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

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

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's credit unions, thank you for holding the hearing entitled "Combating Money Laundering and other Forms of Illicit Finance: Opportunities to Reform and Strengthen BSA Enforcement." The Credit Union National Association (CUNA) represents America's credit unions and their 110 million members.

Since the 2008 economic crisis and the resulting regulations that followed, credit unions have been required to devote more resources for regulatory and legal compliance particularly for mortgage loans and other consumer products, services, and protections. Given these new requirements, it has become difficult for credit unions to absorb their current total compliance burden. The new regulatory regime makes the Bank Secrecy Act (BSA)<sup>1</sup> and Anti-Money Laundering (AML) regulatory compliance even more daunting.<sup>2</sup>

We support efforts to track money laundering and terrorist financing, but also believe it is important to strike the right balance between the costs to financial institutions, like credit unions, and the benefits to the federal government from the BSA, AML, and Office of Foreign Assets Control (OFAC) regulations. As such, we support legislative and regulatory changes to address the redundancies, unnecessary burdens, and opportunities for efficiencies within the BSA/AML statutory framework. In particular, we support changes to (1) minimize the duplication of the same or similar information; (2) provide additional flexibility based on the reporting institution type or level of transactions; (3) curtail the continually enhanced customer due diligence requirements; (4) increase the currency transaction reporting (CTR) threshold; (5) reduce and simplify the reporting requirements of Suspicious Activity Reports (SARs) that have limited usefulness to law enforcement; and (6) allow for greater regulatory and examination consistency among regulators, including the National Credit Union Administration (NCUA) and state credit union regulators, in order to help with interpretations of BSA requirements and guidance and to minimize regulatory overlap.

BSA regulations, administered by FinCEN, are the foundation of all efforts by our government to stop criminal money laundering and terrorist financing. These have been strengthened through AML laws, which include part of the USA PATRIOT Act. These laws require financial institutions such as banks, credit unions, and non-depository financial institutions to keep records of events that could signal money laundering and terrorist financing. BSA/AML regulations require financial institutions to maintain records on cash sales of negotiable instruments of \$3,000 - \$10,000 and records of wire transfers of \$3,000 or more, and to report cash transactions over \$10,000 and any suspicious activity above a \$5,000 threshold that might show money laundering, tax evasion, or another type of crime. The forms used by credit unions to report transactions are the Currency Transaction Report (CTR)<sup>3</sup> and the Suspicious Activity Report (SAR).<sup>4</sup> In addition, BSA requires the verification of member identity and response to the 314a information request lists provided by FinCEN. When financial

institutions fail to comply with these laws and regulations, they are subject to significant civil money penalties and risk damage to their reputation.

The reality is the cost of technology for monitoring and ensuring compliance with BSA/AML laws and regulations is disproportionately burdensome on smaller and less complex institutions, such as credit unions. Often, credit unions choose not to serve certain markets because of the complexities of compliance. Money Service Businesses are a prime example of where many credit unions have difficulty providing needed services because of the BSA and AML ongoing due diligence requirements associated with serving these businesses. Nevertheless, our government can ease the compliance burden for smaller or less complex financial institutions, such as credit unions, while maintaining the protections needed. The following technical changes would make a major difference in the compliance burden facing credit unions on these requirements.

### **SAR and CTR Forms Should Be Combined**

It would be helpful to the industry if the SAR and CTR forms – the two forms used for reporting – were combined into one form and submitted to the same place. This form should be streamlined and consolidated so the same information can be populated for either form, or the form can simultaneously be used for either SAR or CTR (for example, with a check box on the form to specify for which report, CTR or SAR, the information is being provided). This minor change in paperwork would greatly ease compliance burden and ensure mistakes are not made during reporting, without compromising efforts to identify criminal activity.

### **Reporting Thresholds and Deadline to File Should Be Increased to Reflect Today's Environment**

The threshold for a CTR has not been adjusted in many years for inflation. Credit unions support an adjustment to this \$10,000 threshold to account for inflation and economic change over the past several years. This current amount was established in 1972, and would be over \$58,400 if adjusted for inflation in today's world.<sup>5</sup> Furthermore, the current relatively low limit is now capturing routine cash transactions that are not necessary to report since such transactions will be reported via the SAR if there is suspicious activity. Credit unions support increasing the CTR threshold to a minimum \$20,000 amount and at least doubling other key thresholds, such as the \$5,000 threshold for filing a SAR.

Additionally, the deadline to file a SAR should be extended from 30 days to 40 days for more complex cases. The more complex the case, the longer it takes to research the facts, which places substantial pressure on the credit union to timely file a SAR.

