



**America's
Credit Unions**

March 29, 2024

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

RE: Request for Comment Regarding Beneficial Ownership Information Requests (Docket Number FINCEN-2024-0002)

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) request for comment (RFC) on a proposed information collection regarding Beneficial Ownership Information (BOI) requests.¹ America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their nearly 140 million members nationwide. As provided below, we support the proposed process by which credit unions will provide certification in order to access the BOI database; the proposed certification, which is essentially a checkbox, is a streamlined approach that will be easy for credit unions to utilize.

General Comment

America's Credit Unions strongly supports FinCEN's efforts to track and investigate financial crimes involving money laundering and terrorist financing. Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike other financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to members in the form of lower interest rates on loans, higher dividends on deposits, and lower fees. Credit unions exist only to serve their members, and as a result, credit unions' interest in their members' financial well-being and advancing the communities they serve takes on paramount importance.

Compliance with anti-money laundering and countering the financing of terrorism (AML/CFT) rules and regulations is expensive and places a tremendous burden on credit unions. While larger banks and non-bank mortgage lenders can afford to absorb the significant regulatory and compliance costs from the AML/CFT framework, these requirements have made it significantly more difficult for credit unions to provide the affordable financial services credit union members depend on and deserve. Credit unions hope the BOI database established under the Corporate Transparency Act (CTA) will provide significant and important relief from the burden created by

¹ Beneficial Ownership Information Requests, 89 Fed. Reg. 5,995 (Jan. 30, 2024).

FinCEN's customer due diligence (CDD) Rule.² However, we are eager to review the details of the forthcoming proposal to revise the CDD rule in light of the CTA.

Certification Process

Regarding the process of requesting and obtaining BOI from the database, FinCEN has thus far provided little detail, including in the recently adopted BOI Access Rule.³ While this RFC provides some clarity on the certification element to requesting BOI from the database, the RFC notes that FinCEN intends to provide additional detail regarding the form and manner of BOI requests through "specific instructions and guidance."⁴ As the BOI database is now live, we urge FinCEN to release such instructions and guidance as soon as possible. Although credit unions and other financial institutions will not have access to the database until later this year, it is important that they have detailed information on the process now in order to make any necessary system updates and train staff.

As part of FinCEN's BOI Access Rule, financial institutions seeking access to the BOI database will need to provide a certification to FinCEN for each BOI request.⁵ The financial institution must certify that, among other things, it is requesting BOI from the database as part of its due diligence requirements.⁶ Along with the certification, financial institutions will also provide information by filling out data fields for each BOI request; these data fields require basic information, including company name and identifier type.

While the substance of the certification was determined in the BOI Access Rule, FinCEN has discretion in the manner in which it requires requesting financial institutions to provide the certification. We support the proposed Appendix regarding certification. Credit unions generally do not anticipate having issues completing the data fields. Further, the proposed certification, which is essentially a checkbox, is a streamlined approach that will be easy for credit unions to utilize. While we support a checkbox, it is unclear the degree to which such an approach will permit or encourage development in this space for a fintech or core processor to build systems to link to the database in order to pull in BOI information, similar to how credit reports and certain Office of Foreign Assets Control checks are handled. We ask FinCEN to be mindful of this in connection with the BOI database, as well as the upcoming CDD proposal; FinCEN should develop rules in a way that allows credit unions and other financial institutions to comply as efficiently as possible. Business accounts are already an intensive documentation process. Thus, any opportunity to avoid a manual data input function, particularly on a back-office compliance team that might already be under-resourced, could significantly reduce the compliance burden on credit unions.

² Customer Due Diligence Requirements for Financial Institutions, 81 Fed. Reg. 29,397 (May 11, 2016).

³ Beneficial Ownership Information Access and Safeguards, 88 Fed. Reg. 88,732 (Dec. 22, 2023).

⁴ *Supra* note 1, at 5,996.

⁵ *Supra* note 3.

⁶ *Supra* note 3, at 88,812.

Data Collection Burden Estimate

Since the certification requirement will place a reporting burden on impacted financial institutions, FinCEN is required under the Paperwork Reduction Act (PRA)⁷ to provide an estimate of the burden associated with submitting written certification.⁸ FinCEN estimates the per financial institution burden will be 94 hours annually.

Given that the burden estimate is an average time commitment among roughly 16,000 financial institutions, the estimate appears reasonable. While many, if not most, impacted credit unions will access the BOI database for CDD compliance purposes, the potential number of access requests—and thus certifications required—remains to be seen. Further, given that we are still awaiting a revised CDD rule, the frequency of access requests is even less clear. As required under the PRA, FinCEN will need to revisit this data collection in the future. While this RFC estimates a reporting burden of 94 hours annually for the first and subsequent years, we expect this estimate to change in the future when revisited by FinCEN under the PRA. Aside from its statutory mandate, we encourage FinCEN to work with the financial institutions that will be accessing the BOI database on a regular basis to better understand where pain points may exist and update the process as appropriate.

Conclusion

America's Credit Unions appreciates the opportunity comment on the process by which credit unions will provide certification in connection with accessing the BOI database. Should you have any questions or require any additional information, please contact Luke Martone, Senior Director of Advocacy & Counsel at LMartone@americascreditunions.org or (202) 508-6743.

Sincerely,



Luke Martone
Senior Director of Advocacy & Counsel

⁷ Public Law 104-13, 44 U.S.C. 3506(c)(2)(A).

⁸ *Supra* note 1, at 5,999.