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**National Association of Federally-Insured Credit Unions**

May 4, 2021

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

**RE: Beneficial Ownership Reporting Requirements (Docket No.: FINCEN-2021-0005; 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) advance notice of proposed rulemaking (ANPR) regarding implementation of section 6403 of the *Corporate Transparency Act* (CTA), establishing a new framework for reporting, maintaining, and disclosing beneficial ownership information. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 124 million consumers with personal and small business financial service products. NAFCU appreciates FinCEN's commitment to implementing the "FinCEN Database" to combat illicit activity in our U.S. financial system. Although the contours are still to be determined, the FinCEN Database has the potential to provide for a meaningful reduction in compliance burdens. To maximize the utility of the FinCEN Database, NAFCU encourages FinCEN to allow for a pre-authorization mechanism either from credit unions or from the agency. In addition, FinCEN should allow credit unions that obtain consent to receive updated beneficial ownership information provided by reporting companies. Most importantly, FinCEN must clarify examination and supervisory expectations for credit unions that rely on beneficial ownership information for Customer Due Diligence (CDD) compliance.

**General Comments**

On January 1, 2021, the *Anti-Money Laundering Act of 2020*, which included the CTA, was signed into law as part of the *National Defense Authorization Act*. Section 6403 requires reporting companies to provide beneficial ownership information to FinCEN, who must maintain the information in a secure, non-public database, and authorized FinCEN to disclose the information to certain government agencies and financial institutions in meeting CDD obligations. NAFCU was supportive of the *Bank Secrecy Act* (BSA)/anti-money laundering (AML) reform efforts included in the CTA as they may provide meaningful changes to reduce compliance burdens for credit unions. NAFCU appreciates FinCEN's swift implementation of section 6403 prior to the January 1, 2022 deadline and looks forward to implementation of additional provisions in the CTA.

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 BSA/AML compliance programs. This includes gathering and verifying beneficial ownership information from legal entity members. Often, beneficial ownership information can be difficult to obtain given the unique structure of legal entities. As the ANPR identified, it is particularly difficult to obtain up-to-date beneficial ownership information. The FinCEN Database provides an opportunity for credit unions to obtain timely beneficial ownership information for CDD compliance.

BSA/AML compliance continues to be a large source of compliance burdens for credit unions, and access to the FinCEN Database that houses this information is appreciated. According to NAFCU's 2020 *Federal Reserve Meeting Survey*, over 52 percent of credit unions reported that they expect to increase the number of FTE staff members devoted to BSA/AML compliance. This represents a 20 percent increase from 2019 and is likely to increase as illicit actors continue to find innovative ways to access our financial system. Reducing compliance burdens allows credit unions to devote staff and resources towards the BSA's stated purpose of identifying and mitigating money laundering and terrorist financing.

## **Reporting Companies**

Although not reporting companies themselves, credit unions are end users of the beneficial ownership information provided by a reporting company. Therefore, it is important that FinCEN ensure reporting companies provide accurate, timely, and complete beneficial ownership information to fully assist law enforcement and credit union end users. Critical to this effort is ensuring that reporting companies certify and attest to the accuracy of the information they provide. Without accurate and complete information, the utility of the FinCEN Database diminishes, and may cause supervisory issues for credit unions that seek to use the beneficial ownership information obtained.

Next, FinCEN must ensure that the definition of beneficial ownership is similar to that in the CDD regulations to ensure consistency and increase the utility of the information shared by a reporting company. Currently, the CTA defines beneficial owner as any entity or individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise either exercises substantial control over the entity, or owns or controls not less than 25 percent of the ownership interests of the entity. This definition is slightly different than the CDD regulations but aims to gather the same information from a reporting company. The definition of beneficial owner, for purposes of the FinCEN Database, should align with the definition of a beneficial owner in the current CDD regulations. Consistency between the definitions mitigates any confusion on who constitutes a reporting company. FinCEN should ensure the definitions are consistent or clarify that these definitions are the same.

