



February 14, 2022

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

Re: Financial Crimes Enforcement Network (FinCEN) Request for Information (RFI) Regarding Updates, Modernization and Streamlining of Bank Secrecy Act (BSA) Regulations and Guidance; Docket Number FINCEN-2021-0008

Dear Sir or Madam,

The Michigan Credit Union League (MCUL) is a statewide trade association that represents 100% of the 208 credit unions located in Michigan and their nearly 5.8 million members. On behalf of our credit union members, we appreciate the opportunity to comment on the Financial Crimes Enforcement Network's (FinCEN) Request for Information on ways to streamline, modernize and update Bank Secrecy Act (BSA) regulations and guidance.

Several questions posed by the RFI are unanswerable by financial institutions as they are requesting information that financial institutions are not privy to. For example, questions 3, 4, 10, and 25 are better answered by law enforcement or other applicable government agency, as these agencies are best situated to determine what information is most useful to them.

While the MCUL and the credit union's it represents are supportive of FinCEN's continued efforts to strengthen and modernize the Anti-Money Laundering regime, we encourage FinCEN to evaluate the burden that monitoring and reporting places on credit unions, particularly the increased burden placed on smaller institutions. There are several recommendations to be made that provide the opportunity to align the reporting regime with current risk-based criteria, by updating reporting requirements not only for reports that credit unions are filing, but also regarding reports provided to the credit unions. To that end, our comments are largely focused on two main points: 1) increasing transparency between law enforcement and financial institutions, and 2) updating financial institution reporting requirements to align with modern risks. We will address both of these points with our comments herein.

1. Increased Transparency and Collaboration Between FinCEN, Law Enforcement and Financial Institutions

One of the primary concerns of credit unions within the state is the lack of transparency afforded to them in how the information they are required to report is used. Because the information only flows in one direction, it is near impossible to determine whether the information being submitted is of any use to law enforcement. Further, it is our understanding that, due to law enforcement limitations, single reports submitted by a financial institution typically do not trigger an investigation; rather, when an investigation is already underway, the database is scrubbed for applicable reports with information in support of the investigation. While, surely, having the information available is a benefit to the investigatory process; inevitably, a majority of submitted reports go unread, let alone used to combat the potential crimes they



are reporting on. This understanding, paired a one-way information flow, invariably leads our institutions to believe that the time and effort spent in researching, writing and submitting reports is of little worth, leading to a growing frustration year over year in tandem with a growing report volume. With these facts in mind, our suggestions are twofold: 1) develop reporting for financial institution consumption, and 2) engage regularly in collaboration with financial institutions.

DELEVOP REPORTING

The principal question undergirding this suggestion is, “what accountability, if any, does FinCEN have to its stakeholders to provide reports on how stakeholder submitted data is used?” As a corollary, the state of Michigan recently passed Public Act 344 of 2020¹, or the “Financial Exploitation Prevention Act” (FEPA). Within this act, the following language is present:

“Within 10 business days after it receives a report of suspected or detected covered financial exploitation from a financial institution under this section, the law enforcement agency or adult protective services that received the report must provide written notification to the designated contact of the financial institution that clearly indicates whether a reported incident is under investigation or has been referred to a law enforcement agency for investigation. As soon as practicable after the investigation, the law enforcement agency or adult protective services shall notify the financial institution of the disposition of the reported incident.”

As enacted, FEPA places a responsibility on the state’s financial institutions to report, as well as a responsibility on law enforcement to not only investigate, but to report back to applicable stakeholders how that information was used. While we recognize the impracticality of a nationwide implementation of a similar program, there are certainly reasonable actions FinCEN can make in its spirit. For example, if a credit union submits 100 SARs in a given year, it seems reasonable that, within a certain time frame, FinCEN could likewise provide a basic statistical report on filed report usage (i.e. 20% were used in an investigation; 5% overlapped with reports filed by other reporting institutions; 10% resulted in a recovery of \$XXXX to the American taxpayers). Further, such inverse reporting provides ancillary benefits to FinCEN’s goal of modernization, simplifying and streamlining BSA policy and processes, as it provides opportunity for financial institutions to adjust and enhance their monitoring criteria to provide better and more useful information to law enforcement.

