

October 8, 2024

Melane Conyers-Ausbrooks
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements: RIN 3133-AF45

Dear Ms. Conyers-Ausbrooks:

The National Association of State Credit Union Supervisors (NASCUS)¹ submits the following comments in response to the Federal Banking Agencies' request for comment on the proposed Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) Program Requirements (program rules).² For this letter, we will refer to the National Credit Union Administration (NCUA).

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 the NCUA 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 practiced among credit unions. Our comments encourage maximizing the effectiveness and intended purpose of this rulemaking and acknowledge the potential burdens the proposed rule would have upon credit unions and state regulators should it be implemented as proposed.

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 89 Fed. Reg. 65242 (August 2024)

³ 31 U.S.C. 5318(h)(2)(B)

Risk Assessment Process

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

(b) Establishment and Contents of an AML/CFT Program

Section (b)(2) of the proposed rule, consistent with FinCEN's proposal and section 6101(b) of the AML Act, describes the contents of an AML/CFT program as follows: "An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the [bank's]⁴ risk profile and takes into account higher-risk and lower-risk customers and activities..."⁵

Implicit in the existing requirement that banks implement a program "reasonably designed" to ensure and monitor compliance with the BSA is the expectation that banks "allocate their resources according to their money laundering and terrorist financing (ML/TF) risk."

The section-by-section analysis of the proposed rule further states that a bank "would retain flexibility in how it would document the results of its risk assessment process." It also states that "banks would not be required to establish a single consolidated risk assessment document solely to comply with the proposed rule. Various methods and approaches could be used to ensure that a bank is appropriately documenting its particular risks."⁶

Also recognized in the proposed rule is the need for banks to "maintain flexibility over how the AML/CFT priorities are integrated into their risk assessment processes and the method of assessing the risk related to each of the AML/CFT priorities."⁷ NASCUS agrees that flexibility is needed and welcome for credit unions. We recommend the NCUA and the Agencies, implement this flexibility within the final rule. Credit unions vary in size and complexity, and permitting individual credit unions to tailor their risk assessment(s) based on these variables will avoid a "one-size-fits-all" approach. Doing so will also provide less burden upon institutions, especially smaller institutions while maintaining the spirit of the AML Act. Furthermore, this would allow institutions to focus their resources in a way that will increase the likelihood of more effective results in monitoring, identifying, and preventing financial crimes.

AML/CFT National Priorities

In June 2021, FinCEN issued the first National Priorities.⁸ The initial National Priorities are broad, covering the majority of predicate crimes the money laundering statutes are intended to interdict. The Priorities have done little to assist in focusing AML efforts. Likewise, the proposed

⁴ The use of "bank" also refers to credit unions

⁵ 89 Fed. Reg. 65246 (August 2024)

⁶ Id.

⁷ 89 Fed. Reg. 65247 (August 2024)

⁸ [https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/AML_CFT%20Priorities%20(June%2030%2C%202021).pdf)

rule fails to provide sufficient 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. NCUA 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

In our experience, credit unions already utilize a risk-based approach to their AML programs to ensure those programs meet regulatory requirements while simultaneously focusing efforts on optimal efficiency and effectiveness. At the state level, examiners would expect to see formal risk assessments as a foundational element of a credit union’s program. While not a statutory requirement, a well-developed risk assessment assists in identifying ML/TF risks and develops appropriate policies, procedures, and internal controls that are key to credit union AML/CFT programs.

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 encourages but does not require, the consideration of innovative approaches to help banks meet compliance obligations pursuant to the BSA.

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 2024.⁹ 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 manage the risks associated with an AML program.

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

NASCUS recommends that the Final Program Rule include language promoting innovation and, where possible, eliminating barriers to adopting innovative technologies. Specifically, we suggest that the final rule clearly states that financial institutions may utilize innovative technologies, such as AI and machine learning, and provide a safe harbor for credit unions

⁹ See FDIC Consent Order FDIC-23-0110b and FDIC-23-0038b

using well-researched and vetted technology solutions. Additionally, we encourage the NCUA to continue collaborating with other federal banking agencies and FinCEN to gather and incorporate industry feedback into their guidance on model risk management in this area.

Finally, we encourage the NCUA to remove barriers to the adoption of innovative technology that may result from any potential perceived inconsistency between regulatory support for innovation and challenges raised by examiners. This subjectivity should not lead to a financial institution's AML/CFT program, policies, procedures, or controls being considered ineffective or inadequate, nor should it discourage credit unions from assessing and adopting such technologies.

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 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."

This requirement would force smaller institutions to hire additional staff or move duties and responsibilities to other staff. This could 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.

When examining a credit union, NCUA needs to provide much more context in its views of how the agency would apply this provision of the proposed rule and should consider flexibility for smaller institutions, particularly credit unions with \$100 million or less in assets, when designating the AML/CFT officer.

NCUA Part §748 and Customer Due Diligence

NASCUS was encouraged that NCUA acknowledged the need to work with state regulators on changes to the BSA/AML regulations and supervisory processes to implement the National

Priorities.¹⁰ However, NCUA should create a working group of NCUA and state regulators to develop pending regulations as rulemaking and guidance is issued by FinCEN.

Ultimately, there are several layers of proposed and pending regulation that would have a significant impact on the industry. Short of any sense of timing of issuance or any pending guidance, credit unions, and state regulators are left to wonder what will be expected and what they should be examining. Collaboration in this space would not only benefit the NCUA and the state regulators, it would also benefit supervised entities in implementing their programs.

Conclusion

NASCUS encourages the NCUA 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 and the NCUA'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
Vice President, Regulatory Affairs
NASCUS

¹⁰ <https://ncua.gov/regulation-supervision/letters-credit-unions-other-guidance/interagency-statementissuance-anti-money-launderingcountering-financing-terrorism>