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**National Association of Federally-Insured Credit Unions**

November 13, 2020

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

**RE: Anti-Money Laundering Program Effectiveness  
(Docket No.: FINCEN-2020-0011; RIN No.: 1506-AB44)**

Dear Sir or Madam:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) advanced notice of proposed rulemaking regarding anti-money laundering (AML) program effectiveness. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 122 million consumers with personal and small business financial service products. We appreciate FinCEN's commitment to safeguarding our financial system and the proposed changes with the goal of upgrading and modernizing the national AML regime. NAFCU supports FinCEN defining an overall "effective and reasonably" designed AML program, including the explicit requirement for a risk-assessment. However, the risk-assessment should not require national AML priorities due to the increased compliance burdens, misalignment between the proposed timing and current risk-assessment review practices, and examination concerns. In addition to defining an effective and reasonably designed AML program, FinCEN should consider changes to existing mechanisms, such as the information-sharing programs, suspicious activity reports (SARs), and currency transaction reports (CTRs) to increase overall AML effectiveness.

**General Comments**

Since the passage of the *Currency and Foreign Transactions Reporting Act* (commonly referred to as the *Bank Secrecy Act* (BSA)), NAFCU members continue to experience evolving threats of illicit finance, money laundering, terrorist financing, and related financial crimes. These include threats that the BSA could not contemplate at the time of its inception, thus necessitating a call for modernization to ensure financial institutions identify and mitigate evolving threats. Credit unions continue to play an important role in identifying and mitigating risks to our financial system. However, BSA/AML compliance continues to be a large source of compliance burden. Credit unions cannot continue to spend massive amounts of money on compliance resources that are not assisting in the overall effectiveness of the AML regime.

According to NAFCU's 2020 *Federal Reserve Meeting Survey*, over 52 percent of respondents expect to increase the number of full-time equivalent staff members devoted to BSA/AML

compliance. This represents a 20 percent increase from last year and will likely continue to grow, as compliance becomes more intricate. FinCEN must make every effort to reduce burdensome compliance requirements deemed ineffective, unnecessary, or no longer helpful in fulfilling the BSA's stated purpose. NAFCU appreciates FinCEN's recent efforts to ease compliance burdens including the guidance on entering collaborative arrangements to share BSA resources. NAFCU encourages FinCEN to continue these efforts in reducing compliance burdens.

### **NAFCU Supports FinCEN Defining an Effective and Reasonably Designed Program for AML Effectiveness**

NAFCU generally agrees with FinCEN defining an effective and reasonably designed program which includes a risk-assessment as an explicit regulatory requirement for all types of financial institutions; however, the proposed definition causes concerns with the inclusion of the national AML priorities and the ambiguous nature of what information constitutes a high degree of usefulness. The ANPR seeks to define an "effective and reasonably" designed program as one that identifies risks consistent with both the institution's risk profile and the national AML priorities; assures and monitors compliance with recordkeeping and reporting requirements; and provides information with a high degree of usefulness.

Although the regulations do not currently require a risk-assessment, most credit unions conduct risk-assessments as recommended in both FinCEN and the National Credit Union Administration's (NCUA) guidance. Moreover, the Federal Financial Institutions Examination Council (FFIEC) BSA manual recommends use of a risk-assessment as a component of a well-functioning BSA/AML compliance program. The ANPR suggests a risk-assessment that includes the identification and analysis of risks posed, accounting for the credit unions' products, services, customers, and geographic location. The suggested risk factors are consistent with current credit unions practices. At this time, FinCEN should not expand the list of risk factors to require factors that may not be relevant to every credit union, leaving flexibility for the determination of unique risk factors posed. The decision to include other risk factors in the risk-assessment is best left to the individual credit union and FinCEN should not create standards that may not be helpful to every institution or create additional burdens.

#### *National AML Priorities*

It is understandable that FinCEN wishes to enumerate certain national AML priorities to increase overall effectiveness. However, FinCEN must be cognizant of the negative impacts on smaller credit unions by requiring them to include the priorities in their risk-assessments. Requiring national AML priorities increases compliance burdens by continuing to layer new priorities on previous priorities, and creates a misalignment between the proposed timing and existing risk-assessment review practices. NAFCU is not against FinCEN setting national AML priorities to assist with identifying and reporting emerging risks; however, NAFCU does not recommend requiring integration of these into the risk-assessment at this time.

The proposal suggests that national AML priorities will be based on the broader priorities established by the National Illicit Finance Strategy as determined by the Secretary of the U.S. Department of the Treasury, in consultation with other agencies. National priorities may be based on emerging risks identified in FinCEN Advisories. Risks to credit unions are not created equal, so requiring a risk-assessment that includes national AML priorities does not necessarily mean that it is a risk faced by every institution. As FinCEN and the other federal banking regulators have highlighted in previous supervisory guidance, the focus and complexity of financial institutions varies, which creates the corresponding unique risk profile. Credit unions, to some degree, integrate national AML priorities in their overall BSA/AML program. This is especially true for larger and more complex institutions who must undertake more comprehensive risk-assessments.

