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TESTIMONY
OF
FAITH LLEVA ANDERSON
SENIOR VICE PRESIDENT & GENERAL COUNSEL
AMERICAN AIRLINES FEDERAL CREDIT UNION
BEFORE THE
FINANCIAL SERVICES SUBCOMMITTEE ON
FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
UNITED STATES HOUSE OF REPRESENTATIVES
AT A HEARING ENTITLED,
“EXAMINING THE BSA/AML REGULATORY COMPLIANCE REGIME”
JUNE 28, 2017

Testimony
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Faith Lleva Anderson
Senior Vice President & General Counsel
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Financial Services Subcommittee on
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Chairman Luetkemeyer, Ranking Member Clay, Members of the Subcommittee:

Thank you for the opportunity to testify on this important topic. My name is Faith Lleva Anderson, and I am the Senior Vice President and General Counsel for American Airlines Federal Credit Union, headquartered in Fort Worth, Texas. I am also the Vice-Chair of the Consumer Protection Subcommittee of the Credit Union National Association (CUNA),¹ on whose behalf I am testifying today.

American Airlines Federal Credit Union proudly serves over 274,000 members - offering a variety of consumer, mortgage, vehicle, small dollar, credit card, and business loans, as well as a variety of savings and deposit accounts. We began as a single sponsor credit union for American Airlines (AA) over 80 years ago, when only AA employees and their families could become members. Following 9/11, we became an Air Transportation Industry charter. Therefore, while still serving the employees of AA and their families, our members now include those consumers who work directly in the administration, regulation, or security of airlines, airports, or air transportation; work at other airlines or airports; and those whose work is related to the airline/airport industry, such as Transportation Security Administration and Federal Aviation Administration employees.

¹ Credit Union National Association represents America’s credit unions and their 110 million members.

By asset size (\$6.5 billion), loans outstanding (\$3.9 billion), and member deposits (\$5.8 billion), we may be considered relatively “large” for a credit union but are still quite small compared to national or regional banks. Like all credit unions, we are a not-for-profit institution owned by the very members we serve and established for the sole purpose to promote thrift and provide access to credit to members for provident purposes. This member-owner structure is what makes credit unions unique financial institutions in our economic environment. My credit union, as all others, pledges itself to the preservation, protection, and prosperity of the system of cooperative credit.

American Airlines Federal Credit Union is dedicated, first and foremost, to providing excellent products and services to our member-owners. Their financial health and well-being is the most critical element to keeping our credit union operations successful. As such, my credit union takes compliance and financial security seriously, and applies whatever resources necessary to ensure our operations are solid and our members are protected. The good news is that credit unions are, and have always been, strong and stable financial services providers in our communities.

I wish there were no challenges to credit union operations in today’s regulatory regime, but that is not the current reality. While credit unions support laws and regulations that prevent terrorists and criminals from using their institutions to launder money or otherwise engage in illegal activity, the compliance burden of the current regulatory environment often unnecessarily takes away from our ability to serve our members. Since the 2008 economic crisis and the resulting regulations that followed, credit unions have been required to devote more resources for regulatory and legal compliance particularly for mortgage loans and other consumer products, services, and protections. Given these new requirements, it has become difficult for credit unions to absorb their current total compliance burden. The new regulatory regime makes Bank

Secrecy Act (BSA)² and Anti-Money Laundering (AML) regulatory compliance even more daunting.³

We support efforts to track money laundering and terrorist financing, but also believe it is important to strike the right balance between the costs to financial institutions, like credit unions, and the benefits to the federal government from the BSA, AML, and Office of Foreign Assets Control (OFAC) regulations. As such, we support legislative and regulatory changes to address the redundancies, unnecessary burdens, and opportunities for efficiencies within the BSA/AML statutory framework. In particular, we support changes to (1) minimize the duplication of the same or similar information; (2) provide additional flexibility based on the reporting institution type or level of transactions; (3) curtail the continually enhanced customer due diligence requirements; (4) increase the currency transaction reporting (CTR) threshold; (5) reduce and simplify the reporting requirements of Suspicious Activity Reports (SARs) that have limited usefulness to law enforcement; and (6) allow for greater regulatory and examination consistency among regulators, including the National Credit Union Administration (NCUA) and state credit union regulators, in order to help with interpretations of BSA requirements and guidance and to minimize regulatory overlap.

