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; Docket No. NCUA-2024-0033)

Dear Ms. Conyers-Ausbrooks,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the National Credit Union Administration (NCUA) interagency proposed rule on Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements to help implement the Anti-Money Laundering Act of 2020. The Association is the state trade association representing approximately 200 state and federally-chartered credit unions located in the states of Delaware, Massachusetts, New Hampshire, and Rhode Island, which further serve over 4.9 million consumer members. The Association developed these comments in consultation with our members.

## The Association's High-Level Comments

- The Association generally supports the NCUA Board's proposal because it emphasizes the risk-based approach to Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) compliance. Most credit unions already follow a risk-based approach to AML/CFT pursuant to NCUA guidance. We are concerned, however, that the requirement for credit unions to implement an "effective, risk-based, and reasonably designed AML/CFT program…" is both vague and redundant. We urge the Board to clarify that an "effective" and "reasonably designed" AML/CFT program means one that is compliant with the other requirements of this regulation.

- For most credit unions, a risk-based approach in theory reduces compliance burdens because credit unions' risk-profiles are limited by their field of membership restrictions on who can join the credit union. We request clarification, however, that the credit union should only be required to update its AML/CFT risk-assessment when there are material changes to the AML/CFT risks it faces. Periodic updates should not be required.

- We are concerned that the proposed requirement for credit unions and banks to "consider" the Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) in their risk assessments may, in practice, be overly prescriptive and result in unwarranted paperwork burdens. Since SARs must be reported to the credit union's

board of directors, we request clarification that the "consideration" of reports can be based on the review of board meeting minutes on SARs, as opposed to reviews of all of the institutions' individual SARs and CTRs per se. Review of board meeting minutes should be sufficient to identify trends or patterns of SARs for purposes of the risk assessment process.

- The Association strongly supports the clarification that the credit union's periodic independent review and testing of its AML/CFT compliance program can be "conducted by qualified bank [or credit union] personnel" as an alternative to requiring an external AML/CFT audit. We believe the credit union's supervisory committee or audit committee should be able to conduct this independent review in collaboration with the credit union's AML/CFT officer.

- The Association supports the proposal for the credit union's board of directors to be responsible for credit union's AML/CFT compliance program because this board responsibility is already the status quo for credit unions pursuant to NCUA rules.

- We believe having the credit union's AML/CFT officer be based within the "United States" is reasonable, however, we request clarification that "United States" includes the District of Columbia as well as territories of the United States such as Puerto Rico and Guam. There are numerous federal credit unions headquartered in the District of Columbia, Puerto Rico, and Guam, as well as other credit cooperatives based in Puerto Rico. These jurisdictions are part of the United States. It would be an unreasonable compliance burden for those institutions to have to hire an AML/CFT officer based in a U.S. state simply because these jurisdictions are not "states."

## The Association's Detailed Comments

To implement the Anti-Money Laundering Act of 2020, NCUA and the federal banking agencies have issued this proposed rule. If finalized as proposed, Section 748.2 of NCUA regulations would be updated to incorporate expressly aspects of international AML/CFT rules that previously were included in supervisory guidance instead of the regulation itself, such as the requirement for credit union to conduct an AML/CFT risk assessment; the requirement for the credit union's AML/CFT compliance program be "effective, risk-based, and reasonably designed" (instead of simply "reasonably designed"); the requirement for risk-based procedures for credit unions to conduct on-going customer due diligence; an express requirement for the credit union's board of directors to oversee the credit union's AML/CFT program; and that the credit union must have an AML/CFT compliance officer located in the United States of America.

The Association has previously submitted comments to the Financial Crimes Enforcement Network (FinCEN) expressing similar views on FinCEN's notice of proposed rulemaking on AML/CFT that this proposal by the NCUA and the federal banking agencies compliments.

