June 5, 2025

Andrea Gacki
Director
Financial Crimes Enforcement Network
U.S. Department of the Treasury
P.O. Box 39
Vienna VA 22183

RE: Anti-Money Laundering and Countering the Financing of Terrorism Programs (RIN 1506-AB72)

Dear Director Gacki,

On behalf of its member credit unions, the Cooperative Credit Union Association, Inc. ("Association") appreciates the opportunity to comment on the Financial Crime Enforcement Network's (FinCEN) proposed rule on Anti-Money Laundering and Countering the Financing of Terrorism Programs to 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 5 million consumer members. The Association developed these comments in consultation with our members.

The Association's High-Level Comments

- The Association supports FinCEN's proposed rule to fundamentally reform the requirements for financial institutions' anti-money laundering and countering the financing of terrorism (AML/CFT) programs, including renaming "Bank Secrecy Act" ("BSA") rules as "AML/CFT" regulations.

- We agree that the AML/CFT regulatory framework should focus on national security priorities and higher-risk areas as well as de-prioritize lower risks.

- The Association strongly supports the proposal that AML/CFT enforcement actions should only be undertaken when a credit union or bank has failed to implement an effective AML/CFT program in a material respect.

- It is essential that the National Credit Union Administration (NCUA) consult with FinCEN before taking significant AML/CFT supervisory actions against federally-insured credit unions to promote AML/CFT enforcement consistency and a level regulatory playing field as well as limit compliance burdens.

- We urge FinCEN to finalize this rule with minor revisions, as discussed below.

The Association's Detailed Comments

An "Effective" AML/CFT Program (V.B.)

1. The proposed rule sets forth the conditions for an effective AML/CFT program. Is the description of an effective program sufficiently clear or is there anything further that FinCEN should consider adding in the final rule to clarify the concept of program effectiveness?

The Association believe that the description of an effective program is sufficiently clear.

As further discussed in response to Question 9, below, however, we are concerned that credit union examiners may interpret the phrase "risk assessment processes" to require credit unions to have more than one AML/CFT risk assessment process because "processes" is plural. We believe that a single, holistic "process" is preferable to a series of fragmented processes that may not capture an institution's overall AML/CFT risk profile. The end result of a comprehensive, holistic process is often more than the sum of its parts.

2. The proposed rule reflects a determination by FinCEN that financial institutions are best placed to identify risks and allocate resources, and that providing them with greater discretion in these areas will improve the quality of AML/CFT compliance and reporting to law enforcement. Is this correct or should FinCEN consider adding more requirements regarding allocation of resources? How might financial institutions assess changes in the total allocation of resources devoted to an AML/CFT program in a changing risk and cost environment?

Establishing and Maintaining an AML/CFT Program (V.C.)

3. Do financial institutions distinguish between "establishing a program" and "maintaining a program by implementing the program"? If so, how? Should FinCEN add anything to further define these terms in the final rule?

From an operational standpoint, a credit union "establishing a program" and "maintaining a program by implementing a program" are merely two distinct phases in a single compliance process. We agree that differentiating the first phase of the compliance process—i.e., the planning and establishment phase—from the subsequent implementation phase is useful from a conceptual standpoint but these concepts do not require further elaboration.

4. Should the proposed rule's distinction between "establishing" and "maintaining" a program be modified? Is the distinction between "establishing" and "maintaining" a compliance program useful for financial institutions?

The distinction is legalistically useful in the context of the proposed rule because a credit union or bank "establishing" an effective AML/CFT program on paper should operate as a compliance safe harbor unless the credit union has had a serious or significant failure to "implement" the AML/CFT program in a material respect.

Any concept that legally results in a compliance safe harbor is useful to credit unions from a regulatory burden reduction standpoint.

5. Is clarification needed for banks to determine what constitutes a "significant or systemic failure" to implement an effective AML/CFT program (i.e., a failure to implement, in all material respects, a properly established AML/CFT program)?

Yes, clarification is needed on this issue.

As further explained in the Association's comments in response to Question 21, below, a set of examples with fact patterns that represent a "significant or systemic failure to implement an AML/CFT program" should be included in the final rule.