My testimony provides details on specific issues that credit unions have been facing regarding BSA/AML compliance. It also outlines how commonsense changes would help responsible financial institutions, like credit unions, continue to serve their members and communities while protecting them from crime. There are opportunities to reduce financial institution burden while at the same time ensuring that our country and our citizens are protected from financial wrongdoing. Credit unions are deeply committed to the fight against crime, but it is important to recognize we are not law enforcement

² The Currency and Foreign Transactions Reporting Act of 1970 (commonly referred to as the “Bank Secrecy Act” or “BSA”) requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering. The act specifically requires financial institutions to keep records of cash purchases of negotiable instruments, file reports of cash transactions exceeding \$10,000 (daily aggregate amount), and to report suspicious activity that might signify money laundering, tax evasion, or other criminal activities. The BSA is often referred to as an "anti-money laundering" law ("AML") or jointly as "BSA/AML."

³ The Department of Treasury’s Financial Crimes Enforcement Network (FinCEN) implements the regulations for recordkeeping and reporting requirements of the Bank Secrecy Act codified at 31 C.F.C. § 103.

agents and we have certain fundamental limitations. I hope my testimony will help this Subcommittee find the proper middle ground between protection and undue burden.

Providing Credit Unions with the Compliance Tools for Success

My primary goal as Senior Vice President and General Counsel of American Airlines Federal Credit Union is to provide legal and compliance guidance to my credit union so it can operate successfully and provide products and services for its members. This job has become exponentially more difficult in recent years. While credit unions acclimate and adapt to the complex array of payment options today, they are also operating under sophisticated compliance regimes for new technologies. As noted, the burden credit unions face on BSA/AML compliance is further compounded due to complex new regulations that have been promulgated in response to actions of bad actors during the financial crisis, despite the fact credit unions did not cause or contribute to the crisis.

It is important to note that since the economic crisis of 2008, credit unions have been subject to more than 200 regulatory changes from over a dozen federal agencies. These new rules total nearly 8,000 *Federal Register* pages, and counting. The constant stream of new regulations has led to credit union resources being diverted from serving members to making the tough choices to limit or eliminate certain products and services. Furthermore, the disparity in the cost impact of regulation has accelerated the consolidation of the credit union system. While the number of credit unions has been declining since 1970, the attrition rate has accelerated since 2010, after the recession and the creation of the regulations that did not exempt credit unions. In fact, 2014 and 2015 were among the top five years in terms of attrition rates since 1970, at 4.2% and 4.1% respectively. Attrition rates at smaller credit unions have been especially high. In both 2014 and 2015, the attrition rate at credit unions with less than \$25 million in assets (half of all credit unions are of this size) exceeded 6%. There is an indisputable connection between both the dramatically higher regulatory costs and their higher attrition rates. It is for this reason that credit unions speak regularly about the cost of regulatory burden and are looking for solutions to streamline and tailor important requirements, including BSA/AML requirements.

BSA regulations, administered by FinCEN, are the foundation of all efforts by our government to stop criminal money laundering and terrorist financing. These have been strengthened through AML laws, which include part of the USA PATRIOT Act. These laws require financial institutions such as banks, credit unions, and non-depository financial institutions to keep records of events that could signal money laundering and terrorist financing. BSA/AML regulations require financial institutions to maintain records on cash sales of negotiable instruments of \$3,000 - \$10,000 and records of wire transfers of \$3,000 or more, and to report cash transactions over \$10,000 and any suspicious activity that might show money laundering, tax evasion, or another type of crime. The forms used by credit unions to report transactions are the Currency Transaction Report (CTR)⁴ and the Suspicious Activity Report (SAR).⁵ In addition, BSA requires the verification of member identity and response to the 314a information request lists provided by FinCEN. When financial institutions fail to comply with these laws and regulations, they can receive significant civil money penalties and risk damage to their reputation.

