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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

On behalf of America's credit unions, thank you for holding the hearing entitled "Combating Money Laundering and Other Forms of Illicit Finance: Regulator and Law Enforcement Perspectives on Reform." 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 Bank Secrecy Act (BSA)¹ and Anti-Money Laundering (AML) regulatory compliance even more daunting.²

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 threshold requiring Currency Transaction Reports (CTRs); (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,

¹ The Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the "Bank Secrecy Act" or "BSA") requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The act specifically requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. The BSA is often referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML."

² The Department of Treasury's Financial Crimes Enforcement Network (FinCEN) implements the regulations for recordkeeping and reporting requirements of the Bank Secrecy Act codified at 31 C.F.R. § 103.

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 CTR³ and SAR.⁴ 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.

Unfortunately, the current BSA requirements are not proving to be all that effective. “The United Nations Office on Drugs and Crime estimates that financial crimes now yield about \$1.6 trillion annually, of which only 1% is caught . . . Furthermore, catching this 1% costs banks [and credit unions] an estimated \$50 billion a year. This means that [financial institutions] incur astronomical costs and risks for poor results.”⁵

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 reduce the chance mistakes are made during reporting, without compromising efforts to identify criminal activity.

³ Financial institutions must file a CTR on any transaction in currency of more than \$10,000.

⁴ See “Anti-Money Laundering Compliance Frequently Asked Questions and Answers (FAQs),” *available at* <https://www.ncua.gov/Resources/Documents/LCU2005-09Encl1.pdf> (“In general, federally-insured credit unions must file a SAR when there is a known or suspected violation of a federal law, a pattern of criminal violations, or a suspicious activity committed or attempted against the credit union or involving a transaction or transactions through the credit union meeting the following criteria: insider abuse involving any amount; violations aggregating \$5,000 or more where a suspect can be identified; violations aggregating \$25,000 or more regardless of a potential suspect; and transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.”).

⁵ Jo Ann Barefoot & Mathew Van Buskirk, BankThink Regtech Could Help Stop Human Trafficking, *American Banker*, *available at* <https://www.americanbanker.com/opinion/regtech-could-help-stop-human-trafficking> (Jan. 31, 2018).

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, established in 1972, would be over \$61,000 if adjusted for inflation in today's world.⁶ 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 extends Customer Due Diligence (CDD) requirements under BSA rules to the natural persons behind a legal entity, and requires 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 became effective on May 11, 2018, place an enormous burden on credit unions.

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 and \$10,000 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

⁶ See Bureau of Labor Statistics Consumer Price Index Inflation Calculator, *available at* <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=10%2C000.00&year1=197201&year2=201808>.

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 BSA/AML 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 Bureau of Consumer Financial Protection, 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 recognizes 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 is always be more that can 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,



Jim Nussle
President & CEO