



**America's
Credit Unions**

September 3, 2024

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

RE: Notice of Proposed Rulemaking on Anti-Money Laundering and Countering the Financing of Terrorism Programs (Docket Number FINCEN-2024-0013)

Dear Sir or Madam:

On behalf of America's Credit Unions, I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) notice of proposed rulemaking (NPRM) regarding Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) Programs.¹ America's Credit Unions is the voice of consumers' best option for financial services: credit unions. We advocate for policies that allow the industry to effectively meet the needs of their over 140 million members nationwide.

The proposed rule would update financial institutions' AML/CFT programs pursuant to the Anti-Money Laundering Act of 2020 (AML Act).² The proposed rule would require financial institutions to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs with certain minimum components, including a mandatory risk assessment process. The proposed rule also would require financial institutions to incorporate recently adopted priorities into their risk-based programs. As detailed below, credit unions are generally doing much of what is contemplated in this NPRM, particularly with regard to current risk assessment practices. However, the proposed addition of provisions into the AML/CFT program, such as the AML/CFT priorities, will be time and resource consuming, particularly for smaller credit unions. Given that many of the provisions of the NPRM are statutorily required by the AML Act, including the AML/CFT priorities, it is imperative that credit unions be afforded adequate time to implement the changes contemplated in this proposal.

America's Credit Unions Supports FinCEN's Objective but Compliance Challenges Continue

America's Credit Unions supports FinCEN's efforts to track and investigate financial crimes involving money laundering and terrorist financing. Credit unions are not-for-profit financial cooperatives with a statutory mission to promote thrift and provide access to credit for provident purposes. Unlike other financial institutions, credit unions do not issue stock or pay dividends to outside stockholders. Instead, earnings are returned to members in the form of lower interest

¹ NPRM on AML/CFT Programs, 89 Fed. Reg. 55,428 (July 3, 2024).

² Pub. L. No. 116-283, 134 Stat. 4547 (2021).

rates on loans, higher dividends on deposits, and lower fees. Credit unions exist only to serve their members, and as a result, credit unions' interest in their members' financial well-being and advancing the communities they serve takes on paramount importance.

Compliance with AML/CFT rules and regulations is expensive and places a tremendous burden on credit unions. While larger banks and non-bank mortgage lenders can afford to absorb the significant regulatory and compliance costs from the AML/CFT framework, these rules have made it significantly more difficult for credit unions to provide the affordable financial services their members depend on and deserve. The burden on credit unions is amplified by the fact that 45 percent of credit unions have fewer than ten employees.³

To address this persistent burden, America's Credit Unions steadfastly advocates for increases to various reporting thresholds associated with FinCEN's AML/CFT rules. Specifically, for the reasons below, we urge FinCEN to increase the Currency Transaction Report (CTR)⁴ filing threshold from \$10,000 to at least \$30,000, and we ask FinCEN to support an increase in the Suspicious Activity Report (SAR)⁵ reporting threshold from \$5,000 to at least \$10,000.

Outdated CTR Reporting Threshold

The \$10,000 threshold for filing a CTR was established in 1972 and has not been adjusted for inflation. If adjusted for inflation as of July 2024, the threshold would exceed \$76,000.⁶ Viewed within the context of consumers' lives, in 1972 the CTR threshold represented 90 percent of the median annual income for an American family, 33 percent of the average sales price of a new home, and 312 percent of the average price for a new car.⁷ In comparison, the CTR threshold now represents 13 percent of the median annual income for an American family in 2022, 2 percent of the median sale price of a new home in 2024, and 23 percent of the average price for a new car in 2024.⁸ As inflation and the cost of living has skyrocketed past the CTR threshold,

³ Specifically, as of March 2024, 2,079 of the 4,670 credit unions have fewer than ten employees, and 2,156 have fewer than ten FTEs.

⁴ 31 C.F.R. § 1010.311.

⁵ 31 C.F.R. § 1020.320(b).