My credit union has a team of experts to ensure we comply fully with these laws and regulations. We conduct detailed record keeping and spend thousands of hours and dollars on due diligence. In fact, due to increasing BSA requirements, we have split our BSA department into two separate sections – one section to work on the investigative side and one section to work on the risk side. This adjustment was made so my credit union could efficiently keep up with the many filing and record keeping requirements. Of all the requirements on BSA/AML, the most burdensome and time consuming are working on open SAR investigative cases, monitoring the members' account and transaction activity for unusual or suspicious activity, conducting the exhaustive research

⁴ Financial institutions must file a Currency Transaction Report on any transaction in currency of more than \$10,000.

⁵ See "Anti-Money Laundering Compliance Frequently Asked Questions and Answers (FAQs)," available at <https://www.ncua.gov/Resources/Documents/LCU2005-09Encl1.pdf> ("In general, federally-insured credit unions must file a SAR when there is a known or suspected violation of a federal law, a pattern of criminal violations, or a suspicious activity committed or attempted against the credit union or involving a transaction or transactions through the credit union meeting the following criteria: insider abuse involving any amount; violations aggregating \$5,000 or more where a suspect can be identified; violations aggregating \$25,000 or more regardless of a potential suspect; and transactions aggregating \$5,000 or more that involve potential money laundering or violations of the Bank Secrecy Act.").

on an average of 600 potential suspicious activity scenarios per month, and filing the SARs and CTRs. Overall, it takes my credit union three to five days to process an average SAR for one case from beginning to end, and we have 30 - 45 SAR filings per month.

In addition, quality control is costly and time-consuming. Preparing for our federal regulatory agency examination on BSA/AML compliance requires the work of three full-time professional staff members and takes about two full months. This time is dedicated to ensuring reports are filed accurately, the risk assessments are completed, and there have been no mistakes made to the process and filings. Furthermore, my credit union is required to conduct BSA/AML training every year for all our 600 employees, and this training must be customized to the individual roles of the employees. Many credit unions will perform quarterly or monthly training. Federal regulatory agencies also require institutions to conduct regular training on OFAC.⁶

American Airlines Federal Credit Union was previously able to conduct online training for our employees spread over 13 states and the District of Columbia, but now we must supplement the online training with additional one-on-one training. We also train our Board of Directors annually on BSA/AML compliance, because we are being examined on our credit union's "culture of compliance" and examiners expect director accountability and a strong top-down approach to understanding and overseeing compliance programs.

Indeed, my credit union dedicates a great amount of time, staff resources, and money to BSA/AML requirements and we are not a large national bank. The reality is the cost of technology for monitoring and ensuring compliance with BSA/AML laws and regulations is disproportionately burdensome on smaller and less complex institutions, such as credit unions. Often, credit unions choose not to serve certain markets because of the complexities of compliance. Money Service Businesses are a prime example of where many credit unions have difficulty providing needed services because of the BSA and AML ongoing due diligence requirements associated with serving these businesses.

⁶ *See id.*

Nevertheless, our government can ease the compliance burden for smaller or less complex financial institutions, such as credit unions, while maintaining the protections needed. The following technical changes would make a major difference in the compliance burden facing credit unions on these requirements.

SAR and CTR Forms Should Be Combined

It would be helpful to the industry if the SAR and CTR forms – the two forms used for reporting – were combined into one form and submitted to the same place. This form should be streamlined and consolidated so the same information can be populated for either form, or the form can simultaneously be used for either SAR or CTR (for example, with a check box on the form to specify for which report, CTR or SAR, the information is being provided). This relatively minor change in paperwork would greatly ease compliance burden and ensure mistakes are not made during reporting, without compromising efforts to prevent criminal activity.

