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Office of the Comptroller of the Currency
Chief Counsel's Office
Attn: Comment Processing
400 7th Street SW, Suite 3E–218
Washington, DC 20219

James P. Sheesley, Assistant Executive Secretary
Attn: Comments/Legal OES
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Ann E. Misback, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Melane Conyers Ausbrooks, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314–3428

Via Federal eRulemaking Portal

Re: Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements, Docket ID OCC–2024–0005, RIN 1557–AF14

Dear Sir or Madam:

Teachers Insurance and Annuity Association of America ("TIAA"), along with its wholly-owned national trust bank affiliate TIAA Trust, N.A., LLC ("TIAA Trust"), is pleased to submit this comment in response to the Notice of Proposed Rulemaking (the "NPRM") issued jointly by the Office of the Comptroller of the Currency ("OCC"), the Board of Governors of the Federal Reserve System (the "Board"), the Federal Deposit Insurance Corporation (the "FDIC"), and the National Credit Union Administration ("NCUA" and, collectively with the OCC, the Board, and the FDIC, the "Agencies") to amend the Agencies' rules requiring supervised banks to establish, implement, and maintain effective Anti-Money Laundering (AML) and Countering the Financing of Terrorism (CFT) programs.[1] We applaud the Agencies' efforts to modernize the AML/CFT framework for the banks they oversee, and to make each of their regulatory regimes consistent with the AML/CFT requirements for financial institutions that were issued (and recently updated)

[1] *Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements*, 89 Fed. Reg. 65242 (Aug. 9, 2024), *available at*: https://www.govinfo.gov/content/pkg/FR-2024-08-09/pdf/2024-16546.pdf.

by the Financial Crimes Enforcement Network ("FinCEN"). In general, we are supportive of the changes being proposed in the NPRM and recommend that the Agencies issue a final rule without delay. However, we strongly urge the Agencies to make one key amendment to the NPRM before releasing a final rule – namely, to modify the suspicious activity report ("SAR") filing threshold that applies to banks supervised by the Agencies to match the SAR threshold for covered financial institutions established by FinCEN in its regulations. This change will mitigate confusion for financial institutions that are subject to oversight by both FinCEN and one or more of the Agencies and will enhance consistency and clarity across the AML/CFT regulatory landscape. We discuss this recommendation in more detail below.

I. About TIAA and TIAA Trust.

Founded in 1918, TIAA is the leading provider of wealth management and retirement services for those in academic, research, medical, and cultural fields. Over its century-long history, TIAA's mission has always been to aid and strengthen the institutions and participants it serves and to provide financial products that meet their needs. To carry out this mission, TIAA has evolved to offer a range of financial services, including asset management, fiduciary, and custody services offered by TIAA Trust.

TIAA has been involved in commenting on regulatory proposals related to AML/CFT since the passage of the PATRIOT Act and has over two decades of experience operating a multi-entity enterprise AML program. As such, we feel we are well positioned to share our perspective on how the Agencies can modify their current AML/CFT regulatory framework to make it both consistent with current FinCEN regulations and more effective in countering illicit financial activity.

II. The Agencies should amend the SAR reporting threshold in their respective AML/CFT regulations to match the threshold set by FinCEN.

While not explicitly discussed in the NPRM, we have serious concerns that the SAR reporting threshold established by several of the Agencies in their AML/CFT rules differs significantly from the SAR reporting threshold set forth by FinCEN in its own AML/CFT regulations. Under these Agencies' current regulations,[2] as well as guidance issued by the Federal Financial Institutions Examination Council ("FFIEC"),[3] banks are required to report suspected criminal activity involving violations of $5,000 or more *where a suspect can be identified*, as well as violations of $25,000 or more *regardless of whether a potential suspect can be identified*. Compare this standard to the equivalent one in FinCEN's current regulations, which require covered financial institutions, including banks, broker-dealers, and insurance companies, to file SAR reports for *any* transaction that involves or aggregates at least $5,000 in funds or other assets, *regardless*

[2] *See*, *e.g.*, 12 C.F.R. § 21.11(c) and 12 C.F.R. § 208.62(c).

