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May 5, 2021

Policy Division  
Financial Crimes Enforcement Network  
P.O. Box 39  
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Re: Advance Notice of Proposed Rulemaking on Beneficial Ownership Information Reporting Requirements (RIN 1506-AB49; Docket Number FINCEN-2021-06922)

To Whom It May Concern:

The Credit Union National Association (CUNA) represents America's credit unions and their more than 120 million members. On behalf of our members, we are writing regarding the advance notice of proposed rulemaking (ANPRM) regarding reporting requirements for beneficial ownership information<sup>1</sup> under the Corporate Transparency Act (CTA).<sup>2</sup> Credit unions are highly supportive of the creation of the beneficial ownership database and believe it will greatly ease meeting customer due diligence obligations under the Bank Secrecy Act (BSA) and its implementing regulations.<sup>3</sup>

### **Background and General Comments**

The customer due diligence (CDD) rule was finalized by the Financial Crimes Enforcement Network (FinCEN)<sup>4</sup> with the goal of preventing criminals, kleptocrats, and other bad actors from anonymously accessing the U.S. financial system through the use of shell corporations and other corporate structures intended to obscure their ownership or interests.<sup>5</sup> To accomplish this goal, the CDD rule required financial institutions to collect information regarding the identification and verification of the beneficial owners of its legal entity customers.<sup>6</sup>

The collection of beneficial ownership information under the CDD Rule has many limitations. A legal entity must provide its beneficial ownership information to each individual financial institution it has a relationship with, and this information is not generally visible to law enforcement unless specifically obtained. FinCEN recognizes that the inherent difficulty in

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<sup>1</sup> Beneficial Ownership Information Reporting Requirements, 86 Federal Register 17557 (April 5, 2021).

<sup>2</sup> See National Defense Authorization Act for Fiscal Year 2021, Title LXIV (Public Law No. 116-283).

<sup>3</sup> See 31 C.F.R. §1010.230.

<sup>4</sup> See Customer Due Diligence Requirements for Financial Institutions, 81 FR 29397 (May 11, 2016).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

obtaining accurate, current beneficial ownership information is a fundamental and unmitigable risk in our financial system.

To address these concerns, Congress passed the CTA, which requires certain legal entity companies to submit beneficial ownership information directly to FinCEN, which will maintain that information in a secure, non-public database accessible by appropriate law enforcement agencies, federal regulatory authorities, and financial institutions subject to CDD requirements. CUNA applauds FinCEN for issuing this ANPRM to collect stakeholder feedback and encourages FinCEN to implement the CTA's provisions as soon as is possible.

Implementation of the CTA will establish a more efficient system for collecting beneficial ownership information for both reporting companies and financial institutions. It will also establish a more effective tool for law enforcement preventing criminal actors from accessing the U.S. financial system. CUNA offers the below responses to FinCEN's ANPRM in support of these goals. Where a particular question is being addressed, the number is stated in a footnote.

## **Definitions**

Regarding FinCEN's question on the definition of the terms "beneficial owner,"<sup>7</sup> "own," "control,"<sup>8</sup> and any other term which is defined in the BSA or its implementing regulations, FinCEN should do everything possible to align these definitions. Further, wherever possible, terms should be defined by cross-reference to existing law or regulatory definitions to ensure these remain aligned, incorporate existing guidance, and provide clarity in interpretation.

This alignment of definitions should extend to how FinCEN defines which organizations should report information. Entities such as trusts,<sup>9</sup> which are required to provide beneficial ownership information, should be included in the database. This will prevent confusion, streamline processes, and avoid "gaps" where beneficial ownership information may be required but financial institutions and legal entities customers may disagree or be unclear as to whether the information should be provided through FinCEN or not. If a financial institution believes that a legal entity should have provided information to FinCEN and the legal entity has not due to a lack of clarity in definitions, the financial institution may interpret this as a potentially suspicious red flag regarding the legal entity and decline to open an account. Further, FinCEN should consider allowing entities that are exempt from reporting to report voluntarily where practicable to further ease CDD obligations for financial institutions.

## **Reporting of Beneficial Ownership Information**

As with definitions and scope, FinCEN should require reporting companies to provide the same information<sup>10</sup> regarding beneficial owners that financial institutions are required to collect to complete their CDD obligations. Additionally, FinCEN should obtain information regarding

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<sup>7</sup> 86 FR at 17561-17562, Question 3(a).

<sup>8</sup> *Id.* at 17562, Question 3(b).

<sup>9</sup> *Id.*, Question 8.

<sup>10</sup> *Id.*, Question 10.

industry type and any applicable state licensing as confirming and supporting documentation.<sup>11</sup> Reporting companies should be required to certify that to their knowledge, all reported information is both true and complete and any supporting documentation is an unaltered representation of the original.<sup>12</sup>

### **Security and Use of Beneficial Ownership and Applicant Information**

Financial institution access to beneficial ownership information should be as simple and streamlined as possible. Rather than requiring reporting companies to affirmatively identify and pre-authorize financial institutions with whom FinCEN can share information, FinCEN should establish a consent-based process.<sup>13</sup> Reporting companies should confirm with FinCEN that their information can be shared with financial institutions categorically. This would reduce touchpoints between FinCEN and the reporting company and avoid limiting access to only those financial institutions a company was dealing with at its formation.