Additionally, credit unions would benefit from regional statistical and trend analysis, delivered in a reasonably timely manner. To that end, it is suggested that FinCEN provide regional reports with key trend data – specifically, trend data that FinCEN and law enforcement agencies have an interest in pursuing – with examples of activity to be mindful of, which can be filtered into a credit union’s risk-based monitoring procedures.

Finally, while our credit unions understand the benefit of including the “how” and “why” when drafting their SAR narratives, what’s lacking is the “how” and “why” regarding the current reporting paradigm. If cannabis is legal in the state, what is the purpose behind a Marijuana Limited SAR? How is that information being used? How are the hundreds, if not thousands, of CTR reports we are filing annually being used for the betterment of the financial system? How do other agencies work with reports submitted by our financial institution? Similar to what was mentioned earlier, a better understanding of the “how” and

¹<https://www.legislature.mi.gov/documents/2019-2020/publicact/pdf/2020-PA-0344.pdf>



“why” behind current reporting requirements can serve as a benefit to both financial institutions and FinCEN alike, as this information can be used to facilitate continued efforts towards modernization and enhancement of the BSA system.

COLLABORATION

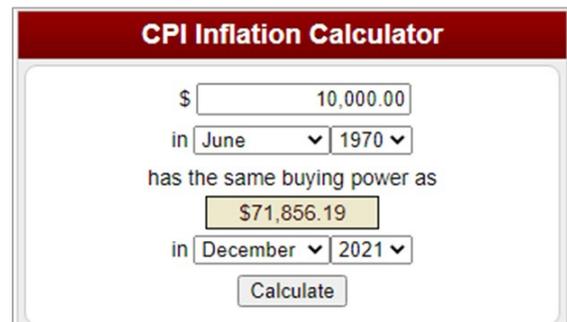
The credit union industry is no stranger to inter-organizational collaboration. In fact, the industry thrives on being fully engaged with their peers in both competition and collaboration. Further, as financial institutions, we have a vested interest in ensuring a strong AML/CFT system is in place. To that end, to assist FinCEN in the development of policy programs that not only provides useful reports and information for law enforcement, but is also reasonably implemented in our front-line institutions, we recommend that FinCEN seek active partnership and collaborative engagement with its financial institution stakeholders via focus groups and targeted work groups.

2. Simplification, Streamlining and Eliminating Regulatory Reporting; Ensuring Information is Truly Risk-Based and Valuable

As stated earlier, credit unions are not in a position to address what is valuable, risk-based information to law enforcement. With that said, as common-bond, front-line financial institutions, credit unions are situated to understand the unique risks and challenges present among their membership and within their communities. There appears to exist an ever-growing disparity between what law enforcement indicates is valuable risk reporting (via mandated reporting thresholds) and what the organizations would view as valuable risk reporting. Many credit unions have expressed that, in some instances, it feels as though they are collecting, organizing and reporting information on good members, simply because the particular activity triggered a reporting requirement, only for that report to remain unread and, ultimately, never acted on. In light of this disparity, there are several recommendations regarding the various reporting elements currently required by BSA regulation, which are detailed below.

CURRENCY TRANSACTION REPORTS

The requirement for Currency Transaction Reports (CTRs) was enacted in 1970, nearly 52 years ago. In the half century since its inception, the \$10,000 threshold has never been adjusted, for inflation or otherwise. To put that into perspective, according to the Bureau of Labor Statistics, \$10,000 in 1970, adjusted for inflation, would be the equivalent of nearly \$72,000 today.²



In conversation with our member credit unions, one credit union made the following observation: *if risk is the primary driver behind policy development, the fact that the CTR threshold hasn't been updated in over half a century indicates that, at least regarding Currency Transaction Reporting specifically, the policy has not been "risk-based" for some time now.* To highlight further how inflationary pressures have increased credit union compliance burdens in this regard, one credit union provided data indicating that, in one month – June 2021 – the credit union filed more CTRs than in all of 2006. What's more, over the

