National Association of Federal Credit Unions
3138 10th Street North • Arlington, VA 22201-2149
(703) 522-4770 • (800) 336-4644 • Fax (703) 524-1082
NAFCU www.nafcu.org • nafcu@nafcu.org

August 21, 2006

FinCEN
P.O. Box 39
Vienna, VA 22183

RE: RIN 1506-AA86; Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds

Dear Sir or Madam:

On behalf of the National Association of Federal Credit Unions (NAFCU), the only trade association that exclusively represents the interests of our nation's federal credit unions (FCUs), I am responding to the Financial Crimes Enforcement Network (FinCEN) and the Federal Reserve Board's (Board) (collectively, the Agencies) advance notice of proposed rulemaking (ANPR) concerning the threshold for the requirement to collect, retain, and transmit information on funds transfers and transmittals of funds in amounts of $3,000 or more. Specifically, the Agencies are soliciting public comment on whether the potential benefit to law enforcement of reducing or eliminating the funds transfer threshold would outweigh the potential burden to financial institutions.

NAFCU commends the Agencies' efforts to help combat terrorist financing, money laundering, and other illicit activities, and to protect the nation's financial system. The intent and purpose behind Bank Secrecy Act and Anti-Money Laundering (BSA/AML) law and regulation is of utmost importance, particularly in the face of increasingly complex realities in which money launderers and terrorist financiers are becoming ever more sophisticated. While NAFCU strongly supports the collection of data that could prove valuable to law enforcement in combating illegal activities, we are concerned that the potential benefits of lowering or eliminating the $3,000 threshold are largely outweighed by the financial, regulatory, and compliance burdens to financial institutions. Specifically, NAFCU offers the following comments below.

Burden to the Financial System of Reducing the Funds Transfer Threshold

The current funds transfer threshold of $3,000 was established in 1995 after a balancing of interests in the value in the data and the burden to the financial system. However, in light of changing needs and the evolving operating environment for financial institutions, the Agencies are now reviewing the current rule and requesting comment on the potential effect of lowering or eliminating the $3,000 threshold. In particular, the Agencies have requested information on financial institutions' practices and procedures in order to measure the potential compliance burden of lowering the threshold.

Funds Transfers Less than $3,000

NAFCU member credit unions indicate that a significantly large proportion of funds transfers that are processed (as an originator's bank) involve amounts less than $3,000. Estimates of the amount of transfers and transmittals under the threshold amount vary, with some member credit unions reporting only 3% of funds transfers are under $3,000, and others reporting as much as 100% of transfers involve amounts under $1,000. Generally, however, most member credit unions have indicated that a significant amount of funds transfers processed are under the triggering threshold amount.

Estimates from NAFCU member credit unions indicate that reducing or eliminating the threshold would result in a considerable increase in the volume of data being collected and retained. This increase in data volume could potentially negate any law enforcement benefits that might be derived from a lower threshold. More is not necessarily better. Indeed, the tremendous growth in defensive SAR filings over the last few years has demonstrated that a problematic "needle in a haystack" effect may result from expanded reporting requirements. A greater volume of data may actually diminish, not increase, its usefulness. NAFCU is concerned that the Agencies may not be able to effectively contend with the increased volume of data that a lower threshold would produce. Therefore, we urge the Agencies to carefully consider how this information could benefit law enforcement before undertaking any further rulemaking on this issue.

Recordkeeping Practices

Despite the large number of transfers involving amounts under the threshold, NAFCU member credit unions generally report that their recordkeeping practices for transactions involving amounts less than $3,000 do not differ from their practices for transfers over the threshold amount. Many credit unions are collecting the same data for all funds transfers, irrespective of the amount of the transfer. Some credit unions, however, do base their recordkeeping practices on the triggering threshold and do not collect the additional information required for transfers under $3,000. For example, some credit unions will only collect and retain the originator's or recipient's address information if the transfer involves an amount above the $3,000 threshold.