⁶ See, Bureau of Labor Statistics Consumer Price Index Inflation Calculator, <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=10%2C000.00&year1=197201&year2=202402>.

⁷ See, U.S. Census Bureau, Money Income in 1972 of Families and Persons in the United States, Report Number P60-90 (Dec. 1973), <https://www.census.gov/library/publications/1973/demo/p60-90.html>; U.S. Census Bureau, Median and Average Sales Prices of New Homes Sold in the United States, Annual Data, https://www.census.gov/construction/nrs/xls/usprice_cust.xls; Marketplace, *Money and Millennials: The Cost of Living in 2022 vs. 1972*, <https://www.marketplace.org/2022/08/17/money-and-millennials-the-cost-of-living-in-2022-vs-1972/>.

⁸ See, U.S. Census Bureau, *Monthly New Residential Sales, January 2024* (Feb. 26, 2024), <https://www.census.gov/construction/nrs/current/index.html>; U.S. Census Bureau, *Income in the United States* (Sept. 12, 2023), <https://www.census.gov/library/publications/2023/demo/p60-279.html>; J.D. Power, *Increasing New-Vehicle Sales Drives Record Consumer Spending* (Feb. 22, 2024), <https://www.jdpower.com/business/press-releases/jd-power-globaldata-forecast-february-2024>.

the CTR reports now frequently capture absolutely routine cash transactions of limited use to law enforcement.

While the individual reports themselves do not take significant time to file, credit unions report that the “sheer volume” of CTR reporting is a compounding burden on credit union resources and staff time.⁹ Credit unions have reported that their CTR filings have increased by up to 40 percent year-over-year during the last five years.¹⁰ Credit unions also report an increase in Suspicious Activity Report (SAR) filings in connection with suspicious activity; however, the increase in CTRs has clear, nationwide explanations that bear no relationship to money laundering or terrorist financing. As the frequency of reportable cash transactions has increased, and corresponding significance and usefulness of the reports has significantly decreased.

The current CTR threshold simply does not serve the goals and original intent of the Bank Secrecy Act (BSA).¹¹ Further, the balance between useful reporting and burden on credit unions is wildly disproportionate. The current threshold should be increased to account for inflation and economic changes over the past several years.

America’s Credit Unions urges FinCEN to use its existing authority to increase the threshold to \$30,000.¹² For purposes of CTR filings, FinCEN established the \$10,000 threshold as provided in section 1010.311 of its regulations.¹³ While 31 U.S.C. section 5313 requires financial institutions to report currency transactions, the statute provides FinCEN with latitude to establish the level at which reporting is mandatory.¹⁴ Based on recent credit union feedback, increasing the threshold from \$10,000 to \$30,000 would reduce the annual number of CTR filings by roughly 90 percent, on average.¹⁵ Thus, we urge FinCEN to increase the CTR filing threshold to at least \$30,000.

Even increasing the threshold to \$30,000 would be conservative, representing 40 percent of 2022 median family income, almost 7 percent of the 2024 median sales price of a new home, and 68 percent of the 2024 average price of a new car.¹⁶ America’s Credit Unions supports the regular adjustment of this threshold to at least keep pace with inflation. As an example, consider when a credit union member sells his or her vehicle and receives over \$10,000 in cash. The credit union may know the member, there may be absolutely nothing suspicious about the transaction, and the credit union may even be aware of a corresponding transaction to finance the purchase

⁹ America’s Credit Unions Member Feedback (received Mar. 22, 2024).

¹⁰ *Id.*

¹¹ 31 U.S.C. §§ 5311-5336.

¹² 31 U.S.C. § 5313.

¹³ *Supra* note 4.

¹⁴ “When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), *in an amount*, denomination, or amount and denomination, or under circumstances the *Secretary prescribes by regulation*, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction” 31 U.S.C. § 5313(a) (emphasis added).

¹⁵ *Supra* note 9.

