THE WOLFSBERG GROUP, JOHN EDWARD CONWAY

Proposal and Comment Information

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

Comment ID: FR-0000-0133-02-C43

Submitter Information

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Organization Type: Organization

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Submitted Date: 09/08/2026

The Wolfsberg Group appreciates the opportunity to comment on the proposed rule by the Board of Governors of the Federal Reserve System that would reform the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program requirements for financial institutions subject to the Board's supervision.

<u>Wolfsberg Group Comment Letter –</u>

<u>Anti-Money Laundering and Countering the Financing of Terrorism Program Requirements</u>

September 8, 2026

Via Electronic Submission

The Board of Governors of the Federal Reserve System

Docket Number R-1835 and RIN 7100-AG78

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Bank of America
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Citigroup
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the Wolfsberg Group

The Wolfsberg Group (the Group) appreciates the opportunity to comment on the proposed rule by the Board of Governors of the Federal Reserve System (the Board) that would reform the Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) program requirements for financial institutions subject to the Board's supervision. The Group recognizes and appreciates the Board's efforts to align on common principles and objectives for the establishment and maintenance of effective AML/CFT programs alongside the changes that were proposed by the Financial Crimes Enforcement Network (FinCEN) and the Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), and the National Credit Union Administration (NCUA) (collectively, the Agencies).

The Group provided a response to that proposed rule on June 9, 2026, and we would direct the Board to the recommendations and suggestions as the basis for our recommendations for the Board's final rule. We offer the additional observations below to support further alignment across the federal framework, including in areas where the Board's proposal addresses similar objectives through a different construct than the proposals issued by FinCEN and the Agencies.

The Group has long supported the consistent implementation of risk-based AML/CFT programs and supervision of financial institutions, and believes that the Board's proposed rule is a positive step toward the harmonization of these programs. The reforms and revisions contemplated in the proposed rule would better support effective, risk-based AML/CFT programs by giving financial institutions appropriate discretion to allocate resources toward the highest illicit finance risks while maintaining strong, sustainable program standards. At the same time, the Group believes it is important that key coordination mechanisms be implemented as consistently as possible across federal authorities supervising financial institutions, so that institutions operating under multiple supervisory frameworks can rely on a coherent, predictable approach to significant supervisory outcomes.

To ensure the consistent implementation and supervision of these programs, the Group strongly recommends that the Board adopt provisions proposed by FinCEN and the Agencies to establish a notice and consultation framework between FinCEN and the Board, applicable when the Board intends to initiate a significant AML/CFT supervisory action or potential AML/CFT enforcement action. The notice and consultation framework should require the Board to provide the Director of FinCEN with an opportunity to review the action and consider input from the Director. The Group agrees with the rationale that frames FinCEN's role as set forth in its proposed rule; specifically, that providing FinCEN with a greater role in the supervisory process could reduce the possibility for differences between how FinCEN and Board examiners might assess the quality of a bank's AML/CFT program.

The Group understands the Board's proposed rule is intended to advance the same overall policy direction as the proposals issued by FinCEN and the Agencies; however, the Group notes that differences in the inclusion (or absence) of a structured consultation framework could, as a practical matter, lead to variation in how significant outcomes are assessed and escalated across the federal framework. Aligning these mechanisms is important because FinCEN, acting on behalf of the Department of the Treasury, plays a central role in administering and interpreting the Bank Secrecy Act framework and in setting National AML/CFT Priorities that inform supervisory focus.

In the Group's view, a well-designed consultation framework supports consistent application of expectations across agencies, helps ensure that supervisory and enforcement judgments are informed by national priorities, and promotes effective coordination in circumstances where multiple authorities may have complementary roles.

The Group also supports the sharing of any information with the FinCEN Director that relates to an existing or potential AML/CFT enforcement action or significant AML/CFT supervisory action. In particular, the Group encourages the Board to consider adopting an appropriately tailored information-sharing authorization framework that enables relevant supervisory information to be shared with FinCEN for consultation purposes, consistent with applicable confidentiality requirements, so that consultation can be meaningful and timely.

