments

- The Association supports FinCEN’s proposal for credit unions to have the option to access FinCEN’s legal entity Beneficial Ownership Information (BOI) database as part of their Customer Due Diligence (CDD) onboarding process. Optional, non-mandatory access to the BOI database should help limit CDD regulatory burdens on credit unions.
- The Association urges FinCEN to clarify that permission to access a legal entity’s information in FinCEN’s BOI database can be obtained a single time as part of the credit union’s membership agreement or similar account opening agreement.
- The Association urges FinCEN to use the Gramm-Leach-Bliley Act and CFPB Regulation P as the framework for safeguarding BOI information. Credit unions already have Gramm-Leach-Bliley Act/Regulation P-compliant policies and procedures in place.

The Association's Comments in Response to FinCEN's Questions

4. The CTA prohibits officers and employees of (1) the United States, (2) State, local, and Tribal agencies, and (3) FIs and regulatory agencies from disclosing BOI reported under the statute. FinCEN proposes to extend the prohibition to agents, contractors, and, in the case of FIs, directors as well. FinCEN invites comments on the proposed scope.

The Association supports credit unions being able to share information from FinCEN's BOI database with their directors as well as their agents and contractors, so it is logical that these individuals should likewise be prohibited from disclosing confidential BOI information to which the credit union gives them access. It is important that a credit union's board of directors be able to know BOI information as part of the board's review of SAR filings, which NCUA guidance specifies must occur at least once a month.¹ Many credit unions also use US-based contractors or agents to assist with the BSA/AML compliance responsibilities. We urge FinCEN to finalize this aspect of the regulation as proposed.

11. FinCEN proposes that FIs be required to obtain the reporting company's consent in order to request the reporting company's BOI from FinCEN. FinCEN invites commenters to indicate what barriers or challenges FIs may face in fulfilling such a requirement, as well as any other considerations.

The Association supports credit unions having access to FinCEN's BOI database, however, we urge FinCEN to clarify in the final version of the rule that the reporting company's consent can be obtained a single time as part of the terms and conditions of the credit union's membership agreement or similar account opening agreement. Consent should not have to be obtained using a separate, FinCEN-specific authorization or more than once.

The Association is concerned that obtaining a reporting company's consent in a FinCEN-specific format would create unnecessary compliance burdens on credit unions and could result in inadvertently "tipping off" bad actors that information about their company is being reported to FinCEN, even if this information does not rise to the level of a Suspicious Activity Report (SAR) per se.

We recognize that the statutory text of the CTA does require a reporting company's permission for FinCEN to release BOI information to a financial institution. Credit unions, however, typically obtain similar permissions through the terms and conditions of the credit union's membership agreement or account opening agreement. We urge FinCEN to clarify that the reporting company's consent can similarly be obtained as part of the legal terms and conditions

¹ See National Credit Union Administration (NCUA) Board, "Final Rule Part 748, Filing Requirements for Suspicious Activity Reports," Regulatory Alert No. 06-RA-07 (Dec. 2006) ("Credit union management must promptly notify its board of directors (board), or a committee designated by the board of directors (committee), to receive notice of any SAR filed. Notification must be at least monthly. Notification at the monthly board meeting is adequate, unless the seriousness of an activity merits immediate reporting."), available at <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/final-rule-part-748-filing-requirements-suspicious-activity-reports>.

of a financial institution's account opening agreement, rather than a specific authorization that highlights FinCEN's involvement.

FinCEN rules and guidance prohibit credit unions from “tipping off” members that a suspicious activity report (SAR) is being filed, and the unauthorized disclosure of SARs is a criminal offense.² While BOI information would not be a SAR per se, in some situations a financial institutions must file a SAR at account opening. A financial institution requesting permission to access FinCEN BOI information may have much the same result of “tipping-off” bad actors to potential law enforcement surveillance that knowledge of a SAR filing would. This could result in a “lemon problem” that alerts bad actors to which financial institutions have the most stringent AML/CFT compliance programs and drives them elsewhere.

The Financial Action Task Force (FATF)—the international standard setting body for AML/CFT rules—in its Interpretive Note to FATF Recommendation 10 (“Customer Due Diligence”) also cautioned against financial institutions tipping off new customers about AML/CFT reporting to FinCEN during the onboarding process. According to FATF:³

“Recommendation 21 prohibits financial institutions, their directors, officers and employees from disclosing the fact that [a SAR] or related information is being reported to the [jurisdiction's Financial Intelligence Unit, i.e. FinCEN]. A risk exists that customers could be unintentionally tipped off when the financial institution is seeking to perform its customer due diligence (CDD) obligations in these circumstances. The customer's awareness of a possible [SAR] or investigation could compromise future efforts to investigate the suspected money laundering or terrorist financing operation.”

The Association urges FinCEN to clarify in the final version of this rule that authorization to access FinCEN's BOI database can be part of terms and conditions of the account opening agreement. A separate, FinCEN-specific authorization should not be required because it could tip-off bad actors about AML/CFT reporting procedures as well as increase paperwork burdens.

