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Proposal and Comment Information

Title: Anti-Money Laundering and Countering the Financing of Terrorism Programs, R-1835

Comment ID: FR-0000-0133-02-C27

Subject

Docket No. R-1835 | RIN 7100-AG78 | Public Comment: Anti-Money Laundering and Countering the Financing of Terrorism Programs

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Submitted Date: 09/01/2026

Proposed 12 CFR 208.63(g) earns credit for separating program establishment from program implementation and raising the threshold for enforcement action tied solely to isolated implementation gaps once a program has been properly established. Distinguishing design failures from operational lapses gives banks a clearer target and should reduce enforcement grounded in minor, non-systemic issues.

The most significant gap is structural rather than semantic. Proposed 208.63(c)(1)(ii) directs banks to steer attention and resources toward higher-risk customers and away from lower-risk ones, and the preamble separately recalls a 2022 interagency statement discouraging wholesale declination of entire customer categories. That anti-blanket-declination principle, however, lives only in a footnoted historical statement, not in the codified rule text. A bank minimizing supervisory exposure could satisfy the letter of 208.63(c)(1)(ii) by categorizing money services businesses, remittance corridors, or charities operating in high-risk regions as uniformly higher-risk and withdrawing services rather than individually assessing risk within those categories. The Regulatory Impact Analysis even counts reduced wrongful account denials as an expected benefit while admitting the Board lacks data to quantify it. The final rule should codify, not merely cite, an expectation that banks assess and mitigate risk at the individual customer or relationship level before treating an entire category as ineligible for service.

A related ambiguity sits in the effectiveness standard. Enforcement exposure turns on whether implementation failures are "significant or systemic" and whether internal controls are "reasonably designed," yet the proposal supplies no worked criteria an examiner or bank could apply consistently; the Board's own question 6 shows awareness of this gap. Leaving the phrase undefined risks inconsistent outcomes across examiners and invites banks to treat compliance as a moving target. The final rule should add illustrative examples of a systemic implementation failure, paralleling the worked example already given for program design.

The preamble's encouragement of machine learning, generative AI, digital identity tools, and blockchain analytics, paired with an assurance that adopting such technology creates no additional enforcement risk on that basis alone, appears nowhere in the codified text of proposed 208.63. As written, the assurance functions as interpretive guidance for examiners rather than a binding commitment, so a future examiner is not clearly bound by it. If the Board intends banks to rely on this assurance when investing in new compliance technology, the final rule should state the no-additional-risk position in the regulatory text itself rather than the preamble alone.

The regulatory flexibility analysis is internally inconsistent: it identifies approximately 439 small Board-supervised institutions, then computes first-year burden using 464 small entities. That discrepancy undermines confidence in the $760,218 first-year and $190,054 annual burden figures and should be reconciled, with a corrected count carried through both calculations, before finalization.

The instruction to "review and, as appropriate, incorporate" the AML/CFT Priorities leaves the incorporation decision to each bank's own judgment, guarded only by a caution against "surface-level" review. Examiners will have little basis to distinguish a considered decision not to incorporate a Priority from a perfunctory one. Requiring banks to document, within the risk assessment, the rationale for excluding a Priority would give examiners something concrete to test.

Finally, the Board's proposal omits the consultation and information-sharing provisions included in the Agencies' parallel proposal governing notice to FinCEN before enforcement action and voluntary bank disclosures to the FinCEN Director; question 23 asks whether to add them. Separately, nothing in the proposed text addresses confidentiality or retention limits for the broader risk-assessment inputs the preamble encourages banks to draw on, including customer IP addresses and device geolocation logs.

Silence on data handling for these inputs could produce inconsistent expectations across regulators and leaves affected customers with no visibility into how such information is retained or shared.

None of this counsels against finalizing a rule that otherwise clarifies decades of accumulated, sometimes inconsistent examiner practice. The concerns above go to implementation detail the Board is well positioned to resolve before the rule takes effect.

Sincerely,

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