A lack of alignment and harmonization in the consultation mechanism used by federal authorities supervising financial institutions could have practical implications for those institutions. For example, some financial institutions may be supervised and examined by two regulatory authorities (i.e. the Board and the OCC). Once final rules have been promulgated by FinCEN and the Agencies, the OCC may be bound by a notice and consultation mechanism with the Director of FinCEN for a significant AML/CFT supervisory action or potential AML/CFT enforcement action, whereas the Board would not be required to notify and consult with the Director of FinCEN. That divergence could create uncertainty for institutions supervised by multiple regulators, including uncertainty about whether FinCEN and the relevant banking agency are aligned on the basis, scope, and expected remediation of a significant supervisory or enforcement outcome.

In its comment on the rule proposed by FinCEN and the Agencies, the Group urged the provision of a clearer framework for FinCEN's consultative role that gives financial institutions the opportunity to share details about their AML/CFT program's effectiveness and their ability to produce highly useful information to law enforcement relating to the National AML/CFT Priorities. The Group similarly recommends that, as the Board considers inclusion of a notice and consultation framework in its AML/CFT program rule, the Board provide greater detail on when FinCEN would be consulted, and the criteria used to trigger a review of a significant AML/CFT supervisory action or potential AML/CFT enforcement action. The Group believes that the notice and consultation mechanism originally proposed by FinCEN is a welcome step to make the supervision of financial institutions' AML/CFT programs function effectively and efficiently between federal financial regulatory authorities, and that inclusion of such a mechanism by the Board in its final rule would be beneficial to ensure appropriate coordination among these authorities.

The Group also encourages the Board, in coordination with the Department of the Treasury and FinCEN, to support a regular process for refreshing the National AML/CFT Priorities so they remain current and sufficiently specific to be operationally useful.

Finally, to support consistent implementation for institutions and regulatory authorities, the Group recommends that the Board along with the other federal agencies prioritize timely conforming updates to the FFIEC BSA/AML Examination Manual and related examiner training materials once the final rules are issued. The objectives of AML/CFT reforms are best realized when there are concurrent changes to the examination framework. Examination procedures and training content that correspond to the changes contemplated in the proposed AML/CFT program rule would help promote consistent supervisory messaging and reinforce a shared understanding of how risk-based expectations are evaluated in practice. Such changes need to be aligned with the implementation timelines associated with the AML/CFT program rule revisions.

In its response to the proposed AML/CFT rule by FinCEN and the Agencies, the Group provided direct edits and amendments to rule language, to guide policymakers and regulators as they consider proposed changes. The Group's full comment letter to FinCEN and the Agencies is included here, as well as our proposed rule text changes, for consideration by the Board.

Sincerely,

J. Edward Conway

Executive Secretary

The Wolfsberg Group

Appendix I: Recommendations for NPRM Amendments

(1) The Components of an Effective Program. The intent of the NPRM is to enshrine a framework for evaluating AML/CFT program effectiveness, and to center supervision on outcomes rather than solely check-the-box compliance. However, as drafted in the NPRM, the "effective" definition and framework remain unclear, and the discussion of how to objectively measure effective outcomes is underdeveloped.

To achieve the goal of greater clarity of expectations, the Group recommends FinCEN and the FBAs explicitly include in the regulatory text its interpretation, as reflected in the summary of comments in the preamble, that it is unreasonable for an AML/CFT program, no matter how well established or maintained, to be expected to detect and report all financial crime. This clarification is important to ensure supervisory focus remains on reasonable design, risk-based execution, and demonstrable outcomes, and is fundamental to how a financial institution's AML/CFT program should be structured. FinCEN and the FBAs can then provide more clarity within the rule text itself by setting forth a framework that logically outlines what would constitute an effective program. The Group has proposed revisions to the proposed rule text language, found in Appendix II, to translate these changes into rule text.