Similarly, most NAFCU member credit unions include the same information in payment or transmittal orders regardless of the amount of the transaction, although a small proportion of member credit unions rely on the triggering threshold to determine whether additional information, such as payee information, is included in the transmittals.

Due to field of membership requirements, credit unions are unlikely to provide funds transfer services to individuals who are not "established customers" as defined by 31 C.F.R. 103.11(l). Indeed, by virtue of meeting membership eligibility requirements, a credit union member will generally qualify also as an established customer under the regulation. Accordingly, most credit unions do not have different recordkeeping and identity verification procedures for established versus non-established customers.

Nonetheless, NAFCU believes that reducing or eliminating the recordkeeping threshold could create a tremendous compliance burden for some credit unions. For those who do differentiate between transactions above and below the triggering threshold, lowering the threshold would result in considerable implementation, staff, and transaction costs. Further, because a lower threshold would capture a substantially large volume of data, reducing or eliminating the threshold would dramatically impact those credit unions whose recordkeeping policies currently distinguish between transfers above and below the threshold.

Affect on Services and Payment Operations

The Agencies have also requested comment on how reducing or eliminating the threshold would affect the price and type of services that financial institutions provide, and on how a lower threshold would affect the cost and efficiency of financial institutions' payment operations and of the payments system in general.

NAFCU does not believe that reducing or eliminating the $3,000 triggering threshold would significantly impact the price and type of services that credit unions would provide. Modifying the threshold would have little impact on credit unions' service offerings since market demand would likely ensure the continuance of existing funds transfer services. Pricing is also typically market driven and would be nominally affected by any change to the threshold.

Amending the threshold requirement would, however, impact credit unions' payment operation costs and efficiencies. Lowering or removing the threshold would increase the cost per transaction because of the additional time that would be needed to collect the required information for each funds transfer. Modification of the threshold would also have a significant impact on labor costs due to the labor-intensive nature of processing, monitoring, and inputting data for recordkeeping purposes. Eliminating or reducing the threshold would also require additional staff training, and more data storage. NAFCU believes that credit unions' payment operations would be particularly hampered if the triggering amount were either eliminated entirely or lowered to $1,000 since a significantly higher proportion of funds transfers would be captured at those thresholds.

Additional Comments

NAFCU would also like to take the opportunity to provide some general comments on BSA/AML compliance requirements. With the myriad existing BSA/AML compliance responsibilities, including suspicious activity reporting (SAR), currency transaction reports (CTR), customer identification procedures (CIP), and adherence to recordkeeping standards, credit unions are already feeling significantly taxed. BSA/AML consistently remains a top compliance concern among NAFCU members. While

NAFCU certainly supports the spirit of the law, we are concerned that the growing reliance on financial institutions to help prevent and detect money-laundering, terrorist financing, and illicit activity is becoming increasingly costly and burdensome to the industry. Thus, NAFCU strongly urges the Agencies to fully and carefully contemplate the potential benefits of any change to law enforcement before imposing any additional recordkeeping requirements on financial institutions.

NAFCU is also concerned that a reduction or elimination of the $3,000 threshold would be a mere precursor to implementing an ongoing funds transfer reporting requirement, or to lower reporting thresholds for CTRs and SARs. NAFCU believes that law enforcement objectives can be met without imposing an unreasonable compliance burden on financial institutions. We encourage the Agencies to continue to pursue a careful analysis of the potential impact of any rulemaking on all affected parties, to truly ensure that benefits are maximized and burdens minimized.

Relative to this, NAFCU would like to commend the Agencies' decision to ascertain public views on these important issues as an advance notice of proposed rulemaking. Early issuance of this proposal as an ANPR will help ensure the Agencies have ample time to carefully weigh the respective benefits and burdens to law enforcement, the financial system, and the public.

NAFCU would like to thank you for this opportunity to share its comments on this advance notice of proposed rulemaking. Should you have any questions or require additional information please call me or Pamela Yu, NAFCU's Associate Director of Regulatory Affairs, at (703) 522-4770 or (800) 336-4644 ext. 218.

Sincerely,

Fred R. Becker, Jr.
President/CEO

FRB/pwy