



3138 10th Street North
Arlington, VA 22201-2149
703.522.4770 | 800.336.4644
f: 703.524.1082
nafcu@nafcu.org | nafcu.org

National Association of Federally-Insured Credit Unions

February 11, 2022

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

**RE: Review of Bank Secrecy Act Regulations and Guidance (Docket No.:
FINCEN-2021-0008)**

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) request for information (RFI) regarding the review of *Bank Secrecy Act* (BSA) regulations and guidance. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 127 million consumers with personal and small business financial service products. NAFCU appreciates FinCEN's efforts to streamline, modernize, and update the anti-money laundering (AML)/countering the financing of terrorism (CFT) framework. NAFCU asks FinCEN to provide additional guidance related to digital assets, government fraud, and cyber-enabled crime. In addition, NAFCU urges FinCEN to modernize and streamline the current Suspicious Activity Reports (SARs) and Currency Transactions Reports (CTRs) by increasing the reporting thresholds and removing any redundant or obsolete provisions. Lastly, NAFCU encourages FinCEN to explore opportunities to provide feedback to credit unions regarding filed reports. NAFCU understands that additional reviews will be conducted pursuant to various provisions of the *AML Act of 2020* (AMLA), and we appreciate this comprehensive review of all BSA regulations and guidance.

General Comments

Section 6216 of the AMLA requires a review of the BSA/AML regulations, and the goal of the final report is to ensure that appropriate safeguards are in place to protect the financial system against threats of money laundering and terrorist financing; to ensure that the BSA's required reports and records are highly useful; and to identify regulations and guidance that are outdated, redundant, or do not promote a risk-based framework for financial institutions.

As a threshold matter, regulatory BSA/AML compliance burdens continue to increase and modernization and streamlining existing guidance and regulations, even minor changes, may decrease unnecessary regulatory compliance burdens. According to NAFCU's *2021 Federal Reserve Meeting Survey*, over 79 percent of respondents expect the burdens to increase over the

next five years. This may be due, in part, to the legislative changes that will be taking place with the passage of the AMLA. Evidence that additional compliance requirements should be countered with a reduction in unnecessary, antiquated requirements. In addition, a separate 2021 NAFCU survey identified that 50 percent of respondents reported that the number of staff responsible for BSA compliance has increased in the last five years. Given the increase in compliance burdens, as well as anticipated compliance burdens, NAFCU urges FinCEN to streamline and update BSA/AML rules to carry out the intent of the BSA while also affording some regulatory relief.

Safeguards to protect the financial system from threats

The first purpose of the required report is to ensure the appropriate safeguards are in place to protect the financial system from threats to national security, including money laundering and the financing of terrorism and proliferation, posed by various forms of financial crimes. NAFCU believes that there are threats and risks that are not sufficiently addressed and require additional FinCEN guidance .

Digital Assets, Convertible Virtual Currency (CVC)

As CVC, as that term is defined by FinCEN and includes the terms cryptocurrency and digital assets, becomes more prevalent in our financial system, it is prone to becoming a target for suspicious activity and the facilitation of illicit finance. FinCEN has previously indicated that the agency views itself as “technology neutral” and regulates the activity of money transmission and not just certain types of transactions. NAFCU supports this approach and encourages FinCEN to maintain this viewpoint. As FinCEN and other federal agencies work together on an initial government-wide strategy regarding digital assets regulation and supervision, it is important that FinCEN maintain their technology neutral stance. Guidance and Advisories thus far have focused on other actors in the CVC space and their related BSA/AML obligations, in part to close the existing regulatory gap. Credit unions continue to abide by BSA/AML regulations and rules as their members begin to conduct transactions with exchanges and purchase digital assets/CVC and are experiencing an increasing number of wire transfer and Automated Clearing House (ACH) transactions involving CVC. Risks associated with digital assets/CVC remain a significant concern until FinCEN provides additional transparency regarding the monitoring of these transactions.

Currently, the National Credit Union Administration (NCUA) is working on a digital assets rulemaking; however, both the regulatory and supervisory expectations remain unclear and credit unions remain concerned about potential examiner scrutiny. Some credit unions have begun to receive some scrutiny regarding CVC transactions from examiners. According to NAFCU’s October 2021 *Economic & CU Monitor Survey*, about 48 percent of respondents reported some degree of scrutiny from an examiner regarding CVC transactions, ranging from a minimal level to moderate level of scrutiny. Additional guidance for financial institutions will assist in mitigating the “de-risking” of member accounts that have transactions involving CVC. FinCEN has listed cryptocurrency as a national priority; thus, it is important that financial institutions have sufficient guidance regarding integration of this priority into their risk assessments.

