



USET

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*Transmitted Electronically
to regulations.gov*

May 5, 2021

AnnaLou Tirol
Deputy Director
Policy Division
Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183

**Re: Docket No. FINCEN-2021-0005, FinCEN Advanced Notice of Proposed Rulemaking
on Implementation of the Corporate Transparency Act**

Dear Deputy Director Tirol,

On behalf of the United South and Eastern Tribes Sovereignty Protection Fund (USET SPF), we submit these comments in response to the Advanced Notice of Proposed Rulemaking (ANPRM) issued by the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) on April 5, 2021. The purpose of the ANPRM is to solicit input on questions regarding the implementation of the Corporate Transparency Act (CTA). The CTA was enacted under Title LXIV of the National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283) on January 1, 2021. The CTA requires reporting companies—such as corporations, limited liability companies (LLCs), and similar entities—to submit information to FinCEN about their beneficial owners as well as information about the persons who form or register those reporting companies. Although the goal of CTA is to stop nefarious acts of money laundering and terrorism financing, USET SPF has some concerns regarding the Act's impact on Tribal Nation sovereignty and the confidentiality of sensitive business development information, especially since many of our enterprises and businesses are established pursuant to Tribal law and under the purview of our governments.

USET Sovereignty Protection Fund (USET SPF) is a non-profit, inter-tribal organization advocating on behalf of thirty-three (33) federally recognized Tribal Nations from the Northeastern Woodlands to the Everglades and across the Gulf of Mexico.¹ USET SPF is dedicated to promoting, protecting, and

¹ USET SPF member Tribal Nations include: Alabama-Coushatta Tribe of Texas (TX), Aroostook Band of Micmac Indians (ME), Catawba Indian Nation (SC), Cayuga Nation (NY), Chickahominy Indian Tribe (VA), Chickahominy Indian Tribe—Eastern Division (VA), Chitimacha Tribe of Louisiana (LA), Coushatta Tribe of Louisiana (LA), Eastern Band of Cherokee Indians (NC), Houlton Band of Maliseet Indians (ME), Jena Band of Choctaw Indians (LA), Mashantucket Pequot Indian Tribe (CT), Mashpee Wampanoag Tribe (MA), Miccosukee Tribe of Indians of Florida (FL), Mississippi Band of Choctaw Indians (MS), Mohegan Tribe of Indians of Connecticut (CT), Monacan Indian Nation (VA), Nansemond Indian Nation (VA), Narragansett Indian Tribe (RI), Oneida Indian Nation (NY), Pamunkey Indian Tribe (VA), Passamaquoddy Tribe at Indian Township (ME), Passamaquoddy Tribe at Pleasant Point (ME), Penobscot Indian Nation (ME), Poarch Band of Creek Indians (AL), Rappahannock Tribe (VA), Saint Regis Mohawk Tribe (NY), Seminole Tribe of Florida (FL), Seneca Nation of Indians (NY), Shinnecock Indian Nation (NY),

advancing the inherent sovereign rights and authorities of Tribal Nations and in assisting its membership in dealing effectively with public policy issues.

CTA Reporting Requirements for Tribal Enterprises and Native Businesses Should be Developed in Consultation with Tribal Nations

Under P.L. 116-283, the CTA reporting requirements must be promulgated by January 1, 2022, with an effective date yet to be determined. The first Tribal consultation initiated by FinCEN on the CTA reporting requirements was held on April 21, 2021. The purpose of this consultation was to begin dialogue with Tribal Nations to learn more about Tribal-specific processes, issues, and concerns related to the CTA. These issues and concerns included topics such as Tribal business formation, registration, and ongoing compliance, the transmission of relevant data to and from FinCEN and any relevant technological issues that should be considered, and the best methods for future Tribal engagement and how best to communicate and disseminate information.

Moving forward, USET SPF recommends future national and regional consultations on these issues with Tribal Nations throughout 2021. The ANPRM posed an extensive 48 questions regarding definitions, reporting of beneficial ownership information, use of a FinCEN identifier, security and use of beneficial ownership and applicant information, and cost, process, outreach, and partnership on CTA requirements. Since the ANPRM included a robust set of questions and on a multitude of issues to structure CTA reporting requirements, we strongly recommend that future consultations continue to focus on receiving Tribal Nation input on the ANPRM questions, as well as dialogue on how this input is influencing FinCEN's thought process around CTA implementation. This will ensure that any issues and concerns regarding CTA reporting are thoroughly examined and receive substantive input from Tribal Nations. The April 21st consultation was held during a period where many Tribal Nations across the country were inundated with federal department and agency consultations on the January 26, 2021 Biden Presidential Memorandum on, "Tribal Consultation and Strengthening Nation-to-Nation Relationships". This memorandum reaffirmed the Administration's commitment to the November 6, 2000 Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (E.O 13175), and the November 5, 2009 Presidential Memorandum requiring federal agencies to prepare and periodically update plans to implement E.O. 13175. Due to the heightened level of federal consultation activity, Tribal Nations may not have had ample time to thoroughly review the questions and content of FinCEN's ANPRM.

Concerns with Confidentiality and Reporting Burdens on Tribal Enterprises and Native Businesses

USET SPF is concerned that implementation of the CTA reporting requirements may have a disproportionate impact and burden on Tribal enterprises and Native businesses, especially in the era of COVID-19. Treasury is aware of this issue, since excessive reporting burdens were placed on Tribal Nations accessing funds from the 2020 Coronavirus Aid, Relief, and Economic Security (CARES) Act to respond to the COVID-19 pandemic in our communities. In recognition of our sovereign status and the trust obligation, as well as the current strain on resources posed by COVID-19, Tribal Nations must not be subject to burdensome administrative requirements. Reporting should be limited to that which is required by law. While the promulgation of the CTA reporting requirements will not occur until January 2021, the ramifications of the COVID-19 pandemic on Tribal Nations could be expected to last for years to come. FinCEN should also offer technical assistance and training for Tribal Nations when we are required by law to comply with CTA reporting requirements.