6. Is clarification needed for banks to determine what constitutes a "failure to establish an AML/CFT program"?

No, credit unions and banks are already comprehensively regulated for AML/CFT purposes and are well aware of what would constitute a "failure" to establish such a program. It is difficult to imagine a credit union failing to establish an AML/CFT program on paper because all de novo-chartered credit unions must include a comprehensive AML/CFT policy as part of their charter application to the NCUA and/or a state regulator, which the regulator must approve before the credit union receives its charter. Existing credit unions are regularly examined by the NCUA on AML/CFT compliance and any failure by a credit union to implement an effective AML/CFT program would be identified during the examination process.

7. How should the proposed rule ensure that the regulations issued by FinCEN and the appropriate Agencies function harmoniously? How should the proposed rule differentiate between the Secretary's responsibility for issuing regulations on establishing and maintaining AML/CFT programs and the Agencies' responsibilities for issuing regulations on establishing and maintaining AML/CFT programs under their respective authorities?

Internal Policies, Procedures, and Controls (V.D.1.)

8. Do financial institutions expect any changes to their existing internal policies, procedures, and controls under the proposed rule, which requires that internal policies, procedures, and controls be "risk-based" and "reasonably designed" to ensure compliance with the BSA?

While credit unions must already have "risk-based" AML/CFT programs, in practice, supervision has focused more on areas that are "high-risk" without necessarily reducing the paperwork burdens associated with "low-risk" activities.

This rule, if finalized, should help credit unions reduce AML/CFT compliance burdens by focuses fewer resources towards low-risk areas and more towards the high-risk areas.

Risk Assessment Processes (Generally) (V.D.1.i.)

9. The proposed rule refers to risk assessment processes rather than a risk assessment process. This leaves financial institutions free to use findings from one or more processes to holistically assess their ML/TF risks. Does this description of how financial institutions would assess their ML/TF risk under the proposed rule provide sufficient flexibility? How should FinCEN describe "risk assessment processes" to better reflect how financial institutions assess ML/TF risks?

The Association is concerned that credit union examiners may interpret the phrase "risk assessment processes" to require credit unions to have more than one AML/CFT risk assessment process because "processes" is a plural form of the word that necessarily implies more than one process.

Thus, a credit union undertaking only a single, holistic risk assessment process—even if this risk assessment is comprehensive and addresses all material money laundering/terrorist financing risks faced by the institution—could be viewed as non-compliant with this regulation because a single "process" cannot be "processes" in the plural, as the plain language of the rule would require.

Retaining the plural "processes" nomenclature risks forcing credit unions to split up their holistic risk assessment process into atomized individual "processes" so that this risk-assessment appears as a series of processes on paper rather than being a single, comprehensive undertaking. This would result in unnecessary paperwork burdens and weaken the AML/CFT risk assessment process by fragmenting it.

The Association does not believe that this eventuality would be consistent with FinCEN's intent. We therefore urge FinCEN to use the singular term "risk assessment process" in the final rule while clarifying that a credit union can consider multiple different types of risk analyses and processes as part of one overall, holistic risk-assessment process.

10. Should risk assessment processes be required to take into account additional or different criteria or risks than those listed in the proposed rule? If so, what additional factors should FinCEN consider requiring?

11. How long does it generally take a financial institution to incorporate the results of a risk assessment into the other aspects of its AML/CFT program? What factors determine this timeframe?

Risk Assessment Processes (AML/CFT Priorities) (V.D.1.i.b.)

12. What, if any, difficulties do financial institutions anticipate when incorporating the AML/CFT Priorities as part of their risk assessment processes?

13. What additional guidance on how to incorporate the AML/CFT Priorities into a financial institution's risk assessment processes would it be useful for FinCEN to provide?

Risk Assessment Processes (Updates) (V.D.1.i.c.)

14. The proposed rule requires that risk assessment processes are updated promptly upon any change that the bank knows or has reason to know significantly changes the bank's ML/FT risks. Would the proposed update requirement change the way financial institutions currently update their risk assessment processes, and if so, how? Is additional explanation needed concerning when a financial institution would be required to update its risk assessment?