Government Fraud

Credit unions are seeing an increasing amount of fraud related to government programs and benefits. Credit unions and financial institutions are conduits for various financial benefits that government programs provide and there are risks of exploitation of these programs by illicit actors. Additionally, FinCEN provided several Advisories during the COVID-19 pandemic related to fraud stemming from pandemic-related programs such as Economic Impact Payments (EIPs) and the Paycheck Protection Program (PPP). These included the Advisories related to COVID-19 medical fraud, imposter scams, cyber-enabled crime, and defrauding of unemployment insurance systems. These Advisories are specific to the COVID-19 pandemic and ask for financial institutions to denote this in various SAR fields. Prior to the pandemic, credit unions were regularly experiencing fraud involving government programs such as Medicare and Social Security benefits. Credit unions want to ensure that they are providing all the necessary information to FinCEN that may assist in any future governmental fraud investigations. FinCEN should consider providing an advisory covering fraud generally related to government programs and benefits.

Cyber Events/Cyber-Enabled Crimes

As cyber-related crime continues to increase, it is important that FinCEN provide updated guidance in this area. Regulators routinely scrutinize the handling of cyber-related events and crimes, including any necessary SAR filings. Although FinCEN provided an Advisory in 2016, additional and newer fact patterns are necessary as cyber-related crime has evolved since publication of the Advisory.¹ Specifically, it would be useful to better understand the distinction between cyber-enabled crime and cyber-events. For instance, does FinCEN expect an account takeover to be considered a cyber-enabled crime? As technology advances, so do cyber-related crimes; without better guidance in this area, the likely trend will be over-reporting for fear of regulatory scrutiny, which will likely be unhelpful to law enforcement and overly burdensome on the financial institutions. NAFCU strongly urges FinCEN to update the 2016 Advisory to reflect more current fact patterns and examples.

NAFCU appreciates FinCEN's commitment to providing guidance on emerging threats and trends but urges the agency to include search functionality to the "Resources" tab on its website so financial institutions may access advisories, notices, bulletins, and fact sheets by topic. In addition, FinCEN should consider adding a disclaimer that all advisories, notices, bulletins, and fact sheets not withdrawn are still valid and in place.

Reports and records that are highly useful in countering financial crime

The second objective of Section 6216 of the AMLA is to ensure that the regulations and guidance implementing the BSA continue to require reports or records that are highly useful in countering financial crime. Given the complexity of transactions and evolving threats, credit unions are

¹ https://www.fincen.gov/sites/default/files/advisory/2016-10-25/Cyber%20Threats%20Advisory%20-%20FINAL%20508_2.pdf

finding that they are filing required reports more often than they did previously. In NAFCU's July 2021 *Economic & CU Monitor Survey*, 65 percent of respondents reported that the number of SARs has slightly or significantly increased in the past five years. In addition, 79 percent of respondents reported that the number of Currency Transaction Reports (CTRs) filed in the past five years has slightly or significantly increased. NAFCU encourages FinCEN to conduct ongoing studies of the usefulness of required reports to determine necessary changes. Previously, FinCEN embarked on the BSA Value Project to review information received and communicate its value. NAFCU urges FinCEN to complete this project and communicate the findings.

Modernization of required reporting thresholds

NAFCU has long encouraged FinCEN to explore a higher reporting threshold for SAR and CTR filings, as the thresholds have remained unchanged for decades. Modernizing and increasing the required reporting thresholds is the highest priority of NAFCU members in producing reports and records that are highly useful in countering financial crime. NAFCU members remain vigilant in combatting financial crime; however, FinCEN must review the thresholds to determine if the usefulness of such reporting could remain high even with increased reporting thresholds. NAFCU was encouraged to see several provisions of the AMLA require a review of the reporting thresholds. Section 6205 requires a review of the thresholds to determine potential changes and requires regular reporting to Congress. It is important that FinCEN prioritize the AMLA's mandatory review of reporting thresholds and continue to review the thresholds and determine whether changes are warranted given the rise in BSA/AML compliance costs and evolving threats to the financial system. As member behavior has changed since the implementation of the thresholds, it important to set thresholds that accurately capture information useful to law enforcement. Behavior that was once thought of as suspicious has since become common transaction practices, such as electronic funds transfers. NAFCU urges FinCEN to increase the reporting thresholds for both SARs and CTRs and tie them to inflation so that the thresholds may automatically adjust. NAFCU urges FinCEN to study the impacts of tying the thresholds to inflation and how often the thresholds would adjust.

Modernization of the CTR and SAR forms

NAFCU members believe updates to the forms and reporting structure can significantly reduce compliance burdens while ensuring information with a high degree of usefulness is still provided to law enforcement.