Tunica-Biloxi Tribe of Louisiana (LA), Upper Mattaponi Indian Tribe (VA) and the Wampanoag Tribe of Gay Head (Aquinnah) (MA).

Additionally, further consultation and dialogue must occur on how FinCEN will ensure privacy and confidentiality of CTA reporting by Tribal enterprises and Native businesses. Section 6403 of the CTA requires FinCEN to maintain reported information in a confidential, secure, and non-public database, but it also authorizes FinCEN to disclose this information to certain government agencies and to financial institutions to assist in meeting their customer due diligence obligations. Question 34 in the ANPRM states that FinCEN is subject to strict security and privacy laws and regulations that will, presumably, protect the security and confidentiality of beneficial ownership and applicant information. Data security and privacy is of paramount concern to Tribal Nations, especially due to the data breach that occurred in April 2020 where sensitive, proprietary Tribal Nation information provided to Treasury and the Department of the Interior for CARES Act funding was publicly released. USET SPF recommends further consultation on how the agency intends to share reported information relevant to CTA requirements with other federal agencies, and to receive input from Tribal Nations to ensure appropriate protocols are established to ensure we are promptly notified and aware of such activities. Additionally, FinCEN should provide Tribal Nations with the ability to challenge and prevent the sharing of sensitive and proprietary CTA-reported information.

Information Sharing Should Occur via a Nation-to-Nation Model

Tribal Nations have a diplomatic relationship with the United States. These diplomatic relationships were initially established through treaties, the Constitution, court decisions, and Congressional statutes that acknowledged our sovereignty as nations. Through these legal mechanisms, Tribal Nations have an established Nation-to-Nation relationship with the U.S. and the U.S. has obligations to Tribal Nations. As sovereigns, we have established our own enterprises and businesses by enacting laws to create these economic drivers. These enterprises and businesses are accountable to our elected Tribal Leaders and the citizens they serve within our communities. As growing, evolving, and maturing governments, Tribal Nations have worked hard to strengthen and grow our economies. These actions have included the establishment of enterprises and businesses to create jobs and to provide for the overall health and wellness of our communities and citizenry. Due to continued failures in the delivery of trust and treaty obligations, these efforts have also been necessary to subsidize federal shortfalls in providing essential services to our people. Tribal corporations create economic opportunity at the direction of and in partnership with Tribal governments and are governed by the laws and regulations of our governments. Therefore, FinCEN should not position itself to demand information and data from Tribal governments and should, instead, work with Tribal Nations on a collaborative, Nation-to-Nation basis. FinCEN has a model and practice of working with foreign nations already in place and those should be extended to Tribal Nations. The United States would not demand confidential, sensitive reporting information from a foreign business entity, so it should not impose such requirements on Tribally chartered enterprises and business entities. Tribal Nations are sophisticated governments, and we are experienced with and have maintained our own auditing and reporting protocols and requirements, especially in the areas of self-governance compacts and agreements with the federal government. Additionally, many Tribal Nations operate gaming enterprises, which is one of the most regulated industries in the country and is already subject to substantial auditing and reporting requirements, including the Bank Secrecy Act.

Educate FinCEN Employees on Tribal Sovereignty and U.S.-Tribal Nation Relations

It is critically important that all employees of federal departments and agencies receive comprehensive training on working with and communicating effectively with Tribal Nations. Federal actions impact Tribal Nations and our citizens, and the development and implementation of the CTA reporting requirements will have some level of impact in Indian Country. FinCEN employees will be responsible for working with Tribal Nations and our enterprise and business entities and, therefore, should have an appropriate understanding of Tribal sovereignty and the federal trust obligation. This is an issue that permeates throughout the federal government where federal employees engage in decision-making that impacts our interests. This lack of

education and understanding regarding the fiduciary trust and treaty obligations contributes, at least in part, to federal failures to properly consult. USET SPF has long recommended mandatory training on U.S.-Tribal relations and the trust obligation for all federal employees. FinCEN should design and develop this training for its employees in consultation with Tribal Nations.

Conclusion

The CTA was enacted to prevent money laundering, terrorism financing, and other illicit activity. While USET SPF supports the goals of the CTA to prevent the financing and funding of nefarious activities, implementing the directives of this law should not come at the expense of protecting the private, sensitive, and proprietary information of Tribal enterprises and businesses established pursuant to the governing laws and regulations of Tribal Nations. Our Tribal enterprises and businesses were established to create jobs and stimulate economic growth within our communities due to the failure of the federal government to uphold its trust and treaty obligations to Tribal Nations. As FinCEN moves forward in developing the CTA reporting requirements, it must uphold our status as sovereign governments and honor the federal trust obligation in full. We look forward to continuing this dialogue and working with FinCEN to ensure CTA reporting requirements are developed with the best interests of Tribal Nation enterprises and businesses in mind. Should you have any questions or require further information, please contact Ms. Liz Malerba, USET SPF Director of Policy and Legislative Affairs, at LMalerba@usetinc.org or 615-838-5906.

Sincerely,



Kirk Francis
President



Kitcki A. Carroll
Executive Director