



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

March 25, 2022

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

RE: Pilot Program on Sharing of Suspicious Activity Reports and Related Information with Foreign Branches, Subsidiaries, and Affiliates (Docket No.: FINCEN-2022-01331; RIN No.: 1506-AB51)

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) notice of proposed rulemaking (NPRM) regarding the proposed establishment of a limited-duration pilot program to permit a financial institution to share suspicious activity reports (SARs) and information related to SARs with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance. 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 generally supports the proposed rule but recommends that FinCEN monitor the confidentiality of the shared SAR information and modernize and streamline its SAR reporting requirements.

General Comments

Since its enactment in 1970, one of the stated purposes of the *Bank Secrecy Act* (BSA) is to establish appropriate frameworks for information sharing among financial institutions and government authorities. NAFCU applauds FinCEN's ongoing efforts to increase information sharing among financial institutions through its 2006 guidance¹, including allowing the sharing of SARs with head offices and controlling companies; its 2010 guidance² allowing the sharing of SARs by depository institutions with their affiliates that are subject to a SAR regulation; and this NPRM that will allow financial institutions to share SARs and related information with their foreign branches, subsidiaries, and affiliates.

¹ Financial Crimes Enforcement Network. *Interagency Guidance on Sharing Suspicious Activity Reports with Head Offices and Controlling Companies* (January 20, 2006). <https://www.fincen.gov/resources/statutes-regulations/guidance/interagency-guidance-sharing-suspicious-activity-reports>.

² Financial Crimes Enforcement Network. *Sharing Suspicious Activity Reports by Securities Broker-Dealers, Mutual Funds, Futures Commission Merchants, and Introducing Brokers in Commodities with Certain U.S. Affiliates* (November 23, 2010). <https://www.fincen.gov/resources/statutes-regulations/guidance/sharing-suspicious-activity-reports-securities-broker>.

Most NAFCU members do not have foreign branches, subsidiaries, or affiliates, and those credit unions that do have a foreign branch are located in a U.S. territory or on a U.S. military base in a foreign country. The majority of credit unions are sharing SAR information according to the existing guidance. NAFCU fully supports the spirit of information sharing and this NPRM, which allows more robust information sharing. Sharing SAR information globally is a way to further spread the influence of BSA/Anti-Money-Laundering rules and requirements and allow U.S. financial institutions with foreign affiliates to gain more information and submit more actionable SARs. NAFCU recommends that in implementing the pilot program, FinCEN monitor how participating financial institutions are managing to keep SAR information safe. Information in a SAR, if leaked to parties associated with the SAR, could be used to undermine law enforcement efforts. It is important that foreign branches, subsidiaries, and affiliates respect the confidentiality of SARs.

NAFCU has always advocated for an enhanced SAR program that allows its members to gain important insights from their filings. The ability to look at more internal and external information for multiple purposes, including fraud detection, anti-money laundering, and sanctions, and then share that information across both the public and private sector will enable credit unions to carry out the intent of the BSA more effectively.

Modernizing and Streamlining SAR Reporting

NAFCU reiterates its request for the modernization and streamlining of SARs, including increasing the reporting thresholds, streamlining the SAR form to remove redundant and obsolete provisions, and providing a simplified SAR form for continuous filings. 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 encourages FinCEN to tie the reporting thresholds to inflation and increase them in order to decrease the burden on credit unions. Currently the U.S. inflation rate is at a four-decade high.³ Spending habits have changed among consumers and the cost of living has increased all over the U.S. The SAR reporting thresholds have remained unchanged for decades even though inflation is occurring at a rapid rate. To address this, NAFCU recommends that FinCEN immediately begin studying the impacts of tying the SAR reporting thresholds to inflation. The outdated thresholds cause some SARs to be useless to law enforcement because behavior that was once thought of as suspicious has since become common transaction practice.

Streamlining the SAR filing process is also crucial to the usefulness of SARs. NAFCU encourages FinCEN to update the forms and reporting structure as explained in NAFCU's February 11, 2022 comment letter in response to FinCEN's request for information regarding the review of BSA regulations and guidance.⁴ Updating the forms and reporting structure can significantly reduce compliance burdens while ensuring information with a high degree of usefulness is still provided

³ Bloomberg. *U.S. Inflation Charges Higher With Larger-Than-Forecast Gain* (February 10, 2022).

<https://www.bloomberg.com/news/articles/2022-02-10/u-s-inflation-charges-higher-with-larger-than-forecast-gain>.

⁴ NAFCU. *Review of BSA Regulations and Guidance* (February 11, 2022).

<https://www.nafcu.org/system/files/files/2.11.2022%20Letter%20to%20FinCEN%20re%20Review%20of%20BSA%20Regulations%20and%20Guidance.pdf>

to law enforcement. The 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 “check-box” 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. FinCEN should also explore whether the optional fields are necessary or whether the information can be captured in the narrative section.

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. It would be simpler if this information were pre-populated. Changes like this would have long-term impacts in terms of compliance staff spending less time to complete longer SAR forms to communicate the same information if additional auto-fill features were available.

Conclusion

NAFCU appreciates the opportunity to comment on this NPRM and share our members’ views. NAFCU applauds and fully supports FinCEN’s ongoing efforts to increase information sharing while further recommending that FinCEN monitor the confidentiality of the shared SAR information and modernize and streamline SARs. Should you have any questions or require additional information, please do not hesitate to contact me at (703)842-2268 or amoore@nafcuhq.org.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. Moore', with a stylized flourish at the end.

Aminah Moore
Regulatory Affairs Counsel