Reporting Thresholds and Deadline to File Should Be Increased to Reflect Today's Environment

The threshold for a CTR has not been adjusted in many years for inflation. Credit unions support an adjustment to this \$10,000 threshold to account for inflation and economic change over the past several years. This current amount was established in 1972, and would be over \$58,400 if adjusted for inflation in today's world.⁷ Furthermore, the current relatively low limit is now capturing routine cash transactions that are not necessary to report since such transactions will be reported via the SAR if there is suspicious activity. Credit unions support increasing the CTR threshold to a minimum \$20,000 amount and at least doubling other key thresholds, such as the \$5,000 threshold for filing a SAR.

Additionally, the deadline to file a SAR should be extended from 30 days to 40 days for the more complex cases. The more complex the case, the longer it takes to

⁷ See Bureau of Labor Statistics Consumer Price Index Inflation Calculator, *available at* <https://data.bls.gov/cgi-bin/cpicalc.pl?cost1=100%2C00.00&year1=197907&year2=201705>.

research the facts, which places substantial pressure on the credit union to timely file a SAR.

“Beneficial Owner” and Beneficiaries Requirements

FinCEN finalized its beneficial ownership rule, which would extend Customer Due Diligence (CDD) requirements under BSA rules to the natural persons behind a legal entity, and require financial institutions to have risk-based procedures for conducting ongoing customer due diligence. The final rule creates a new § 1010.230 in Title 31 C.F.R. to require covered financial institutions to identify and verify the identity of beneficial owners of legal entity customers when a new account is opened, and conduct risk profiles and monitoring of customers. The requirements for identifying the true beneficial owner of various entities, which is effective on May 11, 2018, places an enormous burden on credit unions.

In addition, checking payable-on-death (POD) account beneficiaries against the OFAC list should only be required to occur if payout to the beneficiary is necessary. Payable-on-death beneficiaries do not have access to or control of the account in question, and may never have access, so there is no need to continually check them until they receive this access and control. Information on the beneficiaries is often not available for accurate checks because usually only the name of a beneficiary is collected, making this work difficult and time consuming to conduct. The OFAC checks are a substantial compliance burden and would be easier for institutions to conduct when ownership of the funds occurs. Again, this change would in no way limit our efforts to prevent criminal activity.

Monetary Instrument Purchases

Under 31 C.F.R. § 1010.415, banks and credit unions are required to verify the identity of persons purchasing monetary instruments for currency in amounts between \$3,000.00 and \$10,000.00, and maintain documentation of such transactions. The requirement to maintain a separate documentation for these transactions is antiquated given today’s systems that track every transaction that occurs in a financial institution. A

credit union can trace any transaction on its core system if it is needed by law enforcement. Therefore, the separate documentation requirement should be eliminated.

Working with Financial Institutions, Not Against Them

Credit unions work diligently to ensure they are complying with all applicable rules and regulations. While American Airlines Federal Credit Union has a larger staff, as recently noted by the NCUA, the median size of a credit union is less than \$30 million in assets and the median staff size is eight employees. Accordingly, the NCUA noted that credit unions can “struggle to stay abreast of complex and evolving compliance requirements without the retention of often cost prohibitive counsel, accountants, financial advisors, and other professionals.”⁸

At American Airlines Federal Credit Union, we, like other credit unions, take compliance seriously and dedicate significant resources to it. However, when credit unions are spending their limited resources disproportionately on compliance, this means they are spending fewer resources on innovating and providing safe and affordable products and services. We recognize that regulatory agencies –whether it be the NCUA, the Consumer Financial Protection Bureau (CFPB), or bank regulators – have a renewed focus on BSA/AML compliance, particularly on issues such as cybersecurity and mobile payments. However, we encourage a regulatory regime that will recognize the time and effort that goes into good faith compliance with laws, and does not unduly punish financial institutions for unintentional technical or minor errors. The seemingly never-ending stream of regulatory expectations for credit unions, often with small and stretched staffs, must be considered in agency examinations and when laws and requirements are enacted.