12. FinCEN proposes to define “customer due diligence requirements under applicable law” to mean the bureau's 2016 CDD Rule, as it may be amended or superseded pursuant to the AML Act. The 2016 CDD Rule requires FIs to identify and verify beneficial owners of legal entity customers. Should FinCEN expressly define “customer due diligence requirements under applicable law” as a larger category of requirements that includes more than identifying and verifying beneficial owners of legal entity customers? If so, what other requirements should the phrase encompass? How should the broader definition be worded? It appears to FinCEN that the consequences of a broader definition of this phrase would include making BOI available to more FIs for a wider range of specific compliance purposes, possibly

² See, e.g., FinCEN, SAR Confidentiality Reminder for Internal and External Counsel of Financial Institutions, Letter No. FIN-2012-A002 (Mar. 2012) (“The unauthorized disclosure of SARs could undermine ongoing and future investigations by tipping off suspects, deterring financial institutions from filing SARs, and threatening the safety and security of institutions and individuals who file such reports.”), available at <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2012-a002>.

³ Financial Action Task Force, *The FATF Recommendations 2012*, at 64 (updated March 2022), available at <https://www.fatf-gafi.org/en/publications/Fatfrecommendations/Fatf-recommendations.html>.

making BOI available to more regulatory agencies for a wider range of specific examination and oversight purposes, and putting greater pressure on the demand for the security and confidentiality of BOI. How does the new balance of those consequences created by a broader definition fulfill the purpose of the CTA?

The Association supports FinCEN's proposal to define the CTA's statutory term "customer due diligence requirements under applicable law" to mean the bureau's 2016 CDD Rule as amended. Giving credit unions the option, but not the requirement, to access FinCEN's BOI information database will help limit regulatory burdens by assisting credit unions in their CDD compliance responsibilities without creating new paperwork requirements.

Once obtained, however, BOI information should be treated the same as other information the credit union collects in the CDD process because creating a special set of rules and procedures just for handling BOI information would create unnecessary compliance burdens. We also believe that the credit union should be permitted to store and utilize BOI information it collected as part of the CDD process to the same extent and for the same purposes that the credit union can store and use other information about its members it collected in the CDD process.

23. FinCEN proposes to require FIs to limit BOI disclosure to FI directors, officers, employees, contractors, and agents within the United States. Would this restriction impose undue hardship on FIs? What are the practical implications and potential costs of this limitation?

The Association supports FinCEN's proposal that a credit union or other financial institution's directors, officers, employees, contractors, and agents within the United States may have access to BOI information the credit union receives from the FinCEN BOI database. As noted in response to question 4, above, a credit union's board of directors should be able to know BOI information as part of the board's at-least-monthly review of SAR filings. Many credit unions also use US-based contractors or other agents to assist with the BSA/AML compliance responsibilities, so it is appropriate that these individuals and/or legal entities should be able to access BOI information too. We urge FinCEN to finalize this aspect of the regulation as proposed.

24. Are the procedures FIs use to protect non-public customer personal information in compliance with section 501 of Gramm-Leach-Bliley sufficient for the purpose of securing BOI disclosed by FinCEN under the CTA? If not, is there another set of security standards FinCEN should require FIs to apply to BOI?

Yes, the Association believes that the procedures that credit unions and other financial institutions use to protect non-public customer personal information under the Gramm-Leach-Bliley Act are sufficient to protect BOI for legal entities that become credit union members. Credit unions are subject to the Consumer Financial Protection Bureau's (CFPB) Regulation P, 12 C.F.R. part 1016, which implements Title V, Subtitle A of the Gramm-Leach-Bliley Act including Section 501.

Using the Gramm-Leach-Bliley Act and Regulation P as the framework for safeguarding BOI information should also help limit compliance burdens on credit unions because credit unions already have Gramm-Leach-Bliley Act/Regulation P-compliant policies and procedures in place.

The Association urges FinCEN to finalize this aspect of the regulation as proposed.

25. Are the standards established by section 501 of Gramm-Leach-Bliley, its implementing regulations, and interagency guidance sufficiently clear such that FIs not directly subject to that statute will know how to comply with FinCEN's requirements with respect to establishing and implementing security and confidentiality standards?

Yes, the Association believes that Regulation P as well as the CFPB's guidance interpreting that regulation should be sufficiently clear for financial institutions to comply with FinCEN's security and confidentiality standards. Credit unions have been subject to section 501 of Gramm-Leach-Bliley for more than two decades and have followed CFPB's Regulation P rule and its predecessor regulations since Gramm-Leach-Bliley took effect.

These CFPB regulations should be easy for other financial institutions to understand, especially in view of the existing guidance clarifying Regulation P compliance requirements issued by CFPB and other regulators. The National Credit Union Administration (NCUA), for example, publishes a *Federal Consumer Financial Protection Guide* that helps outline credit unions' compliance responsibilities under Regulation P and other laws.⁴

The Association appreciates the opportunity to comment on FinCEN's proposed rule on Beneficial Ownership Information Access and Safeguards, and Use of FinCEN Identifiers for Entities to implement the Corporate Transparency Act. If you have any questions about our comments or require further information, please do not hesitate to contact the Association at govaff-reg@ccua.org.

Sincerely,

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⁴ See, e.g., Privacy of Consumer Financial Information (Regulation P)—NCUA; <https://www.ncua.gov/regulation-supervision/manuals-guides/federal-consumer-financial-protection-guide/compliance-management/deposit-regulations/privacy-consumer-financial-information-regulation-p> (last visited Feb. 13, 2023).