### **“Beneficial Owner” and Beneficiaries Requirements**

FinCEN finalized its beneficial ownership rule, which would extend Customer Due Diligence (CDD) requirements under BSA rules to the natural persons behind a legal entity, and require financial institutions to have risk-based procedures for conducting ongoing customer due diligence. The final rule creates a new § 1010.230 in Title 31 C.F.R. to require covered financial institutions to identify and verify the identity of beneficial owners of legal entity customers when a new account is opened, and conduct risk profiles and monitoring of customers. The requirements for identifying the true beneficial owner of various entities, which is effective on May 11, 2018, place an enormous burden on credit unions.

In addition, checking payable-on-death (POD) account beneficiaries against the OFAC list should only be required to occur if payout to the beneficiary is necessary. Payable-on-death beneficiaries do not have access to or control of the account in question, and may never have access, so there is no need to continually check them until they receive this access and control. Information on the beneficiaries is often not available for accurate checks because usually only the name of a beneficiary is collected, making this work difficult and time consuming to conduct. The OFAC checks are a substantial compliance burden and would be easier for institutions to conduct when ownership of the funds occurs. Again, this change would in no way limit efforts to prevent criminal activity.

### **Monetary Instrument Purchases**

Under 31 C.F.R. § 1010.415, banks and credit unions are required to verify the identity of persons purchasing monetary instruments for currency in amounts between \$3,000.00 and \$10,000.00, and maintain documentation of such transactions. The requirement to maintain a separate documentation for these transactions is antiquated given today's systems that track every transaction that occurs in a financial institution. A credit union can trace any transaction on its core system if it is needed by law enforcement. Therefore, the separate documentation requirement should be eliminated.

### **Zero Tolerance for Unintentional Non-Compliance Should Be Reconsidered**

The zero tolerance for non-compliance should be loosened so unintentional errors on SARs or CTRs, which can be complex and confusing to complete depending on the situation, do not result in an unfair penalty or violation in a supervisory examination. Intentional noncompliance or a pattern of negligence with the essential and substantive requirements should be subject to zero tolerance, but the occasional clerical error, such as failing to check a box on a complex form, should be afforded more leniency. In the current regulatory environment, even a substantially minor error, such as recording a P.O. Box as an address instead of a street address, can lead to a Document of Resolution (DOR) for the institution for non-compliance. If there is more than one error, for one or more consumers, the DOR by the financial regulator could be for a "systemic" violation, which would garner increased attention and be considered a greater violation. In today's complex regulatory environment, federal and state examiners are particularly conservative and will report institutions for a systemic violation even if only two similar errors were made. This reality increases the compliance burden for credit unions to conduct more checks than likely necessary and spend more resources on quality control. Furthermore, because the safe harbor for compliance only applies when a SAR is filed, credit unions tend to err on the side of caution and file a SAR even though law enforcement officials tell them not to file unless necessary. Finally, another reason why the burden is high for BSA/AML compliance is because now BSA officers can be held personally liable and be required to pay high civil money penalties out of their own pocket if they do not have a solid BSA/AML Program, as seen in some recent court cases. The penalties can be harsh and daunting, and can prevent individuals from becoming BSA officers or make these officers too expensive to hire.

### **Conclusion**

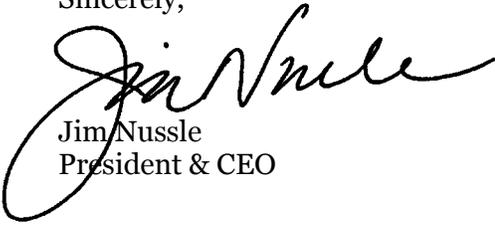
Credit unions take compliance seriously and dedicate significant resources to it. However, when credit unions are spending their limited resources disproportionately on compliance, this means they are spending fewer resources on innovating and providing safe and affordable products and services. We recognize that regulatory agencies – whether it be the NCUA, the Consumer Financial Protection Bureau (CFPB), or bank regulators – have a renewed focus on BSA/AML compliance, particularly on issues such as cybersecurity and mobile payments. However, we encourage a regulatory regime that will recognize the time and effort that goes into good faith compliance with laws, and does not unduly punish financial institutions for unintentional technical or minor errors. The seemingly never-ending stream of regulatory

expectations for credit unions, often with small and stretched staffs, must be considered in agency examinations and when laws and requirements are enacted.

Thank you again for the opportunity to be a part of this process. We take our role in the credit union movement, and as part of the financial services industry, seriously. We believe we have an obligation to protect our members and the financial community from fraud and crime, and there can always be more that should be done. However, credit unions are first and foremost in the financial services business, and do not have the infrastructure for law enforcement. This is the reality they struggle with every day. The tough question that lawmakers must grapple with is how to balance the need for protection with the burden placed on financial institutions and consumers who ultimately pay the cost. The credit union industry is open to working with the government to protect against crime, and we look forward to being a resource as you develop processes and requirements that are streamlined and more manageable.

On behalf of America's credit unions and their 110 million members, thank you for your consideration of our views.

Sincerely,

A handwritten signature in black ink, appearing to read "Jim Nussle". The signature is fluid and cursive, with a large initial "J" and "N".

Jim Nussle  
President & CEO