¹⁶ *Supra* note 8.

of a new car. Yet, credit union staff must dedicate time and resources to the completion and processing of a CTR which has absolutely no use to law enforcement. This is wasteful and inefficient.

While inflation or the cost of living are helpful metrics to contextualize these amounts, ultimately, the appropriate threshold amount and the frequency of its adjustment should be driven by how and the degree to which CTR reports have been successfully used by law enforcement. As addressed elsewhere in this letter, a major concern is the lack of feedback from FinCEN and/or law enforcement regarding the usefulness of AML/CFT reporting. As such, we urge FinCEN to improve the feedback loop to ultimately improve the effectiveness and efficiency of AML/CFT reports filed by credit unions and other financial institutions.

Outdated SAR Reporting Threshold

Consistent with our advocacy efforts to increase the CTR threshold, we believe the SAR reporting thresholds should also be adjusted. As with CTRs, credit unions report that the number of SAR filings has increased over the last several years, close to the point of doubling. Unlike with the increase in CTR filings, the increase in SAR filings appears to actually be connected to an increase in suspicious activity of interest to law enforcement.

The inclusion of a threshold amount for triggering certain SAR filings clearly indicates a policy decision that some transactions are too *de minimis* to be useful to law enforcement or to justify the reporting burden for financial institutions. Without adjusting that threshold over time, inflation essentially defeats that policy decision, diluting the helpfulness of filed SARs and overburdening credit unions. We support an increase in the SAR reporting threshold from \$5,000 to at least \$10,000. Credit unions have indicated that such an increase would reduce the number of SARs filed, but at the same time would not reduce the quality of information to law enforcement, given that SARs would more likely only be filed on significant incidents requiring immediate attention.

Further, we continue to support legislative reform to the SAR thresholds, including increasing the \$5,000 threshold to \$10,000, which would have been achieved by the *Financial Reporting Threshold Modernization Act*.¹⁷ Such an increase would be conservative, appropriate, and more properly strike a balance between what is helpful to law enforcement and compliance burden for credit unions. As with the CTR threshold, America's Credit Unions supports an annual inflation adjustment to the SAR thresholds. Given that SARs involve suspicious activity by definition, the appropriate thresholds should simply be driven by inflation to ensure the policy goals of the thresholds remain intact.

¹⁷ H.R. 2040, 117th Congress (2021), §2(a).

Redundant and Irrelevant Marijuana Limited SAR Filings

America's Credit Unions urges FinCEN to revisit the requirement to file marijuana limited SARs. Marijuana limited SARs are appropriate where a credit union is providing services to a marijuana-related business that it reasonably believes does not violate state law.¹⁸ While all parties recognize transactions violate Federal law, they are of little or no practical use to law enforcement. The risk of money laundering or financing of terrorism associated with these transactions is not sufficient to justify the filings. These reports are essentially defensive, check-the-box filings that burden credit unions without making meaningful contributions towards the goals of the BSA and should be eliminated.

If the requirement cannot be wholly limited, FinCEN should consider allowing credit unions to file marijuana limited SARs once a year to indicate an ongoing relationship with the marijuana-related business, and intermittently when it becomes aware of significant changes such as changes in principals, location of the business, etc. This would achieve a better balance between the burden on credit unions and the goal to provide useful information in support of the BSA.

Proposed “Effective, Risk-Based, and Reasonably Designed” AML/CFT Program Requirements

The AML Act provides that AML/CFT programs are to be “risk-based” and reasonably designed to assure and monitor compliance with the requirements of the BSA. For AML/CFT programs to be risk-based, financial institutions must identify and understand their exposure to money laundering and terrorist financing (ML/TF) risks. As proposed, an effective, risk-based, and reasonably designed AML/CFT program would focus attention and resources in a manner consistent with the financial institution's risk profile that takes into account higher-risk and lower-risk customers and activities, and would need to include, at a minimum: (1) a risk assessment process that serves as the basis for the financial institution's AML/CFT program; (2) reasonable management and mitigation of risks through internal policies, procedures, and controls; (3) a qualified AML/CFT officer; (4) an ongoing employee training program; (5) independent, periodic testing conducted by qualified personnel of the financial institution or by a qualified outside party; and (6) other requirements depending on the type of financial institution, such as CDD requirements.

