



National Association
of Federal Credit Unions
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January 21, 2016

Mr. Jamal El-Hindi
Deputy Director
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

RE: Comments on Regulatory Impact Assessment & Initial Regulatory Flexibility Analysis, RIN 1506-AB25

Dear Deputy Director El-Hindi:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally insured credit unions, I am writing to you regarding the Regulatory Impact Assessment (RIA) and Initial Regulatory Flexibility Analysis (IRFA) related to the agency's proposed rule on Customer Due Diligence (CDD) requirements for covered financial institutions. *See* 80 FR 80308 (Dec. 24, 2015).

Background

NAFCU has consistently supported the importance of FinCEN and BSA requirements to assist in the prevention of tax evasion or money laundering as they pose risks to national security. BSA requirements however, are very burdensome to implement from a compliance standpoint, and NAFCU has worked with FinCEN to try to reduce that burden for our members. While NAFCU and our members value FinCEN's goal of strengthening BSA protections, we fundamentally believe the benefits of this proposal do not outweigh the burdens.

The proposed rule, which was first proposed in August 2014, would codify existing CDD requirements and add a requirement for covered financial institutions to identify and verify the identity of natural person "beneficial owners" of "legal entity" accounts. In response, NAFCU commented on the rule, strenuously urging the agency reconsider its proposal, especially in light of the fact that the rule as proposed would cost significantly more to implement than FinCEN estimated, and thereby, would create a burden much greater than the overall benefit. As we discussed in our comment, NAFCU continues to hear from our members that current BSA/AML requirements are already a significant burden and cost to their operations. This proposal would only exacerbate the problem, particularly impacting

small credit unions.

In fact, since the agency received so many comments advancing similar claims, it became obligated to conduct additional research related to the proposal. Under the *Regulatory Flexibility Act* (RFA), and as determined by the Office of Management and Budget (OMB), an RIA and IRFA are required if the proposed rule will be an economically significant regulatory action and would have a significant economic impact on a substantial number of small entities.

In addition, while NAFCU appreciates FinCEN undertaking additional analysis of the proposal's burden on small institutions, NAFCU believes that the analysis is incomplete. Accordingly, we renew our call that FinCEN withdraw the proposal in favor of studying the issue until a viable, less burdensome rule is formulated.

Cost Burdens Need More Study

In its original comment, NAFCU argued that the proposed rule would have significant costs on credit unions beyond the time needed during the initial account opening. These costs would include, among other things, additional training, investments in technology, and coordination with third-party vendors. All of these require additional time and money, things that are increasingly scarce at small credit unions.

NAFCU is concerned that FinCEN's estimates and assumptions have been based on an extremely small snapshot of the industry. According to the agency's reports, FinCEN only consulted three small financial institutions when creating its cost and burden estimates. In light of the fact that the report acknowledges that this proposed rule would affect 13,000 small entities, we believe that the agency needs more time to adequately survey a statistically valid sample size.

Alternatives to the Proposed Rule Need More Study

In reviewing the agency's reports, NAFCU notes that FinCEN did not fully consider all alternatives suggested during the comment process. For example, in the RIA, the only alternative analyzed was considering different beneficial ownership thresholds, i.e., whether the agency should provide a 10 percent or 50 percent ownership threshold instead of the 25 percent threshold set out in the proposed rule. While NAFCU appreciates the agency studying the cost of one alternative to the proposal, we firmly believe there are additional alternatives that should be analyzed and assessed. NAFCU, as well as numerous other commenters, noted these alternatives would be less burdensome, but still achieve the agency's overarching goals.

For example, other governmental agencies, such as the IRS or state agencies, already collect the information that the agency would seek to collect from many of the legal entities included in this rule. NAFCU firmly believes that if the agency were to rely on that information, which is already being collected, small institutions such as credit unions

would not be burdened with duplicative requirements. Additionally, as many commenters have indicated, this rule's purpose might be more efficiently achieved if the agency would consider a risk-based approach, where a covered financial institution would only have to identify and verify beneficial owners of a legal entity if certain, high risk circumstances were present.

NAFCU believes that both these alternatives can achieve the desired result with less costly and adverse effects.

More time is needed for informed stakeholder comment

As NAFCU urged in a joint letter it sent to the agency on January 8, 2016, the agency should extend the deadline for comment. Both analyses rely heavily on intricate and expansive data, and as such, require detailed review by stakeholders and professionals that are not only in the best position to review such data, but would also be the most affected if the rule were finalized "as is."

Given that further analysis is required, a 30-day comment period was insufficient time for thorough review. Therefore, NAFCU asks the agency to give stakeholders more time to officially comment.

NAFCU appreciates the opportunity to share our thoughts on this proposed rule and its related reports. Should you have any questions or would like to discuss these issues further, please feel free to contact me at memancipator@nafcu.org or (703) 842-2249.

Sincerely,



Michael Emancipator
Senior Regulatory Affairs Counsel