Inclusion of the national AML priorities may have a layering effect on overall BSA/AML compliance, whereby credit unions will continue to receive new priorities every two years and these priorities continue to layer on those previously issued. It is unclear whether the previous priorities expire with the issuance of new national AML priorities. If some continue to be relevant, it appears that they continue to be mandatory as part of the risk-assessment. This creates a trickle-down effect on compliance practices, ultimately resulting in increased burden and associated costs. Although it is not FinCEN's intent to place any significant additional burdens on compliance, the inclusion of the national AML priorities will impact the onboarding of new accounts and ongoing customer due diligence (CDD) analysis. Credit unions need to know expectations at the outset to conduct their customer identification program (CIP), CDD, and beneficial ownership analysis. As noted in the proposal, the inclusion of the priorities will require updates to a credit unions' policies and procedures.

Additionally, the misalignment of the priorities schedule and risk-assessment review is problematic. Currently, credit unions conduct risk-assessments every 12-18 months and have operated under this review model for some time. There is no "bright line" rule for the review of a risk-assessment; however, the FFIEC BSA manual also suggests a 12-18-month review. Given the national AML priorities will be determined by the Director every two years, this may create additional work for compliance departments operating under an 18-month review cycle. There is less of an impact on credit unions that review and update their risk-assessment every 12 months, as annual reviews can capture the national priorities. Again, FinCEN must account for this proposed misalignment. Should FinCEN ultimately decide to publish national AML priorities, these should be provided on a yearly basis so they can be incorporated into annual reviews. Additionally, once these priorities are in place it will take credit unions some time to adjust their current practices to account for newly identified risks.

The proposal is silent as to whether the inclusion of the priorities would require mandatory compliance as of publication, or if there will be an implementation period permitted for adjustment or a later compliance deadline. Immediate compliance will likely be burdensome and difficult, as credit unions need to adjust policies, procedures, and train staff. Moreover, credit unions may need to internally shift staff to assist with complying with the additional national AML priorities. FinCEN should consider allowing an implementation period or later compliance deadline to allow credit unions to adjust to new compliance requirements.

Finally, the inclusion of national AML priorities as part of the risk-assessment may cause examination concerns. According to NAFCU's November 2019 *Economic & CU Monitor Survey*, over 64 percent of respondents' report that the focus of their examination is often based on BSA/AML compliance. Again, these priorities may lead to concerns regarding examiner subjectivity and calling into question the extent to which a credit union correctly incorporates national AML priorities. To minimize examination issues and ensure consistency in the examination process, FinCEN should provide a template risk-assessment for credit unions to use which, when utilized, provides some degree of a safe harbor for compliance. Without a template or guidance, there can be disagreements with regulators regarding the content and scope of compliance requirements.

### *High Degree of Usefulness*

A statutory purpose of the BSA is to provide information with a high degree of usefulness to government authorities. FinCEN has the statutory authority to require financial institutions to keep records and file reports that the Director determines have a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism."<sup>1</sup> The proposal would explicitly define this goal and require credit unions to provide information with a high degree of usefulness to government authorities consistent with both the credit union's risk-assessment and the risks communicated as national AML priorities; however, it is unclear how the ANPR defines information with a "high degree of usefulness."

The ANPR states that collaborative efforts between credit unions and Federal, State, and local law enforcement may provide information with a high degree of usefulness, as well as BSA reporting that address priority threats to the U.S. financial system. This seems to place an emphasis on BSA reporting. Given the unclear definition, credit unions are concerned about heightened examination subjectivity as to what constitutes a high degree of usefulness. Consistency among examiners for BSA compliance continues to be a priority for credit unions. Codifying the statutory goal of the BSA is reasonable; however, FinCEN needs to define what reports constitute a high degree of usefulness or provide a framework for credit unions and examiners to follow.

### **FinCEN Should Consider Additional Mechanisms to Increase Effectiveness**

Defining an effective and reasonably designed AML program is an appropriate mechanism to achieve increased overall effectiveness, but there are additional mechanisms that can help further this goal. Leveraging existing mechanisms, such as the information-sharing programs and BSA reporting can also increase overall effectiveness with additional amendments.

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<sup>1</sup> See 31 U.S.C. 5311.

### *Information Sharing Programs*

NAFCU agrees with the Bank Secrecy Act Advisory Group's (BSAAG) recommendation to enhance information-sharing among financial institutions, regulators, and law enforcement through partnerships and other existing mechanisms as it is a key component of an effective BSA/AML program. The ability to look at more internal and external information for multiple purposes including fraud detection, AML, and sanctions, and share that information across both the public and private sector will enable credit unions to carry out the intent of the BSA more effectively.

NAFCU members recognize that the 314(a) program has practical utility in combatting money laundering and terrorist financing. FinCEN's regulations state that each law enforcement agency seeking information through the 314(a) program should include "enough specific identifiers, such as date of birth, address, and social security number that would permit a financial institution to differentiate between common or similar names."<sup>2</sup> Often times, credit unions are only given a common name, which creates difficulties in reviewing member records and results in false positives, negating the intent of the information-sharing mechanism. Law enforcement should make every effort to provide all the information required for CIP purposes. Also, NAFCU encourages FinCEN to ensure that law enforcement agencies can efficiently use this important information-sharing channel.