[3] *FFIEC BSA/AML Manual*, Appendix R: Enforcement Guidance, Section IV: Suspicious Activity Reporting Requirements*, available at*: https://bsaaml.ffiec.gov/manual/Appendices/19#:~:text=known%20or%20suspected%20criminal%20violations%20aggregating.

of whether a suspect is identified or not.[4] For institutions that are regulated by one or more of the Agencies *and* overseen by FinCEN as a covered financial institution, this regulatory divergence can cause not only confusion, but significant regulatory, financial, and reputational risk. While we are supportive of the reporting threshold distinguishing between situations with and without an identified suspect, without FinCEN's regulations supporting this distinction, we believe it should be removed from the Agencies' regulations and guidance.

As a prime example, we note that the Financial Industry Regulatory Authority ("FINRA") fined Merrill Lynch $6 million in 2023 for failing to apply the correct SAR reporting threshold for more than 10 years – and as a result failing to file over 1,5000 SARs during that period. In that case, FINRA alleged that after its 2009 merger with Bank of America, Merrill Lynch had incorrectly applied the $25,000 SAR reporting threshold applicable to national banks under the Agencies' regulations, rather than the appropriate $5,000 SAR reporting threshold applicable to broker-dealers under FinCEN's regulations. Respectfully, for any financial institution that has subsidiaries regulated as banks and broker-dealers (or other financial institution covered by FinCEN's regulations) as Merrill Lynch and Bank of America do, it can be confusing to determine which SAR reporting threshold applies in a given instance. This lack of clarity leaves financial institutions exposed to a significant degree of risk, as evidenced by the fine FINRA levied against Merrill Lynch.

To help financial institutions operating in good faith avoid this level of risk and confusion, we urge the Agencies to amend the SAR reporting threshold in their regulations from $25,000 in cases where a suspect has not been identified to $5,000 *whether a suspect has been identified or not*, thus bringing their regulations in line with those established by FinCEN. This will alleviate misunderstandings on the part of well-meaning financial institutions and further the Agencies' goal of making their AML/CFT frameworks consistent with FinCEN's regime. We urge the Agencies to make this change before issuing any final AML/CFT rule.

As we have recommended in previous letters commenting on various regulatory proposals issued by FinCEN,[5] we strongly believe that FinCEN and the Agencies should revise the current $5,000 SAR reporting threshold upwards, at least to account for inflation. In our view, the $5,000 threshold is far too low and captures a great deal of financial activity that is not truly useful to law enforcement,[6] and ultimately results in needless time and resources being wasted. We urge the Agencies to review this threshold in their respective regulations and, in consultation with FinCEN, consider revising it to a higher figure that better reflects the appropriate balance between identifying potential illicit activity and using financial institutions' limited compliance resources wisely. Such a review is required by Section 6205 of the Anti-Money Laundering Act

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[4] *See Reports by banks of suspicious transactions*, 31 C.F.R. § 1020.320(a)(2).

[5] *See*, *e.g.*, Letter from Andrew C. Svarre, Senior Vice President and Associate General Counsel of TIAA, to FinCEN (Apr. 15, 2024), *available at:* https://www.regulations.gov/comment/FINCEN-2024-0006-0040/.

[6] In our experience, law enforcement (due to limited investigative resources) rarely is interested in following up on low-dollar activity reported in SAR reports.

of 2020,[7] and we urge the Agencies to join with FinCEN and undertake that review with urgency.

Conclusion.

TIAA appreciates the work the Agencies have done to update their AML/CFT regulatory framework. We are grateful for the opportunity to share our thoughts and welcome any further engagement on this topic.

Sincerely,

Andrew C. Svarre

[7] Anti-Money Laundering Act of 2020, Pub. L. 116-283, § 6205, 134 Stat. 3388 (2021).