FinCEN and the FBAs should incorporate additional structure in the regulatory text under the proposed revised §1020.210(c) (the program implementation prong) to define the key terms that will determine how institutions can demonstrate effectiveness.

The Group has included revised rule text language in the program implementation section (see: Appendix II) to reflect a clearer framework for what constitutes program implementation "in all material respects" to guide FinCEN and the FBAs and reflect the significant treatment of this concept in the preamble. Specifically, the Group recommends a definition that 1) clearly identifies when a program has failed, 2) acknowledges that self-identified gaps reinforce a financial institution's governance and control functions as a hallmark of an effective program, and 3) ensures proportionality by including a totality of circumstances clause.

The Group proposes revising the program implementation section to state that an AML/CFT program is not implemented "in all material respects" when the deficiencies in the program are either widespread across one or more program components or materially impair the financial institution's overall ability to identify, monitor, mitigate, or report risks. It does not include minor, isolated, or immaterial deficiencies. Amending the proposed rule in this way is imperative to ensure the intent to reduce check-the-box compliance, afford appropriate deference to financial institutions' judgements and drive consistency across examinations. Doing so will increase regulatory harmony and limit the potential for inconsistent examiner application.

The Group has also proposed defining additional key terms in revised rule text (see: Appendix II, § 1020.221(e)) to support the determination of an effective program. These definitions should be clear, consistent, and emphasize financial institutions' risk-based determinations of their approaches to money laundering, terrorist financing, and illicit finance risks.

(2) Establish/Maintain. FinCEN and the FBAs should further clarify the intended differences between program establishment and maintenance via implementation by explaining that "establish" is the response to new activities and risks by adopting, as necessary, new or additional policies, procedures and controls in a timely fashion. Thus, "maintaining via implementation" is the execution of daily operations, i.e., the execution of existing policies, procedures and controls to manage the risks posed by existing activities.

FinCEN and the FBAs should confirm in an article of construction that all covered financial institutions, and under what circumstances, who have already been examined and have been found to have effective programs, will not be subject to a wholesale review under the new establishment prong. The Group has suggested language at § 1020.210(c) to affirm this view (see: Appendix II).

Additionally, FinCEN and the FBAs should define what constitutes a "systemic" or "significant" failure as one that is widespread, recurring, or material enough to impair the financial institution's ability to effectively identify, monitor, mitigate, or report risks across one or more business lines, legal entities, or enterprise processes. This definition will clarify that the mere existence of issues, either internally or externally identified, will not be the determining factor for whether or not a program is considered to be effective.

(3) Resource Allocation. The Group welcomes the strategic shift toward risk-based resource allocation. To ensure consistent implementation and supervision, FinCEN and the FBAs should confirm in the rule text that the NPRM does not create an obligation for financial institutions to redeploy the same resources (e.g. budget line items or equal numbers of FTE) on a dollar-for-dollar or person-hour basis from one risk area to another.

Rather, FinCEN and the FBAs should confirm that the rule provides financial institutions with the discretion to reduce, eliminate, or substitute resources (e.g. technology in place of personnel) as deemed appropriate to effectively and efficiently mitigate risk, based on their understanding of their own risk profile and associated controls. FinCEN and the FBAs should also confirm that resource allocation does not need to be evidenced as individual line items from a headcount or dollar spend perspective. Instead, each financial institution should allocate attention and resources based on the risks it faces. In this formulation, the institution should consider allocating attention and resources across broader functional categories or capabilities to reflect strategic shifts in capacity, prioritization, and operational as well as technological support.

The drafting could support this concept by providing a clearer definition of "attention and resources" – as noted above – to include items such as, but not limited to, how a financial institution deploys budget, human capital, or technology, and how a financial institution supervises such a redeployment (e.g., governance resources processes). Such a treatment could build on FinCEN's 2014 guidance on a culture of compliance which discussed the role of human and technological resources in mitigating financial crimes risk.[1] The Group has proposed revisions to the proposed §1020.210 (see: Appendix II) to reflect this suggestion to afford financial institutions with flexibility and discretion to deploy resources on the basis of risk.

