



**Submission to the
Standing Senate Committee on
Banking, Trade and Commerce**

**On the Review of Anti-Money Laundering
and Anti-terrorist Financing Legislation**

Credit Union Central of Canada

June 2006

Credit Union Central of Canada (Canadian Central) is writing to provide the Standing Senate Committee on Banking, Trade and Commerce with a credit union system perspective on the Committee's review of the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (S.C. 2000, c. 17) pursuant to section 72 of the Act.

As you may know, Canadian Central is the national trade association for credit unions in Canada outside of Quebec. Through their ownership of Canadian Central, our 9 provincial credit union central members are able to provide their direct credit union members with national services that include the last tier of system liquidity, participation in the clearing and settlement of payment items through the Canadian Payments Association, participation in the INTERAC debit network and government relations.

The Canadian Central family of credit unions numbers 521, with nearly 1,800 locations. Together, they serve nearly 4.9 million members, and employ over 20,000 people. Altogether, these 521 credit unions serve 951 communities across Canada. In 330 smaller towns, credit unions are the only financial institution. Assets of the 521 credit unions total approximately \$88 billion.

The credit union system is committed to helping the Federal Government and law enforcement agencies combat money laundering and terrorist financing. We recognize the broad dangers that money laundering and terrorist financing represent to Canadians in general, but we are also well aware of the operational and reputation risks that money laundering and terrorist financing present to credit unions and other financial institutions.

It is with this in mind that we respectfully outline our comments and concerns regarding the evolution of Canada's anti-money laundering and anti-terrorist financing regime.

Our comments revolve around three central areas and refer to the extensive legislative and regulatory proposals outlined in last Fall's consultation paper issued by the Department of Finance. The document, entitled *Enhancing Canada's Anti-Money Laundering and Anti-terrorist Financing Regime*, was tabled earlier at these hearings:

1. **Concerns about the regulatory burden that many of the proposals will entail for credit unions.** As you know, credit unions are relatively small financial institutions when compared to large Canadian chartered banks and additional regulatory requirements present a challenge because the resources and personnel available to respond at the credit union level are limited. Concerns about regulatory burden are magnified when questions are raised about the effectiveness of the measures proposed. Thus we have noted, with concern, the observation in the 2004 Report of the Auditor General that in 2003-2004, out of nearly 10 million transaction reports filed with FINTRAC, only 197 disclosures were made by FINTRAC to law enforcement and other agencies. Equally troubling is the observation that – at the time of the audit – no prosecutions had been launched as a result of those FINTRAC disclosures.
2. **Concern that it will be very difficult to ensure appropriate compliance with some of the proposed regulations as they will require front-line staff to make “judgment calls” that can be questioned well after the fact by regulators.**

For instance, the consultation paper proposes to amend legislation and regulations to explicitly include the reporting of suspicious attempted transactions. Currently, all reporting entities are currently obligated to report suspicious transactions under Part 1 of the Act yet with the change noted above they would be required to report suspicious *attempted* transactions.

Canadian Central believes this proposal will significantly increase the administrative burden placed on credit unions while at the same time introduce a compliance requirement that may be impossible to meet in a satisfactory manner. For example, regarding transactions at an ATM, it may be impossible to know the amount of the attempted transaction or the reason why it did not occur – only that it was incomplete. Tracking technology focuses on completed transactions and not on attempted transactions. Finally, we have concerns about whether there will be any additional value in reporting such additional information given the difficulties FINTRAC is likely to face in analyzing, interpreting and following up on such data.

However, if the government is to proceed with such a change it should:

- Provide detailed guidance to reporting entities to assist them in identifying and reporting such transactions;
- Retain the current form and manner of suspicious transaction reporting except for the addition of information indicating that the transaction was not completed;
- Ensure that the record-keeping requirements in place for suspicious transactions would also apply to attempted suspicious transactions;

3. **Concerns about the proposed introduction of an Administrative and Monetary Penalties Regime to help enforce compliance while at the same time introducing new regulations that leave considerable grounds for interpretation by financial institution personnel.** This scenario could result in financial institutions being liable for penalties for violations that may not have been at all evident to financial institution personnel at the time. The Finance Department consultation paper proposes to create an Administrative and Monetary Penalty (AMP) regime to deal with individuals and entities that do not comply with the requirements of the money laundering and terrorist financing legislative framework. AMPs would be used as a complementary compliance tool

to criminal sanctions, which will continue to be available to deal with the most severe violations (e.g. willful non-compliance).

Canadian Central is of the view that an AMP framework is workable only in situations when there are clear and precise compliance requirements and the responsibilities of parties are not open to interpretation. However, these circumstances may not be met in regard to a significant number of proposed new AML/ATF requirements because of the interpretation that is required in regard to the provisions and the fact that the legislative regime is still relatively new. Such a situation could result in regulated entities finding themselves liable for penalties for violations that are not clear on their face.

On this point, Canadian Central recommends that the Federal Government not proceed with an AMP regime until clear guidance is provided to financial institutions on how to interpret new provisions in the legislation and regulations. It is also important that reporting entities have considerable time to develop compliance frameworks to deal with all the new provisions before an AMP regime is established.

To conclude this brief submission, Credit Union Central of Canada wishes to express its appreciation for the opportunity to provide comments to the Standing Senate Committee on Banking, Trade and Commerce in regard to the review of current anti-money laundering and anti-terrorist financing legislation.

If you have questions please feel free to contact Hugh Scott, Director of Government Relations at Credit Union Central of Canada (613-238-6747 ext. 218) if you have any further questions.