



January 13, 2014

Sent via email

Financial Action Task Force Secretariat
2 rue André Pascal - 75775
Paris, France
pdg@fatf-gafi.org

Re: Risk-Based Approach (RBA) Questions for the Private Sector

Dear Sir or Madam:

World Council of Credit Unions (World Council) appreciates the opportunity to comment on the Financial Action Task Force's (FATF) Risk-Based Approach (RBA) Questions for the Private Sector on Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT). World Council is the leading trade association and development organization for the international credit union movement. Worldwide, there are nearly 56,000 cooperatively owned credit unions in 101 countries with approximately US\$ 1.7 trillion in total assets.

World Council's responses to the FATF's six RBA Questions for the Private Sector are as follows:

1. Please set out if, and if so, how, you used the 2007 FATF RBA Guidance for the financial sector. What did you find useful and what could be improved? In particular, is there anything this Guidance should address that it does not currently address?

World Council believes that the FATF should revise the 2007 FATF RBA Guidance¹ in order to reinforce and expand the RBA as envisioned by the FATF's *International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations* (2012).²

Credit unions have seen limited adoption of principle 1.11 of the 2007 FATF RBA guidance, which states "where risks are low simplified or reduced controls may be applied."³ We urge the FATF in revising the 2007 guidance to limit further the unnecessary regulatory burdens imposed on credit unions by "tick-the-box" AML/CFT approaches, including with respect to "low risk" activities, in order to allow credit unions flexibility to direct their limited resources to the areas of highest money laundering and terrorist financing (ML/TF) risk.

Some credit unions do use the 2007 FATF RBA Guidance as a source of international AML/CFT compliance best practices. We urge the FATF to work with local authorities to provide a compliance safe harbor for credit unions that follow the FATF's RBA Guidance.

Many small and mid-sized credit unions would welcome additional guidance on the likely risks of common credit union and banking activities, up to and including the FATF providing standardized risk-assessments for particular products and services. We agree that each institution should assess AML/CFT risks for itself; however, policymakers providing specificity regarding the risks of common products and services, such as

¹ FATF, *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures* (2007), available at <http://www.fatf-gafi.org/media/fatf/documents/reports/High%20Level%20Principles%20and%20Procedures.pdf>.

² http://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/FATF_Recommendations.pdf.

³ FATF, *Guidance on the Risk-Based Approach to Combating Money Laundering and Terrorist Financing: High Level Principles and Procedures* at 2.



the FATF did in the sample risk matrix on pages 19-20 of its *Guidance for a Risk-Based Approach to Prepaid Cards, Mobile Payments and Internet-Based Payment Services* (2013),⁴ helps limit AML/CFT compliance burdens on credit unions by streamlining the ML/TF risk-assessment process.

We also urge the FATF to address correspondent banking specifically in the revised RBA Guidance, especially with respect to revised FATF Recommendation 10 (“Customer due diligence”) and Recommendation 17 (“Reliance on third parties”) which make a bank or credit union responsible for due diligence on its customers’ customers.⁵

In the past year some large banks in Great Britain and the United States have closed credit unions’ correspondent accounts without providing clear explanations for these account closures.

We believe that these account closures are likely the result of a combination of new regulatory requirements on banks including the FATF’s revised Recommendations 10 and 17 as well as the Basel III liquidity rules. Providing additional guidance on the RBA for correspondent banking relationships, especially with respect to customer due diligence, would help credit unions maintain access to bank services.

2. The most commonly used ML/TF risk categories are customer risk; country or geographic risk; and products, services, transactions or delivery channels risk. How relevant is this classification in the banking sector’s context? How relevant is it across all categories of banking lines of business? What new risks have emerged or insights developed, for example in relation to new payment methods or virtual currencies, which would require the introduction of additional or new criteria? Where relevant, please distinguish between risks arising in a money laundering and in a terrorism financing context.

The common ML/TF risk categories of customer risk; country or geographic risk; and products, services, transactions or delivery channels risk continue to be the most relevant ML/TF risks for credit unions and similar consumer retail banking institutions.

We support the FATF continuing to provide detailed guidance on the RBA with respect to new technologies, as the FATF did in 2013 with its *Guidance for a Risk-Based Approach to Prepaid Cards, Mobile Payments and Internet-Based Payment Services*. Without such guidance, many credit unions and credit union regulators would be unclear regarding what are the most appropriate AML/CFT policies and procedures with respect to new technologies.

We note, however, that new technologies do not necessarily mean that significant changes to existing AML/CFT compliance rules are in order.

Many situations involving new technologies are analogous to longstanding credit union products or customer profiles—e.g., reloadable pre-paid debit cards are in many ways similar to a current account or checking account at a credit union, virtual currency companies are often similar to other types of money services businesses—and new risks can often be addressed using preexisting AML/CFT compliance solutions such as robust customer due diligence or enhanced monitoring of account activity.