(4) Innovation Agenda. The Group has long advocated for responsible innovation to combat illicit finance risks. The development and deployment of new technological solutions is a critical strategy for the efficient and effective use of compliance resources, and permits financial

[1] FIN 2014 A007

institutions to match the technological improvements employed by bad actors. Consequently, we welcome the U.S. Government's inclusion of innovation in the NPRM, which is broadly reflective of the work Treasury has pursued to date.

FinCEN and the FBAs could further support these principles in the Final Rule by codifying themes included in the preamble of the proposed rule. In particular, the rule should make clear that responsible investment in new technology should not be burdened by undue regulatory scrutiny in general and, among the specific priorities for financial institutions, regulators should place reasonable expectations on requirements for testing and defer to the financial institution's judgment (e.g., on decisions relating to parallel runs, or tailoring model risk management to financial crime risks).

Codifying in the rule text financial institutions' ability to flexibly include innovative technologies and tools as part of their AML/CFT programs would be in line with existing supervisory guidance and public statements on responsible innovation, which takes as its core attribute that an institution's risk-based development of new technology should not be second-guessed so long as the institution has internal processes for quality assurance and control.[2] The Group has suggested revisions to the rule text in §1020.221 (see: Appendix II) to further strengthen the U.S. Government's commitment to supporting responsible innovation.

(5) Risk Assessment Processes. The Group appreciates the extent to which FinCEN and the FBAs have adjusted language related to the risk assessment processes component of the proposed rule in response to public comment. As written, the proposed rule text more closely reflects how financial institutions govern risk management on an ongoing basis, rather than relying on a singular, static, point-in-time enterprise-wide risk assessment. FinCEN and the FBAs should further underline this theme in the rule text by leveraging each financial institution's existing change management processes to serve as the trigger for updating relevant risk assessment processes. The change management framework provides the financial institution with discretion and associates this line of effort with well-established controls known to examiners. The Group has proposed language in §1020.210(b) (see: Appendix II) to better reflect how financial institutions may update their risk assessment processes in line with their procedures and change management processes.

The Group has proposed changes to the text of the rule (see: Appendix II, §1020.210(b)(1)(i)(C)) to reflect that a financial institution would perform a risk assessment as necessary within a reasonable time after identifying a material change, and by relying on its established change management process. Such a change would also allow any appropriate follow-up steps from a financial institution's risk assessment processes (e.g., updates to policies, procedures, or internal controls) to be covered by a separate timeline.

(6) Risk-Based Independent Testing. The Group has consistently advocated for the importance of risk-based testing for financial institutions' AML/CFT programs and encourages FinCEN and the FBAs to support the principles of risk-based testing in the updated AML/CFT program rule.

The Group proposes to add "risk-based" to the section of the AML/CFT program that requires independent testing, which we view as an important language change that is nevertheless fundamental to enabling financial institutions to shift their AML/CFT programs to incorporate the changes envisioned by the updated rule and regulatory framework that will lead to truly

[2] Innovation | FinCEN.gov; BSA/AML Innovative Industry Approaches & Other Related Links | OCC

effective outcomes. Specifically, this change would allow a financial institution's independent testing requirement to be consistent with the risk-based approach that FinCEN and the FBAs will take in implementing the rule. The Group has previously published principles on Auditing for Effectiveness, which we believe can be used as a guide by internal testing teams to implement such an approach.[3]

Harmonizing these approaches will provide financial institutions assurance that they will be subject to consistent testing approaches and enable them to make meaningful corresponding changes to allocate resources toward and prioritize higher risk activity, without being subject to inconsistent approaches or to criticism for minor, isolated or immaterial deficiencies.

