



**America's
Credit Unions**

October 8, 2024

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

RE: Notice of Proposed Rulemaking on Anti-Money Laundering and Countering the Financing of Terrorism Programs (Docket ID NCUA-2024-0033)

Dear Ms. Conyers-Ausbrooks:

On behalf of America's Credit Unions, I am writing in response to the National Credit Union Administration's (NCUA) 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. Together with the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Fed), and the Federal Deposit Insurance Corporation (FDIC), the NCUA is issuing this proposed rule to amend each regulator's Bank Secrecy Act (BSA) compliance program rules to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs.

The purpose of this NPRM is to ensure the NCUA's and the other regulators' program requirements remain consistent with those imposed by the Financial Crimes Enforcement Network (FinCEN). The primary reason for the changes is so that the regulators' BSA compliance program rules will remain aligned with FinCEN's rule to avoid confusion and additional burden on financial institutions. Specific to federally insured credit unions (credit unions), the NPRM would amend section 748.2 of the NCUA's regulations to align this section with changes that are being concurrently proposed² by FinCEN as a result of the Anti-Money Laundering Act of 2020 (AML Act).³

We support consistency between FinCEN's and the NCUA's BSA requirements. Thus, we support the proposed amendments to Part 748 to ensure continued alignment. Below are several suggestions we recently shared with FinCEN in response to its proposed rule that are also relevant for purposes of the NCUA's NPRM. This rulemaking is somewhat unique in that we are providing comments on the NCUA's proposed changes that would align with changes proposed by FinCEN that are still pending. Thus, we share the suggestions below so the NCUA is aware of

¹ NCUA NPRM on AML/CFT Programs, 89 Fed. Reg. 65,242 (Aug. 9, 2024).

² FinCEN NPRM on AML/CFT Programs, 89 Fed. Reg. 55,428 (July 3, 2024).

³ Pub. L. No. 116-283, 134 Stat. 4547 (2021).

our position on the pending FinCEN proposal. Assuming the NCUA is in regular communication and coordination with FinCEN, including during these rulemakings, it is important that the NCUA be familiar with the industry's concerns regarding the FinCEN proposal. Regardless of how the FinCEN AML/CFT programs final rule may differ from the proposed version, we urge the NCUA to provide harmonization with FinCEN's program rules.

In addition to changes in this NPRM to maintain consistency with the FinCEN proposal, the NPRM would incorporate into section 748.2 of the NCUA's regulations language identical to that included in section 1020.210 of FinCEN's regulations regarding customer due diligence.⁴ Similar to the broader changes included in this NPRM, we believe it is important to maintain consistency with regard to the customer due diligence requirements between the NCUA's and FinCEN's regulations. Further, it is important that the NCUA make future conforming amendments to section 748.2 to reflect forthcoming changes to FinCEN's customer due diligence rule required by the AML Act.

Concerns with FinCEN's AML/CFT Programs Proposal

America's Credit Unions supports efforts to track and investigate financial crimes involving money laundering and terrorist financing (ML/TF). Compliance with AML/CFT rules 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 make 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.⁵

To address this persistent burden, America's Credit Unions steadfastly advocates for increases to various reporting thresholds associated with the NCUA's and FinCEN's AML/CFT rules. Specifically, for the reasons described in our letter regarding the FinCEN proposal,⁶ we continue to advocate for an increase in the Currency Transaction Report (CTR)⁷ filing threshold from \$10,000 to at least \$30,000, and we ask FinCEN to support an increase in the Suspicious Activity Report (SAR)⁸ reporting threshold from \$5,000 to at least \$10,000.

Proposed AML/CFT Program Requirements

The AML Act provides that AML/CFT programs be "risk-based" and reasonably designed to assure and monitor compliance with the requirements of the BSA. Overall, credit unions are

⁴ 31 C.F.R. 1020.210(b)(5).

⁵ 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.

⁶ America's Credit Unions letter to FinCEN re AML/CFT Programs NPRM (Sept. 3, 2024), https://www.americascreditunions.org/wp-content/uploads/2024/09/CL-FinCEN-NPRM-AML-CFT-Programs_final.pdf.

⁷ 31 C.F.R. § 1010.311.

⁸ 31 C.F.R. § 1020.320(b).

already doing much of what is addressed in the FinCEN proposal. However, they are able to do so with greater flexibility given the current lack of explicit regulatory requirements, such as those provided in the FinCEN proposal. 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.

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. 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 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 asked FinCEN to provide clarity to allow financial institutions to better understand whether they are satisfying the overall objectives of the program.

Risk Assessment Process

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.

The NCUA has in place a general expectation—though not a requirement—that credit unions utilize a BSA/AML risk assessment.⁹ 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 FinCEN

⁹ NCUA Examiner's Guide: BSA/AML Risk Assessment, <https://publishedguides.ncua.gov/examiner/Content/ExaminersGuide/RegulatoryCompliance/BSA/ExamProcedures/BSAAMLRiskAssessment.htm>.

proposal, including the risk assessment, will require additional components to be considered and/or incorporated into a credit union's assessment.

Some of the AML/CFT 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 asked 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, we stressed that 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, the FinCEN proposal 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

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 FinCEN proposal. 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.

Independent Testing

The FinCEN proposal would modify the existing program rules to require each financial institution's program to include independent, periodic AML/CFT program testing conducted by qualified personnel of the financial institution or by a qualified outside party. 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 proposal establishes additional items to be incorporated into a financial institution's AML/CFT program, third-party testers will need additional training, which will likely increase costs to credit unions and strain their ability to serve their members.

Approval and Oversight

The FinCEN proposal would plainly require that the AML/CFT program be subject to board oversight, or oversight of an equivalent governing body. 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 FinCEN proposal. Thus, post-implementation of a final AML/CFT programs rule, we asked 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 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 NCUA's 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.

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October 8, 2024
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Sincerely,

A handwritten signature in black ink that reads "Luke Martone". The signature is written in a cursive style with a long horizontal flourish at the end.

Luke Martone
Regulatory Advocacy Senior Counsel