

September 3, 2024

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

**Re: Anti-Money Laundering and Countering the Financing of Terrorism Programs -
Docket No. FINCEN-2024-0013**

To Whom It May Concern:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the Financial Crimes Enforcement Network's (FinCEN) notice of proposed rulemaking and request for comment: Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) Programs (program rules).²

The proposed rule would implement provisions under section 6101(b) of the Anti-Money Laundering Act of 2020 (AMLA Act) and would amend several aspects of the existing Bank Secrecy Act (BSA) AML program requirements.³ NASCUS understands the need to strengthen and modernize financial institutions' AML/CFT programs as required under the AML Act. Preventing money laundering and terrorist financing within the financial services sector is critical.

As the professional association of state credit union regulators and a voice for the credit union system, NASCUS coordinates, supports, and enhances the state credit union system's BSA/AML/CFT compliance, supervision, and examination efforts. We commend FinCEN for its efforts in developing rulemaking and guidance to assist financial institutions and regulators and appreciate the opportunity to comment on the proposed rulemaking.

Many of the requirements discussed in the proposed rule are already existing practices among credit unions. The following comments are to maximize the effectiveness and intended purpose of this rulemaking while acknowledging the potential burdens the proposed rule will have upon credit unions and state regulators should it be implemented as proposed.

Risk Assessment Process

The proposed rule is heavily risk-focused. As addressed in the preamble and section-by-section analysis of the proposed rule, the majority of the proposed AML/CFT program components are

¹ NASCUS is the professional association of the nation's forty-six state credit union regulatory agencies that charter and supervise over 1800 state-chartered credit unions. NASCUS membership includes state regulatory agencies, state-chartered and federally-chartered credit unions, and other important industry stakeholders. State-chartered credit unions hold over half of the \$3 trillion assets in the credit union system and are proud to represent nearly half of the 142 million members. The remaining states lack state-chartered credit unions.

² 87 Fed. Reg. 55428 (July 2024)

³ 31 U.S.C. 5318(h)(2)(B)

substantially similar to the existing statutory and regulatory requirements for financial institutions. However, the proposed rule would codify a requirement that all financial institutions have a risk assessment as part of an effective, risk-based, and reasonably designed AML/CFT program.

AML/CFT National Priorities

In June 2021, FinCEN issued the initial iteration of AML/CFT priorities. The priorities are broad and cover a wide spectrum. It would be difficult to imagine a crime or suspicious activity not captured by one or more of the eight priorities. Likewise, the proposed rule provides little detail on the expectations of how financial institutions (FIs) should consider the AML/CFT priorities in the risk assessment.

Per the AML Act, FinCEN must update the AML/CFT priorities every four years, and the risk assessment must incorporate the most up-to-date priorities. With this change, credit unions must update their risk assessments more frequently to coincide with changes to priorities and add additional monitoring requirements. Although the NPRM states that a credit union has flexibility in documenting the results, a risk assessment would now be subject to greater examiner scrutiny and subjectivity. FinCEN should provide clear guidance for examiners and regulated entities on what must be in a risk assessment while also considering the size, complexity, and resources of regulated entities. There cannot be a “one-size-fits-all approach.”

Business Activities

Credit unions already structure their program to be risk-based to ensure AML/CFT programs are designed to meet regulatory requirements. Risk assessments are common practice among credit unions and are existing expectations of regulators and examiners.⁴ While not a statutory requirement, a well-developed risk assessment assists in identifying ML/TF risks and in developing appropriate policies, procedures, and internal controls which is already the framework for credit union AML/CFT programs.

FinCEN indicates that a credit union may use other sources for determining risks posed to the institution, such as information obtained from Section 314(a) or 314(b) information-sharing programs, payment transactions with other FIs that have been flagged or returned due to AML/CFT concerns, feedback from regulators or law enforcement, or any other internal information. The proposed rule indicates that any “exercise of discretion or judgment” with the analysis performed as part of the risk assessment process should be documented and subject to oversight and governance.

Although the proposal states credit unions “may” use such information to develop or amend their risk assessment, there could be potential implications that examiners will expect credit unions to use such information, resulting in a “may” versus “shall” scenario that would also increase compliance burdens, particularly to smaller institutions who lack staffing and resources.