When a reporting company seeks to open an account with a financial institution, it should have the option to provide that financial institution with consent to obtain the beneficial ownership information directly from FinCEN, and to define the scope of use of the information within the boundaries permitted by the law and regulation.<sup>14</sup> The most basic scope should include use of the information to meet CDD requirements, but also for Customer Identification Program (CIP) verification and in meeting any other BSA reporting requirements, such as filing suspicious activity reports (SARs). Reporting companies should be permitted to further define the scope of the information at their option. For example, a reporting company may voluntarily choose to allow the information to be used for other customer identification purposes to establish additional hurdles against fraud or identity theft of the business or its owners. Alternatively, it may agree for the information to be used to determine field of membership qualification at a credit union simultaneously. This consent should be voluntary, defined in scope, and able to be withdrawn from the financial institution at any time.

Financial institutions that obtain consent should certify to FinCEN that they have the company's consent to obtain its beneficial ownership information and that the information will only be used for purposes permitted by the law and the scope of that consent. Having obtained consent and certified such to FinCEN, financial institutions should be permitted to directly query FinCEN's database for beneficial ownership information through a secure portal and receive a response immediately.<sup>15</sup> FinCEN should consider allowing reporting companies to affirmatively provide their FinCEN identifier with their consent, and allowing financial institutions to use that number to query the database. Information should be provided in a format that is both easy to read, machine readable, and retainable for recordkeeping purposes. It should include, at a minimum, the name of company, nature of business, and all beneficial owners to include each name, date of birth, unique identifying number, address, and percentage of ownership.

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<sup>11</sup> *Id.* at 17563, Question 23.

<sup>12</sup> *Id.*, Question 23(b).

<sup>13</sup> *Id.* at 17564, Question 35(b).

<sup>14</sup> *Id.*, Question 35(a).

<sup>15</sup> *Id.*, Question 35(c).

The current violations for the misuse of beneficial ownership information are sufficient and additional penalties are not necessary.<sup>16</sup> Individual authorized users of the database within financial institutions should go through an application process similar to that required for Information-Sharing. A legible note regarding the sensitivity and privacy of the information and penalty for disclosing it inappropriately should be placed on any read-out, along with identifying information for the authorized user who accessed it.

Notification of change in beneficial ownership statuses pulled from the FinCEN database should automatically be reported to financial institutions.<sup>17</sup> This is especially critical for those reporting companies that require federal or stated licenses, such as Money Service Business or Marijuana Related Businesses. A change in ownership may be a triggering event requiring a new risk assessment and increased monitoring. For example, at account opening and initial review a reporting business may be assessed as low risk; however, if a new beneficial owner lives in a high risk geographic area and runs another company involved with the sale of cannabis products, the financial institution may assess the reporting company as a higher risk for anti-money laundering (AML) activities and as such, would need to be monitored more often.

Once a record is queried and pulled, financial institutions should be permitted to opt in to automatic updates through the portal.<sup>18</sup> Email notifications that contain no private information but indicate that updates are available in the portal should be sent to a designated email address associated with the authorized user. In the event a reporting company withdraws its consent to access the FinCEN database from the financial institution or closes its account with the financial institution, the financial institution should have the ability to decline further updates on the reporting company. If a reporting company removes its permission for FinCEN to share beneficial ownership information with financial institutions categorically, FinCEN should provide notification to financial institutions that no further updates will be provided automatically.

### **Cost, Process, Outreach, and Partnership**

Without more information on the operation and function of the database, it is difficult to assess costs for smaller financial institutions.<sup>19</sup> It is critical that financial institutions of all sizes be included in the design and feedback process and in testing to ensure that the costs and resources associated with the database are not disproportionate for smaller credit unions. FinCEN should not charge a fee in association with use of the database.

CUNA urges FinCEN to work closely with the National Credit Union Administration to understand credit union obligations, examinations, and available technological support as it moves towards implementation of the database. Further, CUNA is happy to arrange a roundtable discussion between FinCEN and both small and large credit unions to further identify what would be most efficient and effective for their purposes.<sup>20</sup> In addition, FinCEN should consider an initial beta-testing period that involves institutions of various sizes and complexity to identify problems

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<sup>16</sup> *Id.*, Question 34.

<sup>17</sup> *Id.*, Question 36(a).

<sup>18</sup> *Id.*, Question 36(b)-(c).

<sup>19</sup> *Id.*, Question 39.

<sup>20</sup> *Id.*, Question 43.

in real time before a wider launch. As the database nears finalization, FinCEN should also offer trainings illustrating the operation of the database and use of the information for credit unions. CUNA would be happy to assist in this as well.

### **Conclusion**

On behalf of America's credit unions and their more than 120 million members, thank you for your consideration of this feedback and the needs of credit unions in this process. If you have questions or require additional information, please do not hesitate to contact me at (202) 503-7184 or [elaberge@cuna.coop](mailto:elaberge@cuna.coop).

Sincerely,

A handwritten signature in black ink that reads "E Young LaBerge". The signature is written in a cursive, flowing style.

Elizabeth M. Young LaBerge  
Senior Director of Advocacy & Counsel