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

December 17, 2019

The Honorable Michael Crapo  
Chairman  
Committee on Banking, Housing,  
& Urban Affairs  
United States Senate  
Washington, DC 20510

The Honorable Sherrod Brown  
Ranking Member  
Committee on Banking, Housing,  
& Urban Affairs  
United States Senate  
Washington, DC 20510

**Re: NAFCU urges action on S. 2563, the ILLICIT CASH Act**

Dear Chairman Crapo and Ranking Member Brown:

I write to you today on behalf of the National Association of Federally-Insured Credit Unions (NAFCU) to voice our support for the efforts of S. 2563, the *Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings Act* (ILLICIT CASH Act), and to urge you to advance this legislation. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 119 million consumers with personal and small business financial service products.

NAFCU has consistently recognized the importance of the Financial Crimes Enforcement Network (FinCEN), Bank Secrecy Act (BSA), and anti-money laundering (AML) requirements in assisting in the prevention of tax evasion, money laundering and terrorist financing. Credit unions support efforts to combat criminal activity in the financial system. Our members have a good working relationship with FinCEN, and they consistently inform us that the publication of periodic BSA/AML guidance is very helpful. However, BSA/AML requirements remain a burden to implement, and we believe that the system is in need of improvements and reform. We were pleased to see the House pass H.R. 2513, the *Corporate Transparency Act of 2019*, and H.R. 2514, the *COUNTER Act of 2019*, earlier this year that would help strengthen and improve the BSA/AML system.

We appreciate the bipartisan work done by Banking Committee members Senators Mark Warner (D-VA), Tom Cotton (R-AR), Doug Jones (D-AL), Mike Rounds (R-SD), Robert Menendez (D-NJ), John Kennedy (R-LA), Catherine Cortez Masto (D-NV) and Jerry Moran (R-KS) to craft the ILLICIT CASH Act, and we believe it is a step in the right direction to improve corporate transparency and modernize the BSA/AML system. Below, we would like to call attention to some of the provisions in the ILLICIT CASH Act that would help credit unions to effectively implement AML/combating the financing of terrorism (CFT) requirements while continuing to provide excellent service to their members:

**Title I – AML Programs and FinCEN**

- Section 101 requires regulators to establish risk-based AML/CFT policy priorities, allowing credit unions to effectively target their resources toward higher-risk customers and activities.
- Section 103 establishes a Subcommittee on Innovation to encourage and support AML/CFT technological innovation. Improved technology could reduce the number of man-hours involved with BSA compliance and allow more credit unions to have robust AML/CFT procedures in-place.

- Section 104 establishes a FinCEN financial institution liaison, improving the feedback loop with financial institutions so that regulators can proactively respond to problems with BSA rules and examinations.
- Section 105 establishes an interagency AML/CFT staffing rotation program to improve interagency cooperation and build expertise. Our members have consistently reported a lack of consistency among examiners in reviewing BSA policies and procedures, which makes it difficult to accurately anticipate how to prepare for an exam. This could be a good first step toward improving agency expertise on AML/CFT issues and interagency coordination.

## **Title II – Improving AML/CFT Communication, Oversight, and Processes**

- Section 201 requires the Attorney General to provide an annual report to the Treasury outlining the data and associated trends derived from financial institution’s BSA reporting, which will allow the Treasury to better assess the usefulness of BSA reporting and whether revisions are merited.
- Section 202 requires FinCEN to periodically report to financial institutions on actions taken by law enforcement in connection with Suspicious Activity Report (SAR) filings by the financial institution. We often hear from credit unions that they do not receive feedback when they file a SAR, and this would be a good step toward improving communication regarding SARs.
- Section 203 requires a formal review of the current BSA reporting requirements, and for regulators to make changes to reduce unnecessary burdens while ensuring law enforcement receives necessary information.
- Section 204 requires the Treasury to study whether the dollar thresholds for Currency Transaction Reports (CTRs) and SARs should be adjusted. The current \$10,000 threshold for CTRs has not been updated for almost 50 years, and we routinely hear from credit unions about the sheer volume of CTRs that they are filing for unexceptional transactions due to this outdated threshold.
- Section 205 requires regulators to conduct a formal review “to identify those regulations and guidance that may be outdated, redundant, unnecessarily burdensome, or otherwise do not promote a risk-based” AML/CFT regime.
- Section 207 establishes a “keep open” letter safe harbor, providing guidance and certainty to financial institutions who receive formal instruction from law enforcement to maintain accounts that are under investigation.
- Section 209 encourages information sharing and public-private partnerships, which could help strengthen the BSA system. Information sharing has been a vital tool for credit unions and can be enhanced by expanding the scope of what can be shared.

## **Title III – Modernization of AML/CFT System**

- Section 301 requires regulators to consider priorities when imposing requirements for suspicious transaction reporting, creates streamlined “bulk data” reporting processes for filing of non-complex reports, and provides a regime to encourage innovative approaches for transaction monitoring. Taken together, these changes could lessen the regulatory burdens on credit unions while improving the quality of reporting data going to law enforcement.
- Section 302 establishes a financial crime tech symposium to facilitate greater collaboration on new technologies to prevent and detect financial crimes. As stated before, credit unions are optimistic about the potential benefits of new technologies in the AML/CFT space.
- Section 303 provides a path for financial institutions to share de-identified AML/CFT information, improving their ability to identify suspicious activity.

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- Section 304 establishes a FinCEN no-action letter process for financial institutions, which would encourage innovation.

#### **Title IV – Beneficial Ownership Disclosure Requirements**

- Section 401 requires companies to disclose their true beneficial ownership information to FinCEN, in a newly created database of beneficial ownership information that would be available to law enforcement agencies and financial institutions. This provision would be enormously helpful for financial institutions, including credit unions, in complying with the new Customer Due Diligence (CDD) rule. It is important that FinCEN have the resources necessary to operate the beneficial ownership database efficiently and as intended by the legislation.

Overall, the ILLICIT CASH Act is an important step to improve the BSA/AML regulatory compliance regime for community institutions such as credit unions and deserves consideration by the Committee. As the Committee reviews the legislation, we also have a few suggestions for how it could be improved. First, while the legislation takes steps to improve agency coordination, we also believe there is a need for enhanced training for examiners on AML/CFT issues. Facilitating interagency training for examiners would be an important step to help improve the credit union experience with examiners in this area. Second, while we are pleased that the legislation directs Treasury to study the thresholds for CTRs and SARs, we would encourage Congress to act now to at least index the thresholds for inflation. As previously stated, these thresholds have not been updated in decades, resulting in credit unions filing large numbers of unextraordinary reports. Third, we believe that it would be helpful to community institutions if FinCEN would provide opportunities for technical grants or training to help assist with the cost of software or technological capabilities. Small, community institutions stand to benefit the most from new technology in this area, as it would reduce the number of man-hours involved with BSA compliance. Such a move would be in direct alignment with FinCEN's objectives, as training and technological subsidies would enable more credit unions to have robust BSA/AML procedures in-place, thereby furthering FinCEN's goals.

As you know, this legislation has strong bipartisan support, as well as backing from both the financial industry and law enforcement. We urge you to capitalize on this momentum and schedule a markup of the ILLICIT CASH Act as soon as possible. NAFCU thanks you for your attention to this important issue, and we look forward to continuing to work with you to modernize and strengthen the BSA/AML system. Should you have any questions or require any additional information, please do not hesitate to contact me or Sarah Jacobs, NAFCU's Associate Director of Legislative Affairs, at 703-842-2231.

Sincerely,



Brad Thaler  
Vice President of Legislative Affairs

cc: Members of the Senate Banking Committee