(7) FinCEN Consultation and Enforcement Role. The Group welcomes the role FinCEN will adopt in consulting with the FBAs on pending enforcement actions.[4] FinCEN and the FBAs could reinforce the message by bringing into the proposed rule text a codification of the elimination of check-the-box compliance, and strengthen the presumption of effectiveness and safe harbor based on the "establish" and "maintain and implement" prongs as one of the considerations the FinCEN Director must take on when weighing in on potential enforcement. The Group has proposed a methodology for doing so in revisions in the rule text at § 1020.221(d) (see: Appendix II).

The NPRM would benefit from a more explicit framework for the day-to-day operational approach for FinCEN's consultative role. Consequently, the Group recommends the preamble and regulatory text provide more details on timelines, responsible personnel, when FinCEN will be consulted, and the criteria being used to trigger such a review.

Additionally, the Group believes FinCEN should augment its consultation process by expressly allowing covered financial institutions to appeal proposed or pending enforcement actions. FinCEN could use as a model the specific framework the OCC has developed for its appellate framework.

(8) Program Rule Coordination. The Group recommends that FinCEN and the FBAs consider harmonizing examination and supervision expectations in conjunction with a clearer definition of effectiveness in the final rule. In practice, this means FinCEN and the FBAs enjoy consensus on purpose and uniformity in interpretation and execution. One way to achieve uniformity and consistency would be to publish anonymized AML/CFT examination outcomes performed by the FBAs, which would allow for FinCEN and the FBAs to meaningfully and appropriately coordinate on the expectations and outcomes of these examinations. For this to happen, FinCEN requires sufficient resources, and the Group strongly supports the appropriation by Congress of additional resources to FinCEN so that FinCEN can effectively implement the goals of AML/CFT reform envisioned under the Anti-Money Laundering Act and the coordination and consultative mechanisms contemplated in the proposed rule.

Beyond provisions that will be included in a final rule, FinCEN and the FBAs should prioritize joint work on aligning new AML/CFT program rule requirements with the day-to-day realities of examination and supervision.

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[3] The Wolfsberg Group. Wolfsberg Group Principles for Auditing for Effectiveness - Wolfsberg Group. March 23, 2024.

[4] The Group agrees with the NPRM's rationale for framing FinCEN's role: "Specifically for banks, giving FinCEN a greater role in the supervisory process could reduce the possibility for differences between how FinCEN and the compliance examiners might assess the quality of a bank's program. This would help ensure that bank regulators are focused on assessing banks' AML/ CFT programs for effectiveness rather than mere technical compliance."

The Group has identified priority areas for such work, including updates to the FFIEC Manual, examiner training, and increased and continued collaboration between FinCEN and the FBAs on implementation of the rule and throughout all aspects of program assessments.

(9) AML/CFT Officer Responsibilities and U.S. Person Requirements. The Group welcomes that the revised NPRM clarifies that while the AML/CFT officer needs to be located in the United States and available for regulatory oversight, part of or the remainder of enterprise compliance functions may be based in non-U.S. jurisdictions. This change recognizes the operating reality of global financial institutions in overseeing financial crimes risk functions across multiple jurisdictions and the inherent efficiencies that can be obtained by centralizing operational teams in specific locations. To this end, the Group would appreciate a rule of construction that notes the division of responsibilities between the first line and second line functions within each financial institution.

Appendix II: Proposed AML/CFT Rule Text Edits and Additions

Text of 2026 FinCEN NPRM Proposed Program Rule, 31 CFR 1020.210 et seq

…

5. Revise § 1020.210 to read as follows:

§ 1020.210 Anti-money laundering/countering the financing of terrorism program requirements for banks.

(a) ***In general.*** A bank has an effective AML/CFT program and complies with the requirements of 31 U.S.C. § 5318(h)(1) and this section if the bank:

(1) Establishes an AML/CFT program in accordance with paragraph (b) of this section; and

(2) Maintains an AML/CFT program by implementing the AML/CFT program in accordance with paragraph (c) of this section.

(3) A bank is presumed to have established an effective AML/CFT program and is, therefore, presumed to be in compliance with the requirements of 31 U.S.C. 5318(h