



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

November 24, 2020

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

**RE: Thresholds for the Requirement to Collect, Retain, and Transmit
Information Under the Recordkeeping and Travel Rules
(Docket No.: FINCEN-2020-0002; RIN No.: 1506-AB41)**

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) and Board of Governors of the Federal Reserve System (Board) joint notice of proposed rulemaking regarding the thresholds for collecting, retaining, and transmitting information under the Recordkeeping and Travel Rules. 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. NAFCU appreciates FinCEN's commitment to safeguarding our financial system and review of the effectiveness of the Recordkeeping and Travel Rules; however, the justification for such a drastic reduction does not seem warranted. NAFCU urges FinCEN to retain the current Recordkeeping and Travel Rule thresholds and further study the impacts on smaller institutions including associated compliance burdens and costs. Additionally, a lower threshold may have a chilling effect on credit unions offering foreign wire transfer services. NAFCU supports the definition of "money" as proposed, which will resolve ambiguities surrounding applicability to convertible virtual currencies (CVCs). Although the proposal focuses on cross-border transactions, it also raises the question of domestic thresholds and NAFCU asks that FinCEN not increase the domestic threshold at this time.

General Comments

The *Annunzio-Wylie Anti-Money Laundering Act* amended the *Bank Secrecy Act* (BSA) and authorized the U.S. Department of the Treasury (Treasury) and the Board, to promulgate regulations requiring insured depository institutions to maintain records of both domestic and cross-border fund transfers and transmittals (the "Recordkeeping Rule"). FinCEN, as the delegated administrator of the BSA, issued a complementary regulation that requires the transmittal of information on certain funds transfers and transmittals (the "Travel Rule"). The Recordkeeping and Travel Rule thresholds were set in 1995 at \$3,000 for domestic and cross-border transactions. The proposal would reduce the threshold for cross-border transactions from \$3,000 to \$250 that

begin or end outside the United States. In issuing regulations for cross-boarder transfers and transmittals, FinCEN and the Board are to consider the usefulness of the records in criminal, tax, or regulatory investigations or proceedings, and the effect of the regulations on the cost and efficiency of payments systems.

Credit unions play an important role in identifying and mitigating risks to our financial system; however, BSA/AML compliance continues to be burdensome. 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 and complex. Credit unions cannot continue to spend massive amounts of money on compliance resources if the burden severely outweighs the utility or is duplicative of other compliance efforts that provide similar information. In conjunction with the Recordkeeping and Travel Rules, credit unions must also comply with other rules and regulations when conducting cross-border transactions that begin or end in the United States. FinCEN must also take into account the compliance burdens of these other regulations on credit unions conducting cross-border transactions.

FinCEN Should Retain the Current Threshold and Further Study the Impacts on Smaller Credit Unions

NAFCU urges FinCEN to retain the current threshold as the costs of credit union compliance and costs to the payments systems outweigh the usefulness, when BSA reports provide duplicate information. The proposed threshold of \$250 appears arbitrary and the justifications posed do not seem to warrant such a drastically lower threshold. FinCEN used data which was limited in scope and the proposed threshold is much lower than suggested international standards. The dataset used to justify the lowering of the threshold is based on Suspicious Activity Reports (SARs) filed from 2016-2019, that relate to terrorist financing. An underlying reason for the lowered threshold is the notion that some financial institutions may not recognize the suspicious activity and thus, not file a SAR. Credit unions want FinCEN and law enforcement to have the necessary information to combat terrorist financing. The fact that this proposal is based on SARs filed, seems to negate the idea that financial institutions are not recognizing and filing SARs.

Moreover, the proposal highlights FATF's recommendation that information on small-dollar transactions provides valuable information to law enforcement; however, the Financial Action Task Force's (FATF) recommendation is a de minimis threshold of \$1,000 for cross-border wire transfers. The proposal points out that other countries have adopted a \$1,000 threshold. In addition, Treasury's 2020 National Strategy to Counter Illicit Finance supports a lower threshold in order to better align with international standards. The proposed threshold of \$250 appears to be much lower than international standards; however, the proposal does not state whether there is any other generally accepted international standard, other than the one posed by FATF.