### *Pre-Authorization by Reporting Companies to Designate a Credit Union*

Understandably, the ability of credit unions to gain access to the FinCEN Database is limited by the parameters of the CTA. As written, the language authorized FinCEN to disclose beneficial

ownership information to federal agencies engaged in national security, intelligence, or law enforcement, a non-federal law enforcement agency with specified court authorization, a federal agency on behalf of certain foreign requestors, or a financial institution subject to CDD requirements with the consent of the reporting company to facilitate CDD compliance. Thus, a credit union may only receive beneficial ownership information if a reporting company provides prior consent.

The ability of a reporting company to designate a credit union to receive beneficial ownership information from the FinCEN Database through a pre-authorization mechanism would provide a more seamless transfer of information. FinCEN will most certainly need to clarify in the final regulation what a pre-authorization covers and who provides the ability to pre-authorize access. Specifically, whether the pre-authorization covers a one-time access by the designated credit union or if the pre-authorization remains in place until rescission by the reporting company. A reporting company should be able to pre-authorize the sharing of beneficial ownership information in real-time as updated by the reporting company. Requiring discrete authorization every time a credit union seeks access from a reporting company will slow down the new account opening process. Adding a pre-authorization option to account opening documents could be a mechanism for credit unions to gain access to the FinCEN Database.

Alternatively, FinCEN may provide the option for pre-authorization at the time the reporting company provides beneficial ownership information to allow for a more seamless experience. FinCEN should also clarify whether additional disclosures must be provided with the pre-authorization and should ensure that the responsibility of providing disclosures to reporting companies is not borne by credit unions or the financial institutions designated. Credit unions are end users of the beneficial ownership information; thus, the onus should not be on them to provide any disclosure to the reporting company. FinCEN is tasked with maintaining the beneficial ownership information and only providing it to certain authorized parties, so the agency should have the responsibility of providing any additional disclosures.

### **Credit Union Access to and Use of Beneficial Information**

It is important that FinCEN provide beneficial ownership information 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. Any delay in the transfer of beneficial ownership information will frustrate the new account opening process and may cause credit unions to duplicate efforts and collect the same information, only furthering compliance burdens. FinCEN entrusts credit union employees with sensitive information through the 314(a) information-sharing program and other BSA reporting and credit unions will continue to uphold their duties in maintaining confidentiality. Moreover, credit unions are subject to comprehensive privacy regulations to protect member data. FinCEN should allow credit unions to access the beneficial ownership information data through the Secure Information Sharing System (SISS).

*Existing Accounts, Obtaining Updated Information, and Other Uses*

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, it is important that credit unions continue to have access to accurate beneficial ownership information as updated by the reporting company in the FinCEN Database. Section 6403 requires reporting companies to provide updated information in a timely manner but no later than one year after the date of any change. FinCEN should require reporting companies to provide updated information as soon as it is known, and credit unions should receive a notification that a reporting company's information has been updated in the FinCEN Database.

FinCEN should also consider allowing access for accounts that are in existence prior to the launch to assist with on-going CDD analysis. Section 6403 accounts for existing reporting companies prior to the launch of the FinCEN Database and requires that they provide beneficial ownership information within a timely manner but no later than 2 years after the effective date of this regulation once finalized. Access to the FinCEN Database for existing accounts would also assist credit union compliance efforts, as updating the CDD analysis for a member occurs when there is a triggering event and there are circumstances where the credit union is not yet aware of any beneficial ownership changes because no triggering event has occurred. NAFCU encourages FinCEN to allow access once a reporting company has provided the required information. Allowing access for existing accounts would help aid law enforcement efforts to detect illicit activity.

Further, the beneficial ownership information provided would be most useful if credit unions can use the information for other customer identification purposes. Credit unions must have a customer identification program (CIP) that both identifies and verifies members at account opening. The information provided by reporting companies overlaps with some of the required CIP information, duplicating compliance efforts on the part of the credit union. NAFCU urges FinCEN to allow credit unions, with consent of the reporting company, to use beneficial ownership information for other customer identification purposes.