15. How does a financial institution's monitoring for ML/TF risks and its risk assessment processes affect one another? Put differently, if there is a feedback loop between the two, please describe it, including the typical amount of time between discovering new risks and incorporating those findings into risk assessment processes.

Independent AML/CFT Program Testing To Be Conducted by Bank Personnel or by an Outside Party (V.D.2.)

16. Under the proposed rule, a financial institution is required to conduct independent AML/CFT program testing. This requirement is already reflected in existing AML program rule requirements as the requirement to include "an independent audit function to test programs." FinCEN solicits comment on how financial institutions may interpret and carry out this requirement, based on the proposed rule's description of an effective AML/CFT program. Are further clarifications on the independent AML/CFT program testing requirement necessary to ensure that audits carried out by bank personnel or outside third parties are well-tailored, risk-based, and focused on effectiveness?

The credit union's supervisory committee or audit committee, which are responsible for internal audit functions at credit unions, should be authorized to conduct the AML/CFT "an independent audit function to test programs" contemplated by this rule.

AML/CFT Officer Located in the United States (V.D.3.)

17. Under the proposed rule, while the AML/CFT officer must be located in the United States, personnel located outside of the United States would still be permitted to perform certain AML/CFT functions. This language does not alter existing regulations and guidance that generally prohibit the sharing of SARs with personnel located outside of the United States other than limited circumstances, such as a bank's foreign head office or controlling company. Are any further clarifications on what duties personnel outside the United States may perform needed?

The Association supports the proposal that a credit union's AML/CFT officer must be located in the United States and be available to supervisory agencies. In addition, we support the option for personnel outside the United States to perform some AML/CFT functions, but agree that sharing SARs outside of the United States (other than in the limited circumstances contemplated by the rule, such as sending a copy to a foreign bank's home office) could compromise confidential financial intelligence information that could frustrate United States law enforcement and counterterrorism efforts.

We do not believe that further clarification on this issue is necessary.

Written AML/CFT Program and Approval (V.E.1)

18. The proposed rule standardizes the long-standing requirement that an AML/CFT program be written. Should FinCEN further clarify which specific elements of an institution's AML/CFT program must be written, or is this requirement generally understood in its current form?

19. The proposed rule would require that a financial institution's written AML/CFT program be approved by its board of directors, an equivalent governing body, or appropriate senior management. Should FinCEN further clarify which aspects of the AML/CFT program must be subject to such approval?

Supervision and Enforcement (V.F.)

20. The proposed rule would add a new § 1020.221 to set forth a supervision and enforcement framework for banks. The new supervision and enforcement requirements would apply only to banks and the Federal banking agencies in the proposed rule. FinCEN welcomes comment on whether these provisions should apply to other financial institutions.

For purposes of this rule, credit unions are considered "banks," which is appropriate in this case because credit unions are depository institutions that provide many types of banking services. The Association believes that ensuring an effective AML/CFT system which prevents abuse by bad actors is essential. Illicit funds that enter into the financial system at any weak point can compromise the system as a whole.

All financial institutions should therefore be subject to comprehensive AML/CFT regulations that are at least as stringent as the rules for banks in order to ensure financial integrity as well as a level playing field for banks and credit unions in relation to their non-bank competitors.

21. Is further clarification needed for financial institutions to determine what constitutes a "significant or systemic failure to implement an AML/CFT program in accordance with § 1020.210(c)"?

Yes, set of examples with fact patterns that represent a "significant or systemic failure to implement an AML/CFT program" should be included in the final rule.

Without examples from FinCEN, or other clarifying guidance, the term "significant or systemic failure" would be open to interpretation to individual examiners because reasonable minds could differ as to the meaning of this phrase. For example, would a documentation shortcoming qualify as a "significant or systemic failure to implement

an AML/CFT program" if no other problems were identified? If so, what sorts of documentation shortcomings would qualify as a "significant" failure, and for how long would a non-significant documentation failure have to exist to be "systemic'?

Without such clarifications, this rule could result in unwarranted regulatory burdens including regulatory uncertainty and compliance costs to address informal enforcement actions, such as Documents of Resolution (DORs), for compliance shortcomings that are not objectively "significant or systemic" but may appear so in the opinion of an individual examiner.