Although there have been known criminal cases involving transactions of less than \$1,000, FinCEN should further evaluate the usefulness of information at this threshold weighed against

the costs to payments systems. Additionally, the dataset used provides that 71 percent of the SARs filed had an average dollar amount at or below \$500. FinCEN should evaluate the usefulness of information at this threshold weighed against the costs to payments systems. Understandably, the landscape of money laundering and terrorist financing has shifted since the inception of these rules in 1995. Despite the changes to the financial system over the course of the last 15 years, it is unclear why the threshold must now be lowered. When considering the usefulness of the information weighed against the cost to payments systems, the costs and burdens outweigh the usefulness as the existing BSA reporting mechanism already provides this information.

In addition to considering the usefulness of the information to national security, FinCEN considered the costs on payments systems. The \$250 threshold prejudices smaller institutions whose volume of covered transactions is lower and may result in a chilling effect on foreign wire transfer services. According to the proposal, over 89 percent of credit unions are “smaller” institutions, therefore the proposal impacts an overwhelming amount of the credit union industry. Credit unions often provide wire transfer services at cost because it is a necessary service for their membership. Unfortunately, with a drastically lower threshold leading to increased compliance burdens, smaller credit unions may be unable to absorb these costs and ultimately decide to forgo offering this service. A chilling effect on foreign wire services adversely impacts members who rely on these services as they will no longer be able to utilize their primary financial service provider and due to a lack of competition may face increased costs. FinCEN should further study the impacts this change will have on smaller institutions like credit unions.

Despite the impact on smaller institutions, the proposal theorizes that the impacts are minimal on payments systems as many financial institutions currently collect and retain all information required under the Recordkeeping and Travel Rule, regardless of the dollar amount of the transaction. However, this practice is not consistent among credit unions, and variation depends on volume, asset size of the institution, and internal policies. This serves as evidence to the contrary for FinCEN’s belief that most financial institutions already collect the requisite information, therefore the impacts of the proposal would be minimal.

Regardless of credit unions’ current practices, a lower threshold will certainly increase compliance demands on staff. Cross-border transactions are time-consuming to process and complete and a lower threshold will only exacerbate this laborious process. In addition, a lower threshold will likely increase costs to credit unions. Vendors may cover costs; however, this depends on the vendor and the contract in place at the time of the threshold change. The more likely scenario is that vendors will increase their associated transaction processing costs to credit unions, who may then have to pass these costs on to members. Accordingly, NAFCU urges FinCEN to retain the current threshold and further evaluate the impacts of a lower threshold.

NAFCU is Supportive of the Proposed Definition of Money

NAFCU supports the proposed definition of money to make explicitly clear that both payment orders and transmittal orders that include any instruction to transmit CVC or any digital asset having legal tender status. This provides greater clarity for CVCs. As CVCs become more

prevalent in our financial system, they should be subject to the same BSA/AML requirements as traditional forms of currency. CVCs are prone to becoming targets of suspicious activity and can facilitate money laundering and terrorist financing. Despite the applicability of the Recordkeeping and Travel Rules to CVCs in guidance, the definition of money eliminates any ambiguity and helps guard our financial system. As noted in Treasury's 2015 National Terrorism Finance Risk Assessment, there are still numerous avenues for potential terrorist financing with evolving financial technology and payments systems. NAFCU appreciates FinCEN's diligence in combatting these threats.

Conclusion

NAFCU appreciates the opportunity to share our members' views on this matter. NAFCU urges FinCEN to retain the current Recordkeeping and Travel Rule thresholds and further study the impacts on smaller institutions including associated compliance burdens and costs. Although the proposal focuses on cross-border transactions, the question of domestic thresholds is raised, and NAFCU asks that FinCEN not increase the domestic threshold at this time. 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