*Examination Concerns*

FinCEN should clarify examination expectations in the final regulations and update the Federal Financial Institutions Examination Council (FFIEC) BSA manual and other compliance guidance regarding reliance on beneficial ownership information for CDD purposes. Examination for BSA/AML compliance, specifically appropriate CDD and beneficial ownership procedures, remain an examination priority for the National Credit Union Administration.<sup>1</sup> According to the November 2020 *Economic & CU Monitor Survey*, 36 percent of credit unions reported that BSA came up during the institution's last exam. Examiners are focusing on details of a credit union's

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<sup>1</sup>NCUA, *Letters to Credit Unions and Other Guidance*, <https://www.ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/ncuas-2021-supervisory-priorities>.

BSA/AML compliance program, highlighting the importance of clear examination and supervisory expectations for the use of beneficial ownership information.

Credit unions should be able to reasonably rely on the information provided by a reporting company in the FinCEN Database for CDD compliance without worrying about supervisory repercussions. Currently, credit union policies address situations where the beneficial ownership is insufficient and whether any further actions are warranted including not opening up an account or filing a suspicious activity report (SAR). The final regulations should address what actions are required by a credit union when this situation occurs. NAFCU urges FinCEN to consult with the NCUA and other federal banking regulators to ensure there are consistent examination and supervisory expectations for the use of beneficial ownership information from the FinCEN Database. Examination inconsistency, particularly with respect to BSA/AML, continues to be an issue that credit unions experience. According to NAFCU's November 2020 *Economic & CU Monitor Survey*, 36 percent of credit unions reported BSA/AML as an examiner's largest issue, which ranked third overall. Credit unions reported varying degrees of examiner focus on the holistic BSA/AML compliance program versus discrete details such as the number of BSA reports filed. It is critically important that examination is consistent when it comes to the use of beneficial ownership information obtained through the FinCEN Database. Additionally, all FFIEC and supervisory guidance must be updated to reflect changes. Section 6403 mandates the revision of the CDD final rule, therefore the examination expectations may be best described in that revised rulemaking.

## **Burdens**

Generally, the FinCEN Database will provide sufficient and timely beneficial ownership information to law enforcement and credit unions that are provided consent by the reporting company. Despite the utility of the FinCEN Database, it will impose some administrative burdens associated with implementation. This will likely include updating policies and procedures and changing new account documentation to include a pre-authorization mechanism or consent. However, the biggest burden associated with the FinCEN Database is the creation of a dual structure of reporting and collecting beneficial ownership information. There will be instances where a reporting company refuses to provide a credit union with consent and opts instead to provide the information to FinCEN and the credit union separately. The reporting company will be providing identical information to both their credit union and FinCEN, both of which are required to obtain the same information. In addition, a reporting company is required to update the information in the FinCEN Database in a timely manner but no later than one year following the change; however, they may not provide the updated information to a credit union when a triggering event occurs. This may result in a lag where the FinCEN Database will have updated information, but the credit union will not, thus resulting in unnecessary BSA reporting in certain circumstances.

## **Conclusion**

NAFCU appreciates FinCEN's swift implementation of this section 6403 and the opportunity to share our members' views on this matter. Despite the availability of beneficial ownership

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information to credit unions only upon the consent of a reporting company, the FinCEN Database has the potential to allow for a meaningful reduction in compliance burdens. NAFCU encourages FinCEN to allow for a pre-authorization mechanism either by credit unions or from the agency. In addition, FinCEN should allow for the sharing of updated beneficial ownership information and information for existing accounts. Most importantly, FinCEN should clarify examination and supervisory expectations for credit unions that rely on beneficial ownership information for CDD compliance. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or [kschafer@nafcuhq.org](mailto:kschafer@nafcuhq.org).

Sincerely,

A handwritten signature in black ink, appearing to read 'Kaley Schafer', written in a cursive style.

Kaley Schafer  
Senior Regulatory Affairs Counsel