⁴ NCUA Examiners Guide – [BSA/AML Risk Assessment](#)

Innovation

The AML Act notes in section 6002 that one of its purposes is “to encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and financing of terrorism.” The proposed rule states that FinCEN’s goal is to encourage instances where a financial institution finds it beneficial to consider and evaluate technological innovation and implement new technology or innovative approaches in combating financial crime.

Unfortunately, the proposed rule does not necessarily provide for consideration of the resources and costs associated with implementing new technologies, especially for many smaller credit unions referring to a position of providing financial institutions “flexibility” to pursue AML/CFT technology and programs based on their “risk.”

This is unlikely to comfort regulatory authorities who must review and examine credit union AML/CFT programs. Nor does the ambiguity provide comfort to financial institutions. There have been several consent orders and enforcement actions against financial institutions in 2024.⁵ Two of the consent orders raised safety and soundness concerns related to compliance with the Bank Secrecy Act and third-party oversight. Issues such as these could lead to even more costs to already struggling smaller institutions looking for innovative solutions to assist in managing the risks associated with an AML program.

Innovation is an important resource. However, NASCUS encourages FinCEN to provide guidance and resources for financial institutions, especially smaller institutions, on innovation strategies to assist them, while considering costs and limited resources.

AML/CFT Officer

NASCUS appreciates the proposal’s requirements for the designated AML/CFT officer(s) to be “qualified.” An individual(s) responsible for this area must have thorough knowledge and understanding of AML/CFT and the potential implications to a credit union for non-compliance. However, the proposal states whether this person(s) is qualified will depend, in part, on the institution’s ML/TF risk profile, as identified by the risk assessment results. In addition, the proposal would require that the AML/CFT officer’s position in the financial institution’s organizational structure must enable the AML/CFT officer to effectively implement the financial institution’s AML/CFT program and have decision-making capability regarding the program. Additionally, they must have sufficient stature within the organization to ensure the program meets the requirements of the Bank Secrecy Act.

Many smaller institutions have limited staff who wear multiple hats, and they do not have the resources to hire additional staff or pay for additional training. The proposal explicitly states, “An AML/CFT officer that has multiple additional job duties or conflicting responsibilities that adversely impact the officer’s ability to effectively coordinate and monitor day-to-day AML/CFT compliance generally would not fulfill this requirement.”

⁵ See FDIC Consent Order FDIC-23-0110b and FDIC-23-0038b

This requirement would ultimately force smaller institutions to hire additional staff or move duties and responsibilities to other staff. This could potentially add an undue burden on staff and the institution as a whole. In an age of a rapid decline in smaller, community-based institutions, additional burdens will continue to force consolidation, particularly in smaller areas where smaller credit unions are the only financial institutions serving consumers.

FinCEN should consider flexibility for smaller institutions when designating the AML/CFT officer.

Supervising Regulatory Agencies

FinCEN should consider the additional burden the implementation and supervision of additional requirements will have on supervising agencies. The state supervisory agencies are responsible for examining credit unions for BSA/AML/CFT compliance as part of their compliance examinations. Without specific thresholds, based on the size and complexity of institutions, regulators are left with subjectivity in evaluating each institution, leaving a smaller institution potentially subject to the same requirements as a much larger institution.

Additionally, agencies rely upon the NCUA's Examiner's Guidance and the FFIEC BSA/AML Manual when examining credit unions for BSA/AML compliance, as do financial institutions in developing their programs.⁶ These resource documents have been longstanding aids for both regulatory agencies and supervised entities and will need to be updated in the event the proposed rule is adopted. Without clear guidance from FinCEN, resource documents such as these will be inconsistent, leaving an additional layer of potential uncertainty and regulator scrutiny.

Conclusion

NASCUS encourages FinCEN to consider existing regulatory frameworks and practices currently in place, as much as possible to reduce compliance burdens, especially on smaller entities. Additionally, given FinCEN's reliance on state regulator supervision of credit union compliance with BSA/AML, implementing additional rulemaking cannot be successful without full integration of the state regulators in every aspect of the process.

Sincerely,

-signature redacted for electronic submission –

Sarah Stevenson
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NASCUS

⁶ See NCUA Examiner's Guide – Bank Secrecy Act – Exam Procedures – BSA Policies & Procedures and FFIEC BSA/AML Examination Manual – BSA/AML Risk Assessment