**1. What steps are banks planning to take, or can they take, to incorporate the AML/CFT Priorities into their AML/CFT programs? What approaches would be appropriate for**

**banks to use to demonstrate the incorporation of the AML/CFT Priorities into the proposed risk assessment process of risk-based AML/CFT programs?**

**a. Is the incorporation of the AML/CFT Priorities under the risk assessment process as part of the bank's AML/CFT program sufficiently clear or does it warrant additional clarification?**

We are concerned that the requirement for credit unions to implement an "effective, risk-based, and reasonably designed AML/CFT program…" is both vague and redundant.

An "effective" AML/CFT program must be "reasonably designed" by definition. In addition, the term "reasonably designed" as used in NCUA's BSA regulation, 12 C.F.R. § 748.2, has, in practice, resulted in examiners requiring credit unions to take measures that go beyond the requirements of the rule in the name of "reasonable design."

We urge the Board to clarify that an "effective" and "reasonably designed" AML/CFT program means one that is compliant with the other requirements of this regulation.

**b. What, if any, difficulties do banks anticipate when incorporating the [FinCEN] AML/CFT Priorities as part of the risk assessment process?**

Many credit unions already consider FinCEN's national AML/CFT Priorities into their AML/CFT risk assessment process. It would be useful to credit unions, however, for the NCUA Board to incorporate the FinCEN AML/CFT Priorities into the Board's annual Letter to Credit Unions on NCUA's Supervisory Priorities for the year in question.

This would reduce regulatory burdens on credit unions by making it easier for credit union staff to be alerted to FinCEN's AML/CFT Priorities as well as to help contextualize those AML/CFT Priorities with respect to credit union operations.

**2. Please comment on how and whether banks could leverage their existing risk assessment process to meet the risk assessment process requirement in the proposed rule. To the extent it supports your response, please explain how the proposed risk assessment process requirement differs from existing practices to address current and emerging risks, react to changing circumstances, and maximize the benefits of compliance efforts.**

Credit unions manage risks in all areas of their operations and NCUA guidance has long required credit unions to engage in a risk-based approach to AML/CFT including a risk assessment. The proposed requirements for the risk assessment process are generally consistent with the de facto status quo vis-à-vis credit union AML/CFT compliance based on examiners' interpretation of the term "reasonably designed" in NCUA's AML/CFT regulation. 12 C.F.R. § 748.2.

Even though risk assessments were not technically a legal requirement previously, examiners typically pointed to the "reasonably designed" AML/CFT compliance program requirement in NCUA's Section 748.2 regulation as the legal basis to require the credit union to perform such risk assessments (based on the argument that an AML/CFT compliance program could not be "reasonably designed" without a risk assessment).

In performing such risk assessments, the best practice is for credit unions to look to FinCEN's AML/CFT Priorities, the Treasury Department's National Terrorism Risk Assessment, the credit union's past history of SAR filings and sanctions-check red flags, an assessment of the risks inherent to the individuals in credit union's field of membership (which could be a geographic area, or could be one or more associational or employment-based common bonds, or a Trade, Industry or Profession (TIP) such as "all air transport workers in the United States"), and the credit union's lines of business. Based on these sources of information, the credit union typically develops a risk matrix that divides its operations into "low," "medium", or "high" AML/CFT risks.

In general, the credit union's field of membership restrictions also reduce its AML/CFT risk profile because it is not legally permitted to do business with ineligible individuals. For example, a credit union with a field of membership including the Greater Boston Area would analyze its AML/CFT risks based on the risk profile of that geographic region. Similarly, a credit union with a field of membership consisting of state employees would analyze the AML/CFT risks associated with government employment.

**3. Should a bank's risk assessment process be required to take into account additional or different criteria or risks than those listed in the proposed rule? If so, please specify.**

We are concerned that the proposed requirement for credit unions and banks to "consider" the Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs) in their risk assessments may, in practice, be overly prescriptive and result in unwarranted paperwork burdens. Since SARs must be reported to the credit union's board of directors, we request clarification that the "consideration" of reports can be based on the review of board meeting minutes on SARs, as opposed to reviews of all of the institutions' individual SARs and CTRs per se. Review of board meeting minutes should be sufficient to identify trends or patterns of SARs for purposes of the risk-assessment process.