Furthermore, the ever-increasing technology and payment systems make it difficult for a smaller institution to keep up with what is necessary for BSA/AML purposes. For example, shared branch servicing, new bill-pay systems, and Bitcoin all hit

⁸ National Credit Union Administration Letter to CFPB Concerning Compliance with CFPB Rules, available at https://www.cuna.org/uploadedFiles/CUNA/Legislative_And_Regulatory_Advocacy/Removing_Barriers_Blog/Removing_Barriers_Blog/Cordray%20CU%20Compliance%20with%20CFPB%20Rules%20Letter.pdf (May 24, 2017).

a credit union's core system differently, and it could be difficult to know what one is looking at to determine if an activity is suspicious or not. It is in these cases that regulatory agencies can be a resource to financial institutions and work with them to ensure that proper compliance takes place. Below are recommendations for a commonsense approach to working with credit unions on BSA/AML compliance.

Zero Tolerance for Unintentional Non-Compliance Should Be Reconsidered

The zero tolerance for non-compliance should be loosened so unintentional errors on SARs or CTRs, which can be complex and confusing to complete depending on the situation, do not result in an unfair penalty or violation in a supervisory examination. Intentional noncompliance or a pattern of negligence with the essential and substantive requirements should be subject to zero tolerance, but the occasional clerical error, such as failing to check a box on a complex form, should be afforded more leniency.

In the current regulatory environment, even a substantially minor error, such as recording a P.O. Box as an address instead of a street address, can lead to a Document of Resolution (DOR) for the institution for non-compliance. If there is more than one error, for one or more consumers, the DOR by the financial regulator could be for a "systemic" violation, which would garner increased attention and be considered a greater violation. In today's complex regulatory environment, federal and state examiners are particularly conservative and will report institutions for a systemic violation even if only two similar errors were made. This reality increases the compliance burden for credit unions to conduct more checks than likely necessary and spend more resources on quality control. Furthermore, because the safe harbor for compliance only applies when a SAR is filed, institutions like my credit union tend to err on the side of caution and file a SAR even though law enforcement officials tell us not to file unless necessary.

Finally, another reason why the burden is high for BSA/AML compliance is because now BSA officers can be held personally liable and be required to pay high civil money penalties out of their own pocket if they do not have a solid BSA/AML Program, as seen in some recent court cases. The penalties can be harsh and daunting, and can prevent individuals from becoming BSA officers or make these officers too expensive to hire.

Credit unions are on the front-line defense against financial crime, and we are on the side of the good guys. Please allow us to do our jobs as efficiently as possible without fear of a regulatory death sentence for a minor or unintentional oversight when completing complex paperwork.

Greater Transparency Helps Us Do Our Jobs Better

It would be helpful if financial institutions received detailed information about relevant law enforcement cases and results due to reporting. It would allow credit unions to more effectively implement BSA/AML compliance programs if they better understood how their reports are helpful to law enforcement and how they have prevented any criminal activity. Greater transparency and communication between the regulatory agencies, law enforcement, and the industry will ensure all stakeholders have consistent goals and improve the value of the information collected and reported. Furthermore, greater communication can educate regulatory agencies as to what requirements and guidance are helpful or not to law enforcement, so that any unnecessary or useless requirements can be amended.

Ensuring All Stakeholders Have a Meeting of the Minds

It is critical that all federal regulators and agencies are consistent in the examination and supervision of these laws and requirements. Credit unions encourage FinCEN to work toward greater regulatory and examination consistency among regulators, including the NCUA and state credit union regulators, to help with interpretations of BSA requirements and guidance and to minimize regulatory overlap.

Conclusion

Thank you again for the opportunity to testify and be a part of this process. I take my role in the credit union movement, and as part of the financial services industry, seriously. I believe we have an obligation to protect our members and the financial community from fraud and crime, and there can always be more that should be done. However, credit unions are first and foremost in the financial services business, and do not have the infrastructure for law enforcement. This is the reality we struggle with every day.

The tough question that lawmakers must grapple with is how to balance the need for protection with the burden placed on financial institutions and consumers who ultimately pay the cost. The credit union industry is open to working with the government to protect against crime, and we look forward to being a resource as you develop processes and requirements that are streamlined and more manageable. On behalf of America's credit unions and their 110 million members, thank you for consideration of our views.