The voluntary 314(b) information-sharing program is an invaluable tool for credit unions, but FinCEN can enhance the utility of this mechanism by expanding the scope to allow sharing information about fraud. Currently, the regulations limit credit unions to sharing information about fraud in situations of a money laundering scheme or terrorist financing. Fraudulent activity has increased exponentially in recent years and credit unions continue to be victims of fraud. However, fraud can often evolve or include a broader money laundering scheme. According to NAFCU's 2020 *Federal Reserve Meeting Survey*, credit unions have seen a 74 percent increase in check fraud and an 89 percent increase in online or "card not present" fraud. An expanded information-sharing scope would lead to lower losses suffered and increase the chances of identifying suspects. Additionally, a more robust information-sharing program would likely increase voluntary utilization by credit unions. NAFCU recommends that FinCEN amend the existing information-sharing programs to increase the overall effectiveness of the AML regime.

### *SAR Reform*

At the outset, credit unions want to ensure that applicable and timely information is provided to assist law enforcement and FinCEN; however, updates to the current SAR reporting structure can significantly reduce compliance burdens while ensuring information with a high degree of usefulness is still provided to law enforcement. SAR reporting plays a critical role in carrying out the intent of the BSA. NAFCU agrees with the BSAAG's recommendation supporting the possibility of a streamlined SAR for continuing activity. Adoption of a simplified SAR form for

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<sup>2</sup> See 31 C.F.R. 1010.520(b)(1).

the purposes of continuous SAR filings will reduce compliance burdens as the initial SAR filing provides all the necessary information. This minimizes duplicative efforts for credit unions. Credit unions continue to file defensive SARs and that amount has increased more recently. Credit unions report that in 2019, they filed over 48 percent more defensive SARs in the past five years. As the number of SAR filings increase, a simplification of the continuous filings would provide a lot of relief.

Additionally, NAFCU has long supported options for FinCEN and law enforcement to provide more feedback to credit unions related to reports filed. Often, credit unions file a SAR and receive no feedback from FinCEN or law enforcement. Nor does the E-filing system acknowledge receipt or acceptance of a SAR filing. The BSAAG correctly also recommended assessing options for FinCEN and law enforcement to provide more feedback to financial institutions related to the use and utility of BSA reports. NAFCU asks that FinCEN assess options available that open the line of communication, while safeguarding SAR information and preserving the integrity of any possible investigation.

Further modernization of the SAR form to reduce redundancies will assist in reducing burdens but remain effective and useful for end users. This includes a reduction in repetitive “check-box” options. Given that credit unions spend most of their time filing out the narrative field, it would help save time to complete by reducing the confusing or repetitive check-box options. According to NAFCU’s November 2019 *Economic & CU Monitor Survey*, over 59 percent of credit unions reported that Part V, the narrative explanation, needs the most revision or modification.

Lastly, modernization of SAR reporting should include streamlining the E-filing submission system to allow for more auto-fill features. Auto-fill fields will have long-term impacts in terms of reducing compliance efforts while effectively communicating pertinent information. NAFCU supports FinCEN’s BSA Value project in helping determine the usefulness of information from key fields and encourages the removal of redundant fields that are no longer providing value to the filer or the end user.

### *CTR Reform*

Modernization of overall AML effectiveness should include increased thresholds for CTR reporting. NAFCU has long supported a CTR threshold increase or indexing to inflation to better capture suspicious transactions. A higher CTR threshold would mean fewer unnecessary filings for legitimate cash transactions and would allow credit unions to allocate resources to higher-risk priorities or allow more investments in technology and training. In addition, FinCEN should provide a model CTR exemption form to simplify and streamline the renewal process. NAFCU has long supported legislative efforts to increase CTR thresholds, including *H.R. 2513*, the *Corporate Transparency Act*, which was amended to include the *COUNTER Act* and indexes the CTR threshold to inflation. NAFCU asks that FinCEN support legislative efforts such as *H.R. 2513*, and the BSAAG’s recommendation for the potential automation for high-frequency, low-complexity CTRs.

## Conclusion

NAFCU appreciates the opportunity to share our members' views on this matter. NAFCU supports FinCEN defining an overall “effective and reasonably” designed AML program, including the explicit requirement for a risk-assessment. However, the risk-assessment should not require national AML priorities as this would likely lead to increased compliance burdens, misalignment of the proposed timing with the current risk-assessment review practices, and examination concerns. FinCEN must also define what information has a high degree of usefulness to minimize examination issues.

Should FinCEN require national AML priorities as part of the risk-assessment, then FinCEN should provide a template risk-assessment, the priorities should be established on a yearly basis and explicitly state when they expire. Additionally, NAFCU requests that FinCEN provide an implementation period or compliance date for credit unions to incorporate the priorities. In addition to defining an effective and reasonably designed AML program, FinCEN should consider changes to existing mechanisms, such as information-sharing programs, SARs, and CTRs. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or [kschafer@nafcu.org](mailto:kschafer@nafcu.org).

Sincerely,



Kaley Schafer  
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