**4. The proposed rule requires a bank to update its risk assessment using the process proposed in this rule. Are there other approaches for a bank to identify, manage, and mitigate illicit finance activity risks aside from a risk assessment process?**

By definition, a "risk assessment process" in the AML/CFT compliance context is the process of a financial institution identifying the risks associated with money laundering and terrorist financing. While there could be other ways to do such a risk assessment process than the procedures the Board has proposed here, it is difficult to envision how such risks could be assessed without employing some form of risk assessment process at all.

**7. The proposed rule would require banks to consider the BSA reports they file as a component of the risk assessment process. To what extent do banks currently leverage BSA reporting to identify and assess risk?**

While we believe it is logical for a credit union to consider the SARs and CTRs they file in developing their risk assessments when those reports indicate a pattern of behavior, we urge the Board to clarify that credit union examiners should not second guess the credit union's management's assessment of those reports. We would not support credit union examiners claiming that a credit union did not produce an "effective" AML/CFT risk assessment based on examiners claiming the risk assessment did not incorporate individual SARs or CTRs that did not represent a pattern of behavior.

**8. For banks with an established risk assessment process, what is the analysis output? For example, does it include a risk assessment document? What are other methods and formats used for providing a comprehensive analysis of the bank's ML/TF and other illicit finance activity risks?**

Most credit unions develop a risk matrix that divides their operations into "low," "medium", or "high" AML/CFT risks. The Association requests clarification that a risk matrix will remain an acceptable output of the risk assessment process.

**9. The proposed rule uses the term "material" to indicate when an AML/CFT program's risk assessment would need to be reviewed and updated using the process proposed in this rule. Does this rule and/or SUPPLEMENTARY INFORMATION section warrant further explanation of the meaning of the term "material" used in this context? What further description or explanation, if any, would be appropriate?**

The Association believes that the Board including a definition of "material" in the final rule would assist users in better understanding the term and therefore help reduce compliance burdens. We urge the Board to adopt following definition of "material": "Of such a nature that knowledge of the item would affect a person's decision-making; significant; essential." Black's Law Dictionary 499 (5th Pocket Ed. 2016).

**10. The proposed rule requires a bank to review and update its risk assessment using the process proposed in this rule, on a periodic basis, including, at a minimum, when there are material changes to its ML/TF risk profile. Please comment on the time frame for the bank to update its risk assessment using the process proposed in this rule. What time frame would be reasonable? What factors might a bank consider when determining the frequency of updating its risk assessment using the process proposed in this rule? For example, would the frequency be based on a particular period, such as annually, the bank's risk profile, the examination cycle, or some other factor or period?**

The Association believes that credit unions should only be required to update their AML/CFT risk assessments when there are material changes to the credit union's field of membership, such as if the credit union converts from an associational common bond to a geographic one, or if the credit union expands its membership to include an association or occupational group which materially changes the credit union's membership composition.

Most associational or occupational common bond expansions, however, consist of groups with fewer than 3,000 potential members (most of whom will not in practice join the credit union), which NCUA approves in an express process. See 12 C.F.R. pt. 701, Appendix B, Ch. 2, § IV.B.2.

We do not believe that a credit union adding small groups of this size should materially alter the credit union's AML/CFT risk assessment.

**11. Please comment on whether a comprehensive update to the risk assessment using the process proposed in this rule is necessary each time there are material changes to the bank's risk profile or whether updating only certain parts based on changes in the bank's risk profile would be sufficient. If the response depends on certain factors, please describe those factors.**

The Association strongly urges the Board to clarify in the final rule that a financial institution must only update the parts of its risk assessment that are materially affected by the change in circumstances.

Requiring credit unions to perform entirely new risk assessments in areas where the status quo ante remains would be an unreasonable paperwork burden that would not enhance AML/CFT efforts.