22. Is further clarification needed for financial institutions to determine what constitutes a "failure to establish an AML/CFT program in accordance with § 1020.210(b)"?

No. Please see the Association's comments in response to Question 6, above.

23. The proposed rule refers to FinCEN's "enforcement and supervision policy." Does it introduce confusion to label regulatory provisions having the force of law as "policy"? If so, how should the proposed regulatory language be amended to eliminate that confusion?

24. The proposed rule would add a requirement for an Agency to notify and consider information provided by FinCEN before initiating a significant AML/CFT supervisory action when acting pursuant to authority delegated under this chapter. Should the proposed consultation process include an asset threshold—e.g., consultation is required for any significant AML/CFT supervisory actions involving banks with $10 billion or more in assets? In addition, or as an alternative, should the proposed rule not require but instead provide the option for banks to request their Agency consult with FinCEN prior to initiating a significant AML/CFT supervisory action?

It is essential that the National Credit Union Administration (NCUA) consult with FinCEN before taking significant AML/CFT supervisory actions against federally-insured credit unions to promote AML/CFT enforcement consistency and a level regulatory playing field as well as limit compliance burdens.

In the past, non-material technical AML/CFT shortcomings were too often a source of informal supervisory actions, such as Documents of Resolution (DORs), that required the credit union to take expensive remedial measures like lookbacks.

credit unions from having to undertake expensive remedial measures, such as AML/CFT compliance "lookbacks," unnecessarily.

There should be no minimum asset threshold for NCUA consultations with FinCEN to be mandatory to help prevent disproportionate compliance burdens falling on smaller credit unions.

especially with respect to smaller credit unions that often faced AML/CFT compliance burdens that were disproportionate in relation to their size and complexity.

25. The definition of significant AML/CFT supervisory action includes the term "any written communication." Is the term "any written communication" too broad? Are there negative consequences to including the term "any written communication" in the proposed regulatory text? If so, please describe. Should the term "any written communication" be more clearly defined or removed altogether?

26. As described above, the purpose of the FinCEN consultation requirement is to ensure consistency in BSA/AML enforcement and supervision across banks, and for FinCEN to provide relevant information on the effectiveness and impact of an institution's AML/CFT program. While Treasury, FinCEN, and the Agencies believe the benefits of a required consultation process outweigh the costs, the parties recognize this adds additional layers of review for financial institutions and the Agencies during an examination. Are there any avenues, communication channels, or methods in which FinCEN and the Agencies can streamline the consultation process and prevent logistical burdens for financial institutions or delays in exam report issuance?

27. Is the definition of the term "significant AML/CFT supervisory action" sufficiently clear? Does the inclusion of "unsafe or unsound practices or conditions" introduce confusion about what types of supervisory actions would be subject to the FinCEN consultation requirement, since those terms are not found in the BSA?

28. FinCEN welcomes comment on provisions related to the use of innovative tools to achieve effective outcomes, specifically on how the Director may consider the performance of innovative activities that produce demonstrable outputs under the proposed supervision and enforcement framework.

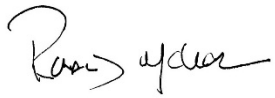
Final Rule Effective Date (VI.)

29. FinCEN is proposing an effective date of 12 months from the date of issuance of the final rule to allow sufficient time for financial institutions to review and implement its requirements. FinCEN solicits comment on the proposed effective date.

The Association supports the proposed 12-month effective date. One year should be sufficient for credit unions and their AML/CFT software vendors to adjust to the new rule's requirements and many credit unions will be eager to implement the new rule because of its anticipated reductions in compliance burdens. Should any credit unions need additional time to implement the new rule, we urge FinCEN to forebear on enforcement so long as the credit union remains compliant with the most burdensome AML/CFT regulations currently in force and is making a good faith effort to comply with the new rule as soon as reasonably practicable.

Thank you for the opportunity to comment on FinCEN's proposed rule on Anti-Money Laundering and Countering the Financing of Terrorism Programs. 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,



Ronald McLean
President/CEO
Cooperative Credit Union Association, Inc.
rmclean@ccua.org