Overall, credit unions are already doing much of what is addressed in this NPRM. However, they are able to do so with greater flexibility given the current lack of explicit regulatory requirements, such as those provided in the NPRM. Further, there are several aspects, including those related to the AML/CFT priorities, that will require a number of additional considerations as part of credit unions' AML/CFT programs.

¹⁸ See, FinCEN Guidance, BSA Expectations Regarding Marijuana-Related Businesses, Fin-204-G001 (Feb. 14, 2014).

Credit unions, much like other community financial institutions, are generally on the smaller size in terms of assets, which presents a significant challenge in terms of resource constraints. Credit unions operate with very lean staffs, where, for example, the BSA officer may not only be responsible for ensuring CTRs are appropriately filed but also must oversee all other issues, even tangentially, related to the BSA, and also serve as the institution's only compliance officer. As with any new regulatory requirement, additional obligations associated with the risk assessment process places additional strain on staff to ensure the credit union continues to be in compliance with FinCEN's rules and all other relevant regulations. The majority of credit unions do not maintain teams of compliance analysts ready and able to pick up additional workload.

Further, we appreciate FinCEN's recognition that the AML/CFT program should be designed in a manner consistent with the financial institution's risk profile. However, it is unclear exactly what constitutes an "effective" program. It would be helpful for FinCEN to define "effective" in the context of the AML/CFT program. In so doing, it is critical that "effectiveness" in this context does not mean an unrealistic expectation of 100 percent effective in eliminating ML/TF. Establishing a specific threshold for attaining effectiveness would be counterproductive, so instead, we ask FinCEN to provide clarity to allow financial institutions to better understand whether they are satisfying the overall objectives of the program.

Risk Assessment Process

The proposed rule would require the financial institution's risk assessment process to identify, evaluate, and document ML/TF risks, including consideration of: (1) the AML/CFT priorities¹⁹ issued by FinCEN; (2) the ML/TF risks of the financial institution based on the financial institution's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and (3) reports filed by the financial institution pursuant to 31 CFR chapter X. Financial institutions would have to review and update their risk assessment on a periodic basis, including, at a minimum, when there are material changes to its ML/TF risks.

Although a risk assessment process is common practice among many financial institutions, including some credit unions, the requirement to have a risk assessment process when developing the AML/CFT programs is not explicit under the current program rules. Therefore, the proposed rule's addition of a risk assessment process to the program rules will be a new regulatory requirement for credit unions.

¹⁹ The AML Act comprehensively updated the BSA for the first time in decades, and it provided several changes to financial institutions' AML program requirements. Among the most prominent changes is the AML Act's mandate that FinCEN establish and make public government-wide AML/CFT priorities, and to update them at least once every four years. The AML Act also requires FinCEN to issue regulations incorporating the AML/CFT priorities into revised program rules. FinCEN issued the AML/CFT priorities in 2021 and this proposal incorporates them into the program rules. The priorities are: (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) proliferation financing.

The National Credit Union Administration (NCUA) has in place a general expectation—though not a requirement—that credit unions utilize a BSA/AML risk assessment.²⁰ Based on our outreach, there is a range in the extent to which credit unions currently employ risk assessments in the AML/CFT context. For example, some have robust assessments with established schedules for reviewing and updating processes, if necessary. However, other credit unions have much more limited risk assessments that include infrequent review, primarily on an as-needed basis (often as a result of material changes to risk profiles). Regardless of the complexity of existing programs, the changes in the NPRM, including the risk assessment, will require additional components to be considered and/or incorporated into a credit union’s assessment.

