

**Remarks of Gary Rogers, Vice President, Financial Policy
Credit Union Central of Canada to the Standing Senate
Committee on Banking, Trade and Commerce**

**Bill C-25, An Act to amend the Proceeds of Crime (Money
Laundering) and Terrorist Financing Act and the Income
Tax Act and to make a consequential amendment to another
Act**

**December 13, 2006
Parliament Hill
Ottawa, ON**

Good afternoon Mr. Chair and Honourable Senators,

I want to thank you for this opportunity to come before the Committee today to discuss Bill C-25. My name is Gary Rogers and I am Vice President of Financial Policy with Credit Union Central of Canada – commonly known as Canadian Central.

Canadian Central is a federally regulated financial institution that operates as the national trade association and finance facility for our shareholders, the provincial credit union centrals and, through them, for 504 affiliated credit unions across Canada. Our credit unions employ more than 24,000 Canadians, serving our members, who number over 4.9 million Canadians. At the end of the second quarter of this year, our

credit unions held close to \$91 billion in assets. Between the second quarter of 2005 and the second quarter of 2006 our affiliated credit unions experienced asset growth of approximately 10.6%.

I would now like to take a few moments to share with you some of the concerns our members have raised about the legislative proposals found in Bill C-25 and some broad concerns about the evolution of the Canada's anti-money laundering and anti-terrorist financing regime.

To preface our comments, we would like to state that we recognize that the Federal Government is intent on passing Bill C-25 quickly in order that we comply with FATF standards by January 2007. However, we are hoping that some of our comments will, at the very least, help inform the Committee as it continues with its in-depth study of Canada's anti-money laundering and anti-terrorist financing legislative regime in the coming months.

First of all we would like to comment that credit unions are concerned that the legislative provisions contained in Bill C-25 are being put into place with little time for stakeholders to publicly debate and assess whether *a)* the new additional regulatory requirements are in fact *needed* to address money laundering and terrorist financing in Canada; *b)* whether the proposed measures will be *effective* in preventing money

laundering and terrorist financing rather than merely producing more and more transaction reports; and *c*) whether the requirements are *fair* in terms of the distribution of compliance costs across society.

To date, the Federal Government has not presented compelling evidence to stakeholders that the measures proposed are needed, effective and fair. We note that in recent Department of Finance testimony before this Committee, officials from the Department of Finance were not able to provide Senator Goldstein with statistics or analysis indicating that the new provisions will enhance enforcement. Instead, officials stated their assumption that the new provisions will create a more hostile regime for money laundering and terrorist financing.

Of course, Canadian Central has participated in consultations with the Department of Finance as Bill C-25 was being developed, however, the discussions focused on how Canada will hit the new FATF standards and not on the broad questions posed above.

Secondly, credit unions are concerned about the significant regulatory burden that many of the proposals found in Bill C-25 will entail for credit union operations. As you know, credit unions are relatively small financial institutions when compared to large Canadian chartered banks and the additional regulatory requirements proposed in C-25 present a challenge because the resources and personnel available to respond at

the credit union level are limited. These concerns are magnified in light of the seemingly limited effectiveness of the current anti-money laundering and anti-terrorist financing transaction reporting regime. 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. More recently, in the 2005-2006 year, FINTRAC reported only 168 disclosures to law enforcement and other agencies despite the fact they received more than 14.9 million reports from regulated entities in that same period. It is also disturbing that after six years of operation, FINTRAC cannot clearly state how many of its disclosures have helped in successful prosecutions.

Finally, credit unions are concerned about C-25 because the full impact of the legislative provisions contained in the Bill cannot be accurately assessed at this time since the Bill, on its own, presents an incomplete picture of the Federal Government's efforts to elaborate its approach to anti-money laundering and anti-terrorist financing activities. First of all, most of the substance of the Bill will be contained in regulations with the term "prescribed" appearing 54 times in a 48 page Bill. Furthermore,

the Bill introduces significant new concepts in very “high level” language, with the details to be worked out in the future in regulations. For example, the Bill introduces the concept of an attempted suspicious transaction however; it provides little guidance as to how to identify such transactions or how the reporting of such transactions is to be carried out. Of course, credit unions will participate in consultations concerning the new regulations yet these regulations will not be subject to Parliamentary review or receive broad public debate. It is our view that this is not the appropriate manner in which to decide matters of important public policy.

Now I would like to comment on two specific concerns found in Bill C-25.

Re. “Attempted Suspicious Transactions”

Currently, reporting entities, including credit unions, are required to file suspicious transaction reports on financial transactions that have been completed. However, Bill C-25, if enacted, will require reporting entities to also file with FINTRAC reports of suspicious transactions that have been unsuccessfully “attempted”. This proposal is a concern because the Bill provides little guidance as to how to identify incomplete suspicious transactions and thus may be introducing a compliance requirement that will be difficult to meet in a satisfactory manner. In addition, if a

transaction is attempted, but then abandoned, it may be difficult, if not impossible, to obtain the information necessary to file the required report. With the introduction of an Administrative and Monetary penalties regime, compliance difficulties may be translated into fines and penalties.

From an operational perspective, the immediate impact of such a requirement on credit unions will be the need to devote additional resources to changing their policies and suspicious transaction reporting procedures, and additional staff training. It is also likely that tracking technology will have to be upgraded. This could be a particularly onerous burden on credit unions, particularly the smaller units. This proposal could also lead to demands upon provincial centrals to take over some reporting functions although some provincial centrals are not currently set up to take on this responsibility.

With these concerns in mind, we recommend that if the Federal Government is to proceed with this legislative proposal FINTRAC should come forward with detailed and realistic guidance for determining when and how to report such transactions at least 6 months before this aspect of the legislation comes into force in order to give reporting entities time to develop compliance.

Re. Politically Exposed Persons

Bill C-25 will require reporting entities, in certain circumstances, to be identified in the regulations, to make a formal determination if they are dealing with a “politically exposed foreign person”, or a “prescribed family member” of a politically exposed person. Once a positive determination has been made, the reporting entity must obtain senior management approval (in prescribed circumstances) and take other measures that may be set out in the regulations.

“Politically exposed person” is defined in the legislation to include the following:

- head of state or government;
- member of the executive council of government or member of legislature;
- deputy minister or equivalent rank;
- ambassador or attaché or counselor of an ambassador;
- military officer with a rank of general or above;
- president of a state owned company or state owned bank;
- leader or president of a political party represented in the legislature;
- head of a government agency;

- judge; and
- holder of any other office or position set out in the regulations.

In our opinion, if this requirement comes into force, credit unions will face an administratively onerous requirement to make inquiries as to the status or particulars of the occupation of a person conducting a transaction, and his or her family members. In addition, credit unions will be compelled to modify their existing policies and procedures, including account opening documentation and other documentation to ensure that politically exposed persons are identified and politically exposed person files are addressed by senior management where required.

A very important concern about this proposal is the lack of any “materiality threshold” in the proposed legislation for triggering this relatively onerous requirement. Transactions, large or small, appear to trigger this requirement.

Canadian Central recommends that if the Federal Government is to proceed with this proposal it should proceed with developing a “materiality threshold” that would distinguish between politically exposed person transactions of significance and those of little concern in relation to money laundering or terrorist financing.

In closing I would like to thank Senators for their time. I will be happy to answer any questions that the Committee may have.