NFIB

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Via www.regulations.gov and via U.S. First Class Mail

September 25, 2024

Hon. Janet L. Yellen
Secretary of the Treasury
c/o Chief Counsel, OCC
Attn: Comment Processing
Docket ID OCC-2024-0005
400 7th St. SW, Ste. 3E-218
Washington, DC 20219

Hon. Jerome H. Powell, Chairman
Board of Governors of the Federal Reserve
c/o Ann E. Misback, Secretary
Docket No. R-1835
RIN No. 7100-AG78
20th St. and Constitution Ave. NW
Washington, DC 20551

Hon. Martin J. Gruenberg, Chairman
Federal Deposit Insurance Corp.
c/o James P. Sheesley, AES
Attn: Comments/Legal OES
RIN 3064-AF34
550 17th St. NW
Washington, DC 20429

Hon. Todd M. Harper, Chairman
National Credit Union Administration
c/o Melane Conyers-Ausbrooks, Secretary
Docket No. NCUA-2024-0033
RIN 3133-AF45
1775 Duke Street
Alexandria, VA 22314-3428

Dear Secretary Yellen and Chairmen Powell, Gruenberg, and Harper:

RE: Joint OCC, Federal Reserve System, FDIC, and NCUA Notice of Proposed Rulemaking Titled "Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements," 89 *Fed. Reg.* 65242 (August 9, 2024)

This letter presents comments of the National Federation of Independent Business (NFIB)[1] in response to the joint notice of proposed rulemaking by the Department of the Treasury Office of the Comptroller of the Currency (OCC), Federal Reserve System, Federal Deposit Insurance Corporation (FDIC), and National Credit Union Administration (NCUA), titled "Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements" and published in the *Federal Register* of August 9, 2024. The regulations proposed by the OCC, Federal Reserve System, FDIC, and NCUA do not take appropriate account of the strong federal policies in support of small businesses and the privacy and liberty of Americans.

[1] NFIB is an incorporated nonprofit association representing small and independent businesses. NFIB protects and advances the ability of Americans to own, operate, and grow their businesses and ensures that governments of the United States and the fifty states hear the voice of small business as they formulate public policies.

The proposed rules would amend OCC, Federal Reserve, FDIC, and NCUA regulations on anti-money laundering (AML) and countering the financing of terrorism (CFT). Proposed 12 CFR 21.21(b) (OCC), 208.63(b) (Federal Reserve), 326.8(b) (FDIC), and 748.2(b) (NCUA) would require the financial institutions supervised by each of those agencies to have "an effective, risk-based, and reasonably designed AML/CFT program to ensure and monitor compliance with the requirements of the Bank Secrecy Act and the implementing regulations issued by the Department of the Treasury at 31 CFR chapter X."[2] The proposed rules specify a number of items or factors the financial institutions should take into consideration under their AML/CFT programs, but fail to require consideration of the size of the customer concerned or the privacy and civil liberties of Americans.

Careful consideration of the interests of small business in rulemaking reflects statutory policy. See the Regulatory Flexibility Act (RFA), Public Law 96-354 (September 19, 1980), 5 U.S.C. 601 note. In paragraph 2(a)(3) of the RFA, Congress found that "uniform Federal regulatory and reporting requirements have in numerous instances imposed unnecessary and disproportionately burdensome demands including legal, accounting and consulting costs upon small businesses, small organizations, and small governmental jurisdictions with limited resources[.]" In paragraph 2(a)(4) of the RFA, Congress declared that "the failure to recognize differences in the scale and resources of regulated entities has in numerous instances adversely affected competition in the marketplace, discouraged innovation and restricted improvements in productivity[.]" Congress also noted in paragraph 2(a)(6) of the RFA that "the practice of treating all regulated businesses, organizations, and governmental jurisdictions as equivalent may lead to inefficient use of regulatory agency resources, enforcement problems, and, in some cases, to actions inconsistent with the legislative intent of health, safety, environmental and economic welfare legislation[.]" Finally, Congress stated in section 2(b) of the RFA: "It is the purpose of this Act to establish as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation." Thus, the AML/CFT program regulations should take into account both the sizes of the financial institutions required to have an AML/CFT program and the sizes of the customers covered by an AML/CFT program.

Congress has found in law that "the privacy of an individual is directly affected by the collection, maintenance, use, and dissemination of personal information by Federal agencies" and that "the right to privacy is a personal and fundamental right protected by the Constitution of the United States[.]"[3] The President said in 2004 by Executive

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[2] 89 *Fed. Reg.* at 65260, 65261, 65262, and 65263. The regulations that appear in chapter X of title 31 of the Code of Federal Regulations relate to activities of the Financial Crimes Enforcement Network (FinCEN), a Treasury bureau.

[3] Paragraphs 2(a)(1) and (4) of the Privacy Act of 1974, Public Law 93-579 (December 31, 1974).

Order: "The United States Government has a solemn obligation, and shall continue fully, to protect the legal rights of all Americans, including freedoms, civil liberties, and information privacy guaranteed by Federal law, in the effective performance of national security and homeland security functions."[4] The right to privacy and the liberties of Americans are not absolute in all circumstances, but agencies should never count them for nothing. The AML/CFT program regulations should give substantial weight to the right to privacy and liberties of Americans.

For the foregoing reasons, NFIB requests and recommends that the OCC, Federal Reserve, FDIC, and NCUA add at the end of proposed 12 CFR 21.21, 208.63, 326.8, and 748.2 the following new subsection:

(f) *Additional Considerations*. Implementation of this section shall--

(1) take account of the special needs of small businesses, including the need to minimize costs and burdens on such businesses; and

(2) give substantial weight to the right to privacy and liberties of Americans.

The joint preamble to the proposed rules states that "[t]he primary reason for the changes is so that the Agencies' BSA [Bank Secrecy Act] compliance program rules will remain aligned with FinCEN's rule to avoid confusion and additional burden on banks."[5] The desire of the OCC, Federal Reserve, FDIC, and NCUA with their proposed rules to defer completely to the bureaucratic interests of a federal domestic intelligence agency, the Financial Crimes Enforcement Network (FinCEN), is misplaced. The OCC, Federal Reserve, FDIC, and NCUA should not ignore the federal policies that protect small businesses and the right to privacy and liberties of Americans simply because FinCEN may choose to do so. The efficiency -- real or imagined -- that might result from having uniformity in the agencies' regulations is not an overriding priority. Please remember that those who declared our independence and fought our Revolution over two centuries ago did not seek to make us efficient -- they sought to make us free.

Sincerely,

David S. Addington

David S. Addington
Executive Vice President and General Counsel

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[4] Executive Order 13353, "Establishing the President's Board on Safeguarding Americans' Civil Liberties" (August 27, 2004), 69 *Fed. Reg.* 53585 (September 1, 2004).

[5] 89 *Fed. Reg.* at 65245, col. 2.