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National Association of Federally-Insured Credit Unions

April 3, 2017

Policy Division
Financial Crimes Enforcement Network
Department of the Treasury
P.O. Box 39, Vienna, VA 22183

RE: PRA Comments – 2016 SAR Database

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), the only national trade association focusing exclusively on federal issues affecting the nation's federally-insured credit unions, I am writing in response to the Financial Crimes Enforcement Network's (FinCEN) proposed update and revisions to the collection of Suspicious Activities Reports (SARs) required under the *Bank Secrecy Act* (BSA) and Anti-Money Laundering (AML) rules.

FinCEN is updating and revising several items in the electronic data elements currently supporting the reporting of suspicious financial activities. FinCEN is also seeking comment on the collection of information related to cyber-events and cyber-enabled crime, pursuant to guidance published in October 2016.

NAFCU has consistently supported the importance of FinCEN and BSA requirements to assist in the prevention of tax evasion or money laundering as they pose risks to national security. Our members have a good working relationship with FinCEN, and they consistently inform us that the publication of periodic AML/BSA guidance is very helpful. However, BSA requirements still remain a burden to implement for many of our smaller members.

NAFCU routinely works with FinCEN to reduce burden wherever possible, and we hope that this letter will serve as an outline for additional mitigation efforts related to SAR filings.

- a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.**

NAFCU believes that FinCEN could minimize the burden of information collection by raising the required SAR reporting threshold. The current threshold of \$5,000 was set in 1996, which totals approximately \$8,000 in today's dollars, yet the threshold has not been readjusted

accordingly. As more transactions cross the threshold, more SARs are filed in response. This increased volume potentially obfuscates the activities of bad actors.

Essentially, any regulatory dollar threshold must be reasonable, and 'reasonableness' inherently evolves over time. For example, setting the threshold too low would create so many false positives as to lessen the usefulness of SARs. Conversely, setting too high a threshold would produce too many false negatives, potentially allowing bad actors to slip through the dragnet.

Therefore, NAFCU recommends that the agency periodically revisit its thresholds and adjust accordingly, as other regulators currently do. If the number of false-positives increases, a reevaluation of thresholds could make it easier for law enforcement officials to identify signals and patterns of bad actors.

b) The accuracy of the agency's estimate of the burden of the collection of information.

Although FinCEN's estimate of 120 minutes for recordkeeping and reporting burden are accurate, NAFCU believes that the agency should provide more information so that commenters can provide feedback on the accuracy of its estimate. Such further detail could include a good faith estimate on the frequency of current SAR filings.

Even if the time required to complete and file a SAR might not increase, it is reasonable to assume that the frequency of filing SARs will increase, especially now that cybersecurity events will be recorded. As such, NAFCU believes that FinCEN should establish a baseline estimate of the current frequency of SAR filings, compared against an estimate of the future frequency of SAR filings, and the resulting increased burden that cybersecurity reporting will create.

c) Ways to enhance the quality, utility, and clarity of the information to be collected.

NAFCU asks that FinCEN encourage more coordination between law enforcement priorities and bank/credit union examiners. Many of our members have indicated that prudential examiners are too heavily focused on auditing absolute numbers of SAR filings and absolute compliance. Because the intent behind BSA/AML and SAR reporting is to aid in law enforcement efforts, examiners should focus on the intent and usefulness of SARs rather than zero-tolerance, technical compliance.

As an example, many of our members have experienced situations where an examiner makes a finding on a SAR based on a pure technical issue, such as a strict timing deadline, which does not truly affect the usefulness of the SAR. Instead, NAFCU believes that FinCEN should

encourage prudential examiners to conduct more holistic and systemic audits, such as reviewing a credit union's procedures and practices.

d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

While our members understand that financial institutions must periodically resubmit SARs for ongoing suspicious activities, NAFCU believes that FinCEN can take certain actions that would minimize the burden of information collection in this area while still meeting the agency's overall objectives.

First, NAFCU recommends that FinCEN extend the ongoing suspicious activity from the current requirement of 90-days to 180-days. Concurrently, FinCEN could allow for simplified SAR "notice filings" that reference earlier, more detailed SAR reports regarding the same, ongoing activity. This will greatly reduce the number of hours required for credit unions that continuously report on unchanging and ongoing circumstances.

NAFCU believes that these recommendations would be mutually beneficial for both law enforcement agencies and the reporting institution. Law enforcement receives notice that the suspicious activity continues unchanged, while the credit union can save valuable time through a reduced filing frequency and reduced time for completing a report.

e) Estimates of capital or start-up cost and costs of operations, maintenance and purchase of services to provide information.

BSA/AML and SAR compliance are a very time-consuming endeavor. As such, many financial institutions have leveraged software and technological capabilities to assist in compliance efforts. However, such software and technology are often cost prohibitive for smaller credit unions that typically have smaller levels of revenue than larger competitors. This reality creates a pro-cyclical scenario for smaller credit unions: they cannot afford to invest in technological improvements, and must spend more precious man-hours on compliance, which decreases the amount of time they can dedicate toward growth or serving members.

Because even the smallest of credit unions must spend significant time and resources on BSA/AML compliance, NAFCU believes that FinCEN could provide opportunities for technical grants or training. Such a move would be in direct alignment with FinCEN's objectives, as training and technological subsidies would enable more credit unions to have robust AML/BSA procedures in-place, thereby furthering FinCEN's goals.

f) Estimates of capital or start-up cost and costs of operations, maintenance and purchase of services to provide the proposed new cyber-events items.

Due to the technical nature of the cybersecurity information required by FinCEN, credit union compliance officers will need a better understanding of IT terminology and information. NAFCU recommends that FinCEN provide a methodology for IT Departments outside of the current SAR process to fulfill cyber event reporting and recording directly, mainly due to the unique, evolving, and technical nature of each cybercrime.

NAFCU appreciates this opportunity to provide comments on ways to improve current SAR requirements and to reduce the information collection burden. We look forward to collaborating with FinCEN as credit unions seek to curb and root-out illegal activity in the financial services sector. Should you have any questions, please do not hesitate to contact me at (703) 842-2249 or memancipator@nafcuh.org.

Sincerely,

A handwritten signature in black ink, appearing to read "Michael Emancipator", with a stylized flourish at the end.

Michael Emancipator
Senior Regulatory Affairs Counsel