NAFCU has previously agreed with the BSAAG's recommendation supporting the possibility of a streamlined SAR for continuing activity. Moreover, NAFCU looks forward to FinCEN implementing Sections 6202 and 6204 of the AMLA which seek to establish easier and potentially automated processes for the filing of noncomplex SARs and requires a review of the SAR reporting requirements to determine adjustments to the filing of continuous SARs. Adoption of a simplified SAR form for the purposes of continuous SAR filings will reduce compliance burdens as the necessary information is provided in the initial SAR filing. This minimizes duplicative efforts by credit unions.

In addition, NAFCU urges FinCEN to reduce SAR form redundancies, including repetitive “checkbox” options, as well as removing boxes that are obsolete. For example, boxes 66 and 88 both ask for the internal control/file number, ultimately asking for duplicative information. Boxes 56 and 68 provide choices that are not well defined in the instructions and do not seem relevant. These are just a few examples of minor adjustments to the SAR form to remove redundancies and obsolete fields. Removal of redundant fields will help to improve SAR quality, reduce compliance burdens, and reduce audit and exam findings related to technical SAR completion errors. FinCEN should also explore whether the optional fields are necessary, should be made mandatory, or whether the information can be sufficiently captured in the narrative section.

FinCEN should consider the addition of peer to peer (P2P) payments and digital assets/CVC to boxes 45 and/or 46 to reflect the increase in these types of transactions. These additions would provide highly useful to FinCEN and law enforcement, as well as other financial institutions that look to publicly available SAR trend data. In addition, FinCEN should consider modifying the boxes where multiple suspects are involved. For example, the SAR form should include the option to check a box when multiple suspects are involved (e.g., more than 3 suspects), and once checked it populates the corresponding boxes, soliciting additional information for this scenario. This will shorten the amount of time to complete a SAR.

Modernization of SAR reporting should include streamlining the e-filing submission system to allow for more auto-fill features. For example, each SAR filer is provided with a PIN with basic information about the filer and the financial institution on behalf of which they are filing. Pre-populating some of this information would streamline reporting. Changes like this will have long-term impacts in terms of compliance staff spending less time to complete longer SAR forms to communicate the same information.

As noted, one of the objectives of Section 6216 review is to ensure that the BSA reporting requirements provide highly useful information in countering financial crimes. It is difficult to determine whether the reports currently required by a credit union are highly useful since there is often a lack of transparency from FinCEN and law enforcement. Financial institutions understand that the information being shared is often sensitive to investigations, but FinCEN should find ways to provide more feedback to credit unions related to filed reports. Often, credit unions file a SAR and receive no feedback from FinCEN or law enforcement.

NAFCU is supportive of section 6203 of the AMLA that requires FinCEN to periodically disclose to credit unions information about SARs that law enforcement found useful during a specified reporting period. Periodic feedback from law enforcement will enhance SAR reporting by financial institutions, as they may devote more time to providing the information that is most useful. NAFCU encourages FinCEN to prioritize efforts to share information regarding SARs, to the extent possible under this statutory authority. Additionally, as part of the efforts to share feedback and review the usefulness of required reports, FinCEN should provide feedback on common errors made in completing required reports as this will help financial institutions provide more accurate and useful information.

Identify Changes to BSA Regulations and Guidance to Improve Efficiency

As technology advances, credit unions and other financial institutions seek ways to leverage technology and other innovative efforts to assist in overall compliance. NAFCU applauds FinCEN's commitment to helping the private sector feel it has the latitude from regulatory scrutiny to be able to innovate. Financial institutions looking to innovate BSA/AML compliance may be more encouraged to do so if they receive a "safe harbor" or regulatory flexibility, especially considering the likelihood of additional regulatory scrutiny in the near future. For instance, the National Credit Union Administration prioritizes BSA/AML as a supervisory priority, and many credit unions report the level of examiner scrutiny has become more detailed. NAFCU appreciates the June 28, 2021 report assessing the appropriateness of a no-action letter (NAL) program. A NAL program that provides financial institutions with an indication of potential regulatory action for certain conduct may assist in adoption of innovative efforts. NAFCU urges FinCEN to continue to explore options for credit unions to innovate.

Conclusion

NAFCU appreciates the opportunity to share our members' views on this matter. To continue ensuring appropriate safeguards are in place to protect the financial system, NAFCU asks FinCEN to provide additional guidance related to digital assets/CVC and government fraud. In addition, NAFCU urges FinCEN to modernize and streamline the current SAR and CTR reporting thresholds, forms, and reporting mechanisms. Lastly, NAFCU encourages FinCEN to explore opportunities to provide feedback to credit unions regarding filed reports. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcuhq.org.

Sincerely,



Kaley Schafer
Senior Regulatory Affairs Counsel