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National Association of Federally-Insured Credit Unions

February 4, 2022

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

**RE: Beneficial Ownership Information Reporting Requirements (Docket No.:
FINCEN-2021-26548; 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 127 million consumers with personal and small business financial service products. This NPRM describes who must file reports with FinCEN, what information must be provided, and when the report must be filed to identify the beneficial owner of the entity and the individuals who have filed an application to form the entity or registered it to do its business. NAFCU generally supports this proposed rule but urges FinCEN to ensure that examination and supervisory expectations are consistent with those of other federal regulators, establish data security protocols, and maintain clarity and simplicity in its communications.

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. The CTA authorizes FinCEN to disclose the information to certain government agencies and financial institutions in meeting Customer Due Diligence (CDD) obligations. In April 2021, FinCEN published an advance notice of proposed rulemaking, initiating the rulemaking process for implementing section 6403. Credit unions are not reporting companies under the rule but are impacted by the rule as they will use the information for regulatory compliance with the CDD rule.

NAFCU appreciates FinCEN's commitment to implementing the "FinCEN Database" and its swift implementation of section 6403 to combat illicit activity in the U.S. financial system. This NPRM as written is clear and concise so that reporting companies are aware of the information they need to provide and when they need to provide it. NAFCU recommends that FinCEN maintain this clarity and simplicity in its communications to ensure that it is well understood by those to which it applies. This NPRM explicitly states that FinCEN will work with secretaries of state or similar

offices to ensure that reporting companies receive notice of and guidance on the reporting obligations. NAFCU appreciates the effort to work with the existing communication channels in place as clarity in rules and communications will decrease the burden on credit unions as it reduces the need to utilize staff time and resources to interpret rules for members. Members routinely rely on their credit unions to assist with all financial matters, and as their trusted financial partner, credit unions will likely help in explaining beneficial ownership reporting requirements. However, under no circumstances should any burden of notifying reporting companies of any obligation fall on credit unions. Respondents of NAFCU's 2021 *Federal Reserve Meeting Survey* reported that their Bank Secrecy Act/Anti-Money Laundering (BSA/AML) regulatory burden has increased by more than 68 percent in the past five years, and they expect that increase to reach over 79 percent in the next five years. NAFCU hopes that this NPRM and eventual final rule will reduce credit unions' BSA/AML regulatory burden.

NAFCU urges FinCEN to adopt shorter reporting timeframes for existing companies and ensure verification of information provided

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, collecting the same information and only furthering compliance burdens. FinCEN entrusts credit union employees with sensitive information through the 314(a) information-sharing program and other BSA reporting requirements 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 such as the *Gramm-Leach-Bliley Act* and state privacy laws including the *California Consumer Privacy Act*, as applicable. Credit unions may not disclose nonpublic personal information about their members to any nonaffiliated third party unless they give their members a reasonable opportunity to opt out, credit unions may not disclose member account numbers to any nonaffiliated third party for marketing purposes, and credit unions must provide their members with notices describing their security policies and their privacy policies and practices.

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 it is updated by the reporting company in the FinCEN Database.

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 two years after the effective date of this regulation once finalized. NAFCU appreciates the effort FinCEN has made to require existing companies to come into compliance with the rule within one year, as the statute allows for two years. However, NAFCU recommends that the timeframe for compliance be shortened to six months. Existing companies should already

have the required information readily available, so a six-month compliance date should not be a burden. Access to the FinCEN Database for existing accounts 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 allow credit unions access to the database once a reporting company has provided the required information. Allowing access for existing accounts would help aid law enforcement efforts to detect illicit activity.

Additionally, NAFCU recommends that FinCEN consider a shorter effective date, such as 60 days, for the final rule. FinCEN's proposal of one year for reporting companies created before the effective date to come into compliance with the rule gives ample time for reporting companies and other stakeholders to incorporate any necessary changes into their systems.

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 to ensuring credit unions and others have access to accurate information. Penalties should be imposed on reporting companies for failure to provide complete and accurate information to help drive compliance. 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. 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 beneficial ownership information from the FinCEN Database.

Data Security

Data security is now more important than ever, as both business owners and financial institutions are targets of cyber-attacks and data thieves. The information required to be reported under this NPRM is sensitive and should be safeguarded through comprehensive security protocols. Whenever there is a centralized collection of sensitive data, there is a risk that information may be targeted by bad actors. FinCEN should ensure that the future security protocols that govern permissioned access to beneficial ownership reflect best-in-class standards for cybersecurity and authentication. As the agency notes in the NPRM, these protocols will be the subject of a future rulemaking and NAFCU encourages FinCEN to approach the development of data security requirements transparently to improve industry confidence in the safety and reliability of the FinCEN Database. At the very least, future standards should be equivalent to the requirements that financial institutions face under the *Gramm-Leach-Bliley Act* and Regulation P when voluntarily sharing data under section 314(b) of the *USA PATRIOT Act*.

NAFCU also encourages FinCEN to help improve financial sector cybersecurity more broadly by committing to a periodic review of the requirements related to voluntary information sharing

among private and public partners under section 314(b). FinCEN should consider, for example, how to make such information sharing more efficient and provide examples of what may constitute a reasonable basis for sharing information when there is no determination that an activity is suspicious. Lastly, FinCEN should aim to communicate more regularly about cybersecurity threats it becomes aware of and continue to leverage the communication networks of existing critical infrastructure partners, such as Treasury's Office of Cybersecurity and Critical Infrastructure Protection, to help credit unions identify emerging threats.

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 beneficial ownership information and amended CDD proposals. NAFCU generally supports this proposal but urges FinCEN to ensure consistent examination and supervisory expectations with other federal regulators, establish data security protocols, and maintain clarity and simplicity in its communications. NAFCU further recommends that FinCEN consider a shorter effective date for the final rule, such as 60 days. 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', with a stylized flourish at the end.

Aminah Moore
Regulatory Affairs Counsel