FinCEN specifically seeks feedback on how it can make the AML/CFT priorities most helpful to financial institutions in the context of the proposed rule. Some of the priorities are easy to incorporate into a risk assessment and are already being done by financial institutions, such as tracking the number of customers/members within High Intensity Drug Trafficking Areas (HIDTA) and High Intensity Financial Crime Areas (HIFCA). However, for other priorities, it is less clear as to how a financial institution could use information to report on them within a risk assessment, such as “corruption.” As such, we ask FinCEN to provide greater clarity on what will be expected within the risk assessment and the program regarding the priorities. Further, given that the AML Act requires FinCEN to update the priorities at least every four years, FinCEN should—contemporaneous to updates to the priorities—release detailed information on how a financial institution can incorporate aspects of the priorities into the risk assessment.

In addition, while we understand there are statutory provisions to which FinCEN must adhere, we urge FinCEN to consider whether it is absolutely necessary to include certain aspects of the NPRM that are not expressly required by law. For example, there are proposed new requirements that are not relevant to all financial institutions’ programs, including credit unions. Certain new requirements will likely add frustrating components that either should not apply to credit unions, or do not provide sufficient information that a credit union can utilize based on credit unions’ unique characteristics. For example, building software to detect new types of activity, or building expertise to identify new kinds of AML practices cannot happen as quickly as trends emerge, and much of that activity is subjective. Also, simply because a trend exists in one part of the country or in a certain city, does not mean it exists in all areas. FinCEN should adopt the approach taken in the Federal Financial Institutions Examination Council (FFIEC) BSA Manual,²¹ which allows for financial institutions to adjust and apply techniques using a risk-based approach for their specific size, geographic location, complexity, services offered, etc.

²⁰ NCUA Examiner’s Guide: BSA/AML Risk Assessment, <https://publishedguides.ncua.gov/examiner/Content/ExaminersGuide/RegulatoryCompliance/BSA/ExamProcedures/BSAAMLRiskAssessment.htm>.

²¹ FFIEC BSA/AML Examination Manual, <https://bsaaml.ffiec.gov/manual>.

In addition, the proposed rule would require financial institutions to consider the reports they file pursuant to 31 CFR chapter X as a component of the risk assessment process. Incorporating CTRs, for example, into a risk assessment will be challenging given that financial institutions rarely see any sort of request involving these documents. As such, it would be helpful for FinCEN to provide guidance around how institutions can consider such reports as a component of the risk assessment process.

AML/CFT Officer

Consistent with other updates to terminology throughout the proposal, the BSA officer would be replaced by an AML/CFT officer. For an AML/CFT program to be effective and reasonably designed to ensure and monitor compliance with the BSA, the compliance officer must be qualified, which will depend, in part, on the institution's ML/TF risk profile, as informed by the results of the risk assessment process. The individual's authority, independence, and access to resources within the financial institution are critical. Importantly, an AML/CFT officer should have decision-making capability regarding the AML/CFT program and sufficient stature within the organization to ensure that the program meets the applicable requirements of the BSA.

Based on our outreach, credit unions' current BSA officers should generally be able to meet the requirements of a qualified AML/CFT officer, as described in the NPRM. However, given that the scope of an AML/CFT officer could go beyond that of a BSA officer, this change would create additional workload for the officer, again further straining limited resources.

In addition, the NPRM states that an AML/CFT officer that has "multiple additional job duties ... that adversely impact the officer's ability to effectively coordinate and monitor day-to-day AML/CFT compliance generally would not fulfill [the AML/CFT officer requirements]."²² We agree that situations that prevent (or even "adversely impact") the officer's ability to do his or her job should be disqualifying; for example, situations that create conflicting professional responsibilities to the extent they prevent the officer from effectively completing his or her duties should be disqualifying. Resource constraints often force credit union BSA officers to wear many hats, frequently taking on various roles within their organization. While the NPRM includes language that multiple additional jobs is disqualifying only if they adversely impact the ability to fulfill the officer's requirements, we believe merely connecting multiple jobs with an inability to effectively complete the job is inappropriate. In addition to resource constraints forcing credit union employees to take on multiple roles, doing so is a common practice within credit unions simply as a way to enhance efficiency and ultimately provide greater benefit to members. As such, we ask FinCEN to remove reference to "multiple additional job duties" from the rule.