²https://www.bls.gov/data/inflation_calculator.htm



course of 2021, the credit union filed 42% more than they filed the previous year and filed nearly as many CTRs as they did from 2006 to 2012 combined. Other credit unions voiced similar concerns. It is clear, the challenge of the ever-increasing cost of compliance will continue to burden our filing institutions. What's more, a 2020 report from the Treasury Inspector General for Tax Administration (TIGTA)³ appears to indicate that, while millions of reports are filed annually, "*...the IRS is not using this data to identify nonfilers.*" In light of these facts, we mirror the recommendations present in "H.R. 2040 – 117th Congress: Financial Reporting Threshold Modernization Act,"⁴ and request that FinCEN seriously consider raising the CTR threshold from \$10,000 to \$30,000. In addition to raising the threshold, we request further that FinCEN consider indexing Currency Transaction Report minimums to inflation and adjust the threshold on a regular basis. Our recommendation is that the threshold be adjusted every 5 years and in minimum increments of \$1,000.

An additional burden, experienced primarily by our smaller credit unions, is the requirement to submit a CTR within 15 days of the transaction date. While larger shops can benefit from automated processes, CTR filing in small shops is largely a manual process. Additionally, in these small shops, compliance reports are typically delegated to one individual, and this one individual is typically responsible for more within the credit union than solely compliance activities. Considering the annual increases in reporting burdens, in addition to the backdrop of COVID-19 and the "great resignation," (unplanned absences; small and shrinking staff) our smallest credit unions are finding it to be exceedingly difficult to file reports in a timely manner, increasing their exposure to compliance risk and examination scrutiny. With the previously mentioned TIGTA report in mind, it would seem to be apparent that there is no administrative need for reports to be submitted within 15 days of a transaction. To that end, we request that FinCEN increase the filing deadline from 15 days to 30 days.

SUSPICIOUS ACTIVITY REPORTS

In conversation with our member credit unions, it was indicated that, for the most part, a credit union generated SAR filing generally occurs for one of two reasons: either the activity triggered a minimum reporting threshold, or the credit union truly believed the activity was suspicious. This conversation alone appears to indicate the fact that, at least in certain instances, there are cases where the credit union is filing a Suspicious Activity Report solely because they were required to, not because the activity being reported had any real indication of being suspicious. Consider, for example, structuring activity. While Appendix G of the FFIEC BSA Examination Manual⁵ would suggest that not every instance of seemingly structured transactions would necessitate a SAR, other guidance⁶ and external factors (such as auditor or examiner review) lead to the fact that, in practice, most instances of seemingly structured transactions will necessarily result in the filing of a SAR, regardless of whether the credit union ultimately viewed the associated activity as suspicious. Accordingly, the narrative will be exceptionally sparse when compared to a narrative drafted in response to activity deemed suspicious. With that information as a backdrop, multiple credit unions have indicated that an overwhelming majority of the Suspicious Activity Reports filed annually are structuring SARs. Given the time required to file any given SAR, in an effort to relieve burdens associated with minimum-value reports, it is requested that FinCEN make available a separate, simplified SAR form for the sole purpose of submitting structuring reports. Further, because a majority of

³<https://www.treasury.gov/tigta/auditreports/2020reports/202030055fr.pdf>

⁴<https://www.congress.gov/bill/117th-congress/house-bill/2040/text>

⁵<https://bsaaml.ffiec.gov/manual/Appendices/08>

⁶<https://www.fincen.gov/resources/statutes-regulations/administrative-rulings/suspicious-activity-reporting-structuring>



structuring events will likewise initiate a CTR report (or vice-versa), this represents a doubling of time spent to submit necessary reporting. To that end, it is requested that FinCEN develop a separate, simplified SAR form for instances where a full SAR would be duplicative or non-value add. Situations such as structuring, SARs with corresponding CTRs, and even continuing activity filings lend themselves to a simplified filing method.