**12. Does the proposed regulatory text that "an effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-risk and lower-risk customers and activities" permit sufficient flexibility for banks to continue to focus attention and resources appropriately? Does redirection allow banks to appropriately reduce resource allocation to lower risk activities? What approaches would be appropriate for a bank to use to demonstrate that attention and resources are focused appropriately and consistent with the bank's risk profile?**

We are concerned that the terms "effective" and "reasonably designed" are unclear and will be cited by examiners as a basis to instruct the credit union to take putatively remedial actions to address perceived compliance weakness that are not related to per se legal requirements.

As discussed above, credit union examiners have previously interpreted the "reasonably designed" requirement in Section 748.2 of NCUA rules for many years to mean that credit unions must employ a risk-based approach to AML/CFT even though the NCUA Board is only now making a risk-based AML/CFT compliance program a legal requirement.

We urge the Board to clarify that an "effective, risk-based, and reasonably designed" AML/CFT program means one that meets the express requirements of applicable AML/CFT regulations.

**15. The proposed rule would make explicit a long-standing supervisory expectation for banks that the BSA officer is qualified and that independent testing be conducted by qualified individuals. Please comment on whether and how the proposed rule's specific inclusion of the concepts: (1) "qualified" in the AML/CFT program component for the AML/CFT officer(s) and (2) "qualified," "independent," and "periodic" in the AML/CFT program component for independent testing, respectively, may change these components of the AML/CFT program?**

The Association strongly supports the clarification that the credit union's periodic independent review and testing of its AML/CFT compliance program can be "conducted by qualified bank [or credit union] personnel" as an alternative to requiring an external AML/CFT audit. We believe the credit union's supervisory committee or audit committee should be able to conduct this independent review in collaboration with the credit union's AML/CFT officer.

**21. How does a bank's board of directors, or equivalent governing body, currently determine what resources are necessary for the bank to implement and maintain an effective, risk-based, and reasonably designed AML/CFT program?**

Credit union boards of directors already typically oversee the risk-assessment process because NCUA's Section 748.2 regulation requires the credit union's board to approve the credit union's Bank Secrecy Act compliance program. 12 C.F.R. § 748.2(b)(1).

In addition, credit union boards are legally responsible for the general direction and control of their institutions in all respects including AML/CFT compliance. See 12 C.F.R. § 701.4 ("The board of directors is responsible for the general direction and control of the affairs of each Federal credit union. While a Federal credit union board of directors may delegate the execution of operational functions to Federal credit union personnel, the ultimate responsibility of each Federal credit union's board of directors for that Federal credit union's direction and control is non-delegable.").

**23. The requirements of 31 U.S.C. 5318(h)(5) (as added by section 6101(b)(2)(C) of the AML Act) state that the "duty to establish, maintain and enforce" the bank's AML/CFT program "shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary**

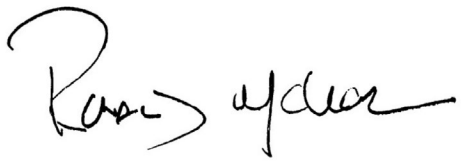
**of the Treasury and the appropriate Federal functional regulator." Is including this statutory language in the rule, as proposed, sufficient or is it necessary to otherwise clarify its meaning further in the rule?**

We believe having the credit union's AML/CFT officer be based within the "United States" is reasonable, however, we request clarification that "United States" includes the District of Columbia as well as territories of the United States such as Puerto Rico and Guam.

There are numerous federal credit unions headquartered in the District of Columbia, Puerto Rico, and Guam, as well as other credit cooperatives based in Puerto Rico. These jurisdictions are part of the United States. It would be an unreasonable compliance burden for those institutions to have to hire an AML/CFT officer based in a U.S. state simply because these jurisdictions are not "states."

Thank you for the opportunity to comment on the NCUA Board's proposed rule on Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements. If you have any questions or desire further information, please do not hesitate to contact the Association at (508) 481-6755 or govaff-reg@ccua.org.

Sincerely,



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