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National Association of Federally-Insured Credit Unions

February 19, 2021

Ms. Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314

RE: Bank Secrecy Act (RIN 3133-AF25)

Dear Ms. Conyers-Ausbrooks:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing in response to the National Credit Union Administration's (NCUA) notice of proposed rulemaking regarding the *Bank Secrecy Act* (BSA). NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve nearly 123 million consumers with personal and small business financial service products. NAFCU appreciates the NCUA, in coordination with the other federal banking agencies and the Financial Crimes Enforcement Network (FinCEN) working on innovative solutions to lessen BSA/Anti-Money Laundering (AML) compliance burdens. NAFCU generally supports the NCUA having express authority to exempt federally-insured credit unions (FICUs) from suspicious activity report (SAR) requirements and urges the NCUA to provide additional information and guidance, such as a letter to credit unions or other source, separate from the final rule, regarding the application process, examples of innovative solutions that may be considered, and factors the NCUA will consider. A supplemental guidance document that can be used in conjunction with the final rule will help assist FICUs seeking an exemption.

General Comments

Since the passage of the *Currency and Foreign Transactions Reporting Act* (commonly referred to as the BSA), NAFCU members strive to ensure they provide accurate and timely SARs to assist law enforcement, the NCUA, and FinCEN. NAFCU has historically sought amendments to the current SAR reporting structure to reduce compliance burdens while ensuring credit unions still provide information with a high degree of usefulness. 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. Providing the NCUA with the express authority to issue exemptions for SAR reporting to FICUs that develop innovative solutions that meet BSA requirements will certainly reduce regulatory burdens for those granted exemptive relief.

NAFCU Generally Supports the Proposed Exemption and Requests that the NCUA Provide Additional Details

In general, NAFCU supports the NCUA having express regulatory flexibility to grant exemptive relief from SAR requirements. As mentioned in the proposal, innovative technology continues to assist in facilitating BSA/AML compliance. NAFCU supports the use of such innovative technologies to reduce compliance burdens and resource costs while identifying and preventing financial crimes. NAFCU appreciates the NCUA, in coordination with the other federal banking agencies and FinCEN leveraging innovative technology, including the 2018 Joint Statement on Innovative Approaches to Meet BSA/AML Compliance. The broad language of the proposal provides flexibility and will remain relevant as technology advances and exemptions are granted on a case-by-case basis. Despite the broad proposed language, additional information in the final rule or in a supplemental rule would help guide FICUs through the process. Specifically, examples of innovative solutions that are eligible for an exemption determination, and details on the application process. This additional information puts FICUs in a better position to determine their eligibility and their decision to move forward in making an exemption request.

Examples of innovative solutions are necessary as the proposal broadly provides that the scope of requests for exemptive relief may involve expanded investigations and SAR timing issues, SAR disclosures and sharing, continued SAR filings for ongoing activity, SAR outsourcing of responsibilities and sharing, the role of agents of FICUs, the use of shared utilities and shared data, and the use of sharing of de-identified data. But the proposal further states that the NCUA grants exemptions on a case-by-case basis. Given the broad scope of activities, would the NCUA grant an exemption for a FICU if its BSA/AML software provider offered an artificial intelligence solution that automatically evaluated certain alert types such as structuring and then “wrote” and submitted the SAR without human intervention? It is important that the NCUA indicate in the final rule that this list regarding the scope of exempted requests is non-exhaustive and exemptions are on a case-by-case basis, the scope of which may be outside the listed examples.

In addition, the NCUA should provide FICUs with information pertaining to the application process including time and form. The proposal states that FICUs must submit a “writing” to the NCUA requesting exemptive relief; however, from this vague language it is unclear what FICUs need to include in the written request or application to the NCUA or who at the agency must receive the written request. NAFCU also encourages the NCUA to expeditiously process requests for SAR exemptions and communicate the status of the request to the FICU throughout the process. As indicated in the proposal, any exemption that overlaps both the NCUA’s and FinCEN’s regulations must seek approval from both agencies and the NCUA will seek concurrence of the overlapping exemption. NAFCU encourage the NCUA to clarify any responsibility the FICU has regarding making a request to FinCEN. In addition, the NCUA should clarify the coordination process between the two agencies.

Although the NCUA is determining this exemptive relief on a case-by-case basis, it is unclear what other factors are part of the decision-making process other than looking at consistency with the purposes of BSA, and safety and soundness. While the NCUA should have board flexibility to

determine the appropriateness of weighing certain factors and NAFCU does not wish to limit the factors the NCUA considers, additional guidance regarding factors would be helpful for the application process. The NCUA should ensure that factors considered include appropriate governance and that the appropriate FICU stakeholders are involved in the process, such as legal and compliance. Further, the NCUA should ensure that the FICU has sufficient BSA controls and processes in place.

Conclusion

NAFCU appreciates the opportunity to share its members' views on this matter. NAFCU appreciates the NCUA's commitment to leveraging innovative solutions to mitigate BSA/AML compliance burdens and supports the proposal providing the agency with express exemption authority. NAFCU urges the NCUA to provide additional information or guidance, such as a letter to credit unions or other source that is separate from the final rule regarding the application process, including form and timing, factors considered, examples of innovative solutions that will be considered, and the examination approach. Should you have any questions or require additional information, please do not hesitate to contact me at (703) 842-2249 or kschafer@nafcu.org.

Sincerely,



Kaley Schafer
Senior Regulatory Affairs Counsel