To expand on the idea of a simplified SAR form, recall from earlier that it is our understanding that no single report is enough to trigger an investigation and, instead, reports are warehoused for potential review in conjunction with an investigation in progress. Recall further that, in our understanding, a majority of reports submitted will never be read. Similar to a year-over-year increase in CTR filings, our credit unions are likewise experiencing increasing volumes of SAR filings. One credit union, for instance, indicated that their SAR volume in 2020 was more than that of the previous four years combined. Especially for our smaller credit unions, where this process is entirely manual and without the assistance of third-party AML software, this continued increase in reporting represents near-exponential increases in time required to report. These understandings present an opportunity to request a simplified reporting process – one that provides enough information to be useful to investigators in identifying patterns, yet not so much that credit unions are shackled to their BSA reports. To that end, our request is for FinCEN to entertain the idea of a two-phase SAR reporting structure. Under this phased approach, Phase 1 would consist of a simplified SAR form, with basic information regarding the target and the activity in question.⁷ From there, should the SAR be included in an investigatory review, a standardized process should be implemented for investigators to request additional information from the filing financial institution, as needed. Upon receiving this request, financial institutions will be provided a window of time to collect and submit the requested information on a Phase 2 report. Under this phased approach, it is our assumption that a majority of reports filed will be of the Phase 1 sort, while a small percentage will move on to Phase 2. Under this approach, credit unions will still be able to uphold their duty to report suspicious activity, while greatly reducing the time and effort required to submit reports, thereby reducing their overall BSA compliance burden.

Finally, similar to Currency Transaction Reports, the minimum reporting threshold for Suspicious Activity Reports has not been adjusted since its 1996 implementation, over 25 years ago. The value of \$5,000, for example, has continued to diminish as inflation grows, and an amount that was meaningfully suspicious nearly 30 years ago does not equate to the same value of suspicion today. Of course, we are unable to discern what activity would be meaningfully suspicious to law enforcement (which, again, highlights the need for transparency and collaboration); however, we are keen to believe that law enforcement isn't particularly worried about low-value offenders and instead chooses to focus on higher-value cases. Evidencing this, multiple credit unions have indicated that they receive very little follow up from law enforcement on filed SARs, if at all. One credit union leader expressed that, in their 30 years of working with BSA, they've not received a single request from law enforcement in follow-up. Throughout this section thus far, our requests have been focused on regulatory reporting relief – to that end, we will again mirror the recommendations present in H.R. 2040⁴ and request that FinCEN consider raising the SAR threshold from \$5,000 to \$10,000.

⁷We envision that this Phase 1 report will largely be absent a narrative. In the instance a report is filed in reference to an active advisory (requiring certain terms be present in the narrative), we suggest, instead, integrating the applicable terms into the data fields of the SAR form, either by way of a check box, or a drop-down list of applicable terms (PPP, Marijuana Limited, etc.)



MONETARY INSTRUMENT LOGS

It is our opinion that monetary instrument logs represent the truest form of “logging for logging’s sake,” and that continuing to maintain these logs holds no value to the broader goals of the AML regime. Consider first the fact that the information contained on these logs has largely been electronically collected by core service providers for at least the last decade. For deposit account holders (members), all required recordkeeping elements⁸ are collected via the core. In the rarer⁹ instance a non-deposit account holder (non-member) purchases a monetary instrument, the additional information required can generally be collected via the core, as well, typically through a combination of core coding and non-member transaction procedures. Even still, there are credit union’s that continue to maintain logs or core reporting designed to comply with the record maintenance requirement; some smaller credit unions are still doing so on paper logs. The value in this or, rather, the lack thereof, comes from the fact that by and large, these reports are rarely, if ever, reviewed during risk-based audits and examinations. This leads us to believe that, as a component of risk during audits and exams, these logs are low enough a risk to avoid review and thus should be eliminated as a requirement. Short of eliminating the requirement entirely, at a minimum, the threshold requirements should be adjusted in a similar accordance with CTR threshold increases.

Conclusion

The MCUL and the credit unions it represents are supportive of FinCEN’s continued efforts to strengthen methods of identifying money laundering and terrorist financing. Additionally, we are encouraged by FinCEN’s RFI and the modernization efforts to come, but most specifically, we are appreciative of the opportunity to express the substantial reporting relief possible by resynchronizing AML reporting requirements to current risk-based thresholds. The MCUL respectfully asks FinCEN to consider our comments in developing rule proposals. We understand the importance of such rules but wish to assist credit unions in alleviating undue burden, where appropriate. On behalf of Michigan’s credit unions, thank you for your consideration.

Sincerely,

Michigan Credit Union League and Affiliates

⁸<https://bsaaml.ffiec.gov/manual/AssessingComplianceWithBSARegulatoryRequirements/08>

⁹Due to credit union membership requirements, a non-member monetary instrument purchase is exceedingly rare.