Independent Testing

The proposed rule would modify the existing program rules to require each financial institution's program to include independent, periodic AML/CFT program testing to be conducted by

²² 89 Fed. Reg. 55,428, 55,441 (July 3, 2024).

qualified personnel of the financial institution or by a qualified outside party. Under the proposed rule, independent testing could be conducted by qualified personnel of the financial institution, such as an internal audit department, or by a qualified outside party, such as outside auditors or consultants.

The proposal provides parameters around the types of individuals that would be qualified and sufficiently independent. While we do not necessarily anticipate that these new restrictions will be problematic, it is worth noting that many credit unions rely on outside third parties for such testing. As such, since the proposed rule establishes additional items that must be incorporated into a financial institution's AML/CFT program, third-party testers will need additional training, which is likely to ultimately increase costs to credit unions and their ability to serve their members.

AML/CFT Program Approval and Oversight

The proposed rule would plainly require that the AML/CFT program be subject to board oversight, or oversight of an equivalent governing body. With this oversight requirement, the proposed rule makes clear that board approval of the AML/CFT program alone is not sufficient to meet program requirements, since the board, or the equivalent governing body, may approve AML/CFT programs without a reasonable understanding of a financial institution's risk profile or the measures necessary to identify, manage, and mitigate its ML/TF risks on an ongoing basis.

While the proposed expansion of the role of the board of directors will apply to all credit unions, its impact will vary depending on current practices. For example, based on our outreach, there are credit unions where the board simply approves the program without other extensive involvement. Conversely, we are aware of credit unions where the board of directors is more intimately involved in oversight of the program, as well as those that have delegated such oversight to another body, such as the Supervisory Committee.

Thus, credit unions will need to assess current policies and practices related to board of director involvement of their AML/CFT program. While the proposed changes ultimately may not substantially increase the degree to which the board must be involved, it is critical to keep in mind that credit union boards of directors are volunteers who generally receive little, if any, compensation for their work and dedication. Credit union boards are already extremely busy guiding the operations of the credit union. Increasing their level of responsibility in any area, regardless of its importance, can lead to unsustainable strain in other aspects of their work. Though the AML Act addresses improved oversight, it does not appear to specifically require the enhanced board of director role as contemplated in the NPRM. Thus, post-implementation of a final AML/CFT programs rule, we ask FinCEN to periodically revisit this issue to ensure the enhanced board responsibility is achieving its intended purpose and, more importantly, not overly straining already stressed boards of directors.

Final Rule Effective Date

As proposed, the final rule would become effective six months after the rule is formally adopted by FinCEN. We believe such an abbreviated timeframe is insufficient. Six months might be appropriate if FinCEN was simply implementing aspects of the FFIEC Examination Manual and existing FinCEN guidance. However, the inclusion of the AML/CFT priorities in particular will require additional time to implement necessary changes and update programs accordingly.

While, as noted above, some credit unions already have robust risk management processes in place, there are numerous credit unions that will require extensive updates to existing processes to prepare for the changes required in this proposed rule. Further, such risk management-specific updates do not address changes related to the AML/CFT priorities, which will impact all credit unions.

While it ultimately depends on the specifics of the final AML/CFT programs rule, we believe 12 to 18 months is a more appropriate timeframe for credit unions to make the numerous updates necessary for compliance.

Conclusion

America's Credit Unions appreciates the opportunity to comment on the NPRM regarding the AML/CFT Programs. Should you have any questions or require any additional information, please contact Luke Martone, Regulatory Advocacy Senior Counsel at LMartone@americascreditunions.org or (202) 508-6743.

Sincerely,



Luke Martone
Regulatory Advocacy Senior Counsel