



May 5, 2021

Policy Division
Financial Crimes Enforcement Network
Docket: FINCEN–2021–0005
P.O. Box 39
Vienna, VA 22183

Re: FINCEN–2021–0005 (RIN 1506–AB49)
Comments on Corporate Transparency Act

Dear Sir/Madam:

On behalf of the General Aviation Manufacturers Association (GAMA) and the National Business Aviation Association (NBAA), thank you for the opportunity to comment on the implementation of the Corporate Transparency Act (CTA), enacted into law as part of the Fiscal Year 2021 National Defense Authorization Act. Our associations represent operators, manufacturers, financing providers, maintainers, and service providers of general aviation aircraft. This segment of aviation, which includes all operations other than the scheduled commercial airlines and military, supports 1.2 million jobs and \$247 billion in economic impact.

Our associations fully support the goals of the CTA and look forward to working with FinCEN on the implementation of policies and procedures for reporting companies to submit information on their beneficial owners. For corporate and industrial security reasons, it is critical that beneficial ownership information is maintained in a confidential, secure, and non-public database. We trust that FinCEN will keep data security at the forefront as this system is developed.

Engagement with General Aviation

Often, general aviation aircraft are owned in special purpose entities, such as LLCs, for reasons including compliance with Federal Aviation Administration (FAA) regulations. For example, because the FAA strictly limits compensation for flights operated under non-commercial rules (i.e., 14 CFR Part 91), companies often utilize leasing structures including LLCs to share aircraft use and costs across related companies. For this and additional valid business reasons, LLCs and similar structures are common in the aviation industry. With the frequent use of these structures in our industry, the aviation community should be included as a unique stakeholder as the development of regulations to implement the CTA continues.

In addition, 85% of companies that utilize general aviation aircraft are small and mid-sized businesses. Your direct outreach to our community through groups like GAMA and NBAA will be critical as final regulations are implemented to ensure awareness and understanding. Adequate notification and transition periods to comply with the final reporting requirements will also be necessary, particularly for entities unfamiliar with reporting requirements under the CTA and engagement with FinCEN.

Coordination with FAA

All U.S. civil aircraft must be registered with the FAA in accordance with FAA regulations. An aircraft may not be operated unless it is properly registered, and the registration certificate is on board the aircraft while it is being operated. The FAA's Aircraft Registry collects the information necessary to maintain the record for all U.S. civil aircraft. Each aircraft record consists of information about the registered owner of the aircraft, information about recorded aircraft security interests, and information concerning aircraft airworthiness.

Currently, the FAA is working on the Civil Aviation Registry Electronic Services (CARES) initiative to enhance registration services and comply with requirements from the FAA Reauthorization Act of 2018 (P.L. 115-254). In addition to creating a web-based service to register all U.S. aircraft, we understand that the system will require "Ultimate Beneficial Owner" (UBO) information at the time of registration.

With both the FinCEN and FAA systems under development, coordination between the agencies will be essential to prevent conflicting or duplicative reporting requirements for UBO information. For example, if the FAA and FINCEN have different definitions of a UBO for reporting purposes, this could lead to substantial confusion.

Use of Trusts in Aviation

The Advanced Notice of Proposed Rulemaking (ANPRM) references trusts, which play a critical role in general aviation (i.e., Question #8). The types of trusts used in the aviation industry range from common law trusts to business and statutory trusts created under state law and registered by a filing with a secretary of state or similar office. Since these different types of trusts all serve the same purposes (i.e., compliance with FAA aircraft registration requirements and aircraft lease or financing structuring), a consistent standard should be applied regardless of whether aviation trusts are not exempt from the FinCEN reporting requirements. Trusts used in connection with the registration of aircraft on the FAA registry are reviewed by the FAA, and trustees have specific obligations to maintain and provide information for law enforcement and other governmental purposes. See *FAA Notice, Policy Clarification for the Registration of Aircraft to U.S. Citizen Trustees in Situations Involving Non-U.S. Citizen Trustees and Beneficiaries*, 78 Fed. Reg. 36412 (June 18, 2013).

Additionally, there is no logical reason why a common law trust established for aviation purposes would be required to only report on the FAA's platform, but a business or statutory trust, a corporation, or an LLC set up for precisely the same purpose would be required to report on both the FinCEN and the FAA platforms. To address these potential challenges and ensure consistent standards that facilitate compliance, coordination between FAA and FinCEN is essential.

If a trust is required to report in the FinCEN system and the trustee acts as an applicant, it is important to clarify what level of reliance the trustee can place on the ownership and control information provided by the trustor and its representatives. To allow trustees to fulfill their obligations under FinCEN and anti-money laundering (AML) requirements and not incur unreasonable risk, a trustee acting as an applicant for a trust should be able to act in reasonable reliance upon the information provided by the settlor or beneficiary consistent with the Bank Secrecy Act and current AML rules.

Voluntary Release of FINCEN Information by Reporting Company to Non-Financial Institutions

The ANPRM appears to envision that in the private sector, only financial institutions subject to customer due diligence (CDD) rules will have access to the UBO information collected. GAMA and NBAA concur that the ability of non-governmental entities to access such information without the express consent of the Reporting Company should be limited to protect the security and privacy of that information.

U.S. aviation-related companies including manufacturers, leasing companies, trust companies, and escrow agents are keenly aware of the risk that customers may use special purpose entities to disguise the true ownership of aircraft assets by criminal elements or sanctioned persons particularly given the international use of aircraft. Therefore, many aviation entities have established robust customer due-diligence protocols that require customers to disclose UBO information, whether or not they are regulated under the CDD rules. For example, both banks and non-banks engage in aircraft leasing and face the same risks when leasing aircraft. Similarly, both banks and non-banks serve as trustees to hold title to aircraft for beneficial owners, both for large commercial aircraft and general aviation aircraft. In many cases, these parties conduct diligence, have similar Know Your Customer (KYC) and AML procedures, and, for trustees, have similar reporting responsibilities under FAA guidance as discussed above, and they would be at a disadvantage if they were not afforded equivalent access to the FinCEN system as financial institution trustees.

We therefore request that FinCEN consider incorporating into the framework a mechanism whereby the Reporting Company itself can either: (i) request a copy of the beneficial ownership information be sent electronically to a specified entity (e-mail address) that is not a financial institution; or (ii) allow the Reporting Company itself to request a copy of such information in a form that is secure and up to date (e.g., a secure document with a current date generated by the FinCEN system).

There is precedent for this type of official document. For example, many state registries will, upon request, provide a "certificate of good standing" in a form that can be relied on by counter-parties for financial or other due diligence purposes. FinCEN should have clear language on any report so generated regarding the limitations of using such information for customer due diligence only.

Thank you for considering our comments and input from the aviation industry as you work to implement the CTA. Both GAMA and NBAA look forward to continuing to engage in the effort; please contact us with any questions.

Sincerely,



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