3. What are the different types of generic ML/TF risks associated with different types of banking activity (e.g. the risks associated with wealth management will be different from those in retail

⁴ FATF, *Guidance for a Risk-Based Approach to Prepaid Cards, Mobile Payments and Internet-Based Payment Services* at 19-20 (2013), available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-RBA-NPPS.pdf>.

⁵ FATF, *International Standards on Combatting Money Laundering and the Financing of Terrorism and Proliferation: The FATF Recommendations* at 14-15, 18 (2012).



banking)? How does this impact the implementation of differentiated AML/CFT measures for the different lines of business? Please describe briefly.

Credit unions primarily provide retail banking services to physical people and small businesses, and present ML/TF risks typical to the community-based retail banking business.

Credit unions' cooperative corporate structure and "common bond" membership limits help further reduce ML/TF risks at a credit union compared to similarly situated retail banks because credit unions usually can only do business with their members. Credit unions therefore typically perform full due diligence on all customers (since all of the customers are members) and do not allow transactions on an anonymous basis.

Similarly, to join a credit union a person must fall within the credit union's "common bond." Credit unions' common bond limitations on membership are typically based on a geography (e.g., persons who live or work in a particular city or province), employment by one or more specific government agencies or private companies (e.g., "National Health Service Employees in Scotland, North England (North East, North West and Yorkshire & Humberside) and their families living at the same address"), work in a particular trade or profession (e.g., "employees who work in the Air Transportation Industry in the United States"), or membership in an association such as a trade union.

Credit unions' common bonds therefore limit the institution's country or geographic risks as well as other risks (e.g., regarding Politically Exposed Persons with respect to money laundering, or persons subject to sanctions in the context of financing of terrorism or proliferation) by reducing significantly the number of individuals who are eligible to join the credit union and often helping the credit union's managers recognize and red flag atypical or suspicious customer behavior.

Despite credit unions' relatively lower ML/TF risks, however, we have seen limited adoption of principle 1.11 of the 2007 FATF RBA guidance, i.e. "where risks are low simplified or reduced controls may be applied." For example, credit unions must typically perform financial sanctions screening on all members, wire transfer recipients, and counterparties, even when the credit union has no international members and does not send cross-border payments, and the likelihood of doing business with a sanctioned company or individual located overseas is therefore close to non-existent.

We urge the FATF to provide additional, detailed guidance on what retail banking activities are "low risk" and what simplified or reduced AML/CFT controls may be appropriate for credit unions in low-risk situations.

4. How do banks identify their risks (e.g. use of a risk assessment methodology, tools developed by the banking sector at national level) and how do they identify/define different levels of risk (e.g. high, medium, low)?

Credit unions typically use a risk matrix as their primary ML/TF risk-assessment tool. Sample risk matrices are therefore useful for credit union managers in terms of illustrating what activities are typically high, medium, or low risk.

Credit unions, however, report that the risk-assessment process can be subjective and that individual credit union examiners may not have a consistent view of the level of risk presented by a particular service or type of business. We welcome increased clarity from the FATF on the relative riskiness of common retail banking products, services, and client profiles, which would help limit the subjectivity of the AML/CFT risk-assessment process.



Larger credit unions also typically employ vendor AML/CFT software to provide an additional level of risk monitoring and help identify possible suspicious activity.

We do not believe, however, that credit unions should be required by regulation to purchase expensive vendor AML/CFT compliance software. While these vendor products can help limit subjectivity and provide automated monitoring, they are too expensive for many small credit unions (given those institutions' limited complexity) and do not always integrate properly with governmental AML/CFT processes.

5. In your experience, what are the prerequisites for the successful adoption of a RBA by banks? For example, have you been able to refer to guidance published by trade bodies, national authorities or international organisations?

Integrating the RBA into national authorities' AML/CFT rules and guidance is the key to successful adoption of the RBA by credit unions. Credit unions are examined for compliance with legally binding national AML/CFT laws, not for compliance with FATF guidance, meaning that adoption of a flexible RBA at the national level is a prerequisite for credit unions to successfully adopt the RBA.

Credit unions in the United States of America, for example, base their AML/CFT compliance programs primarily on regulations and guidance issued by US financial regulatory agencies, including: (1) anti-money laundering regulations issued by the Federal Financial Institutions Examination Council (FFIEC),⁶ a formal interagency body including the National Credit Union Administration (NCUA) and other regulators; (2) the Treasury Department's Office of Foreign Asset Control's (OFAC) regulations on countering the financing of terrorism and proliferation of weapons of mass destruction;⁷ (3) the FFIEC's *Bank Secrecy Act Anti-Money Laundering Examination Manual*;⁸ and (4) other NCUA AML/CFT compliance guidance for credit unions.⁹

The FFIEC's *Bank Secrecy Act Anti-Money Laundering Examination Manual* incorporates the RBA into US AML/CFT compliance principles for credit unions and banks in several sections including the manual's Introduction ("BSA/AML Risk Assessment—Overview"), Appendix I ("Risk Assessment Link to the BSA/AML Compliance Program"), Appendix J ("Quantity of Risk Matrix"), Appendix K ("Customer Risk Versus Due Diligence and Suspicious Activity Monitoring"), and Appendix M ("Quantity of Risk Matrix – OFAC Procedures"). The current FFIEC manual, however, does not necessarily incorporate the RBA into other areas of its AML/CFT guidance.

Credit union trade associations also often play a role in developing risk-based credit union AML/CFT guidance, especially when the association also acts as a self-regulatory organization.

In Ireland, for example, credit unions have relied heavily on AML/CFT guidance issued by the Irish League of Credit Unions which is based on FATF guidance and the AML/CFT rules of the Republic of Ireland and the United Kingdom. In Poland, credit unions comply with AML/CFT guidance promulgated by the National Association of Cooperative Savings and Credit Unions in addition to regulations and executive orders issued by the Polish Ministry of Finance (GIIF).

6. What are the obstacles? Examples could include the perceived benefits of a more prescriptive or rules based approach, human resource constraints, knowledge gaps, (compliance) cultural issues in banks, an unsupportive legal framework or rules-based supervision. How can they be overcome?

⁶ 31 C.F.R. Chapter X, available at <http://www.law.cornell.edu/cfr/text/31/chapter-X>.

⁷ 31 C.F.R. Part 103, available at <http://www.fincen.gov/forms/files/Title31CFR103.pdf>.

⁸ FFIEC, *Bank Secrecy Act Anti-Money Laundering Examination Manual* (2010), available at http://www.ffiiec.gov/bsa_aml_infobase/pages_manual/manual_online.htm.

⁹ E.g., NCUA, Bank Secrecy Act Letters, <http://www.ncua.gov/Legal/BSA/Pages/BSALetters.aspx>.



Examples could include good practices developed at banks' level or industry-wide initiatives developed at national level, or expected solutions at policy/regulatory level.

The most significant obstacle for adoption of the RBA for credit unions is when the local jurisdiction's AML/CFT laws, regulations, and guidance implement the RBA only in part, or implement the RBA nominally but not in practice. As noted in response to question 5, above, this means that the degree to which credit unions are able to implement the RBA depends primarily on the local jurisdiction's interpretation of the FATF's RBA guidance and whether local authorities believe that their AML/CFT laws allow risk-based policies and procedures.

We believe that more detailed RBA guidance from the FATF in the revised RBA Guidance and other FATF guidance papers on the RBA vis-à-vis specific products and services—as the FATF did in 2013 with respect to New Payment Products and Services, Politically Exposed Persons, and Financial Inclusion¹⁰—will help reduce confusion at the national level regarding when risk-based policies and procedures are appropriate and also better ensure consistency in RBA application from jurisdiction to jurisdiction.

As noted in World Council's response to question 1, above, we believe the FATF should work with local authorities to provide a compliance safe harbor for credit unions that follow the FATF's RBA Guidance. A safe harbor for credit unions that comply with the FATF's RBA Guidance would help increase consistent application of the RBA across jurisdictions and help limit credit unions' AML/CFT compliance burdens.

Also as noted above in response to question 1, many small and mid-sized credit unions would welcome additional guidance on the likely risks of many common credit union and banking activities, up to and including standardized risk-assessments for particular products and services. Detailed guidance on specific ML/TF risks would help credit union managers and examiners conduct risk-assessments and better understand the RBA on a practical level.

Thank you for the opportunity to comment on the FATF's RBA Questions for the Private Sector. If you have questions about our comments, please feel free to contact me at medwards@woccu.org or +1-202-508-6755.

Sincerely,

Michael S. Edwards
VP and Chief Counsel
World Council of Credit Unions

¹⁰ FATF, *Guidance for a Risk-Based Approach to Prepaid Cards, Mobile Payments and Internet-Based Payment Services* (2013); FATF, *Politically Exposed Persons (Recommendations 12 and 22)* (2013), available at <http://www.fatf-gafi.org/media/fatf/documents/recommendations/Guidance-PEP-Rec12-22.pdf>; FATF, *Anti-Money Laundering and Terrorist Financing Measures and Financial Inclusion* (2013), available at http://www.fatf-gafi.org/media/fatf/documents/reports/AML_CFT_Measures_and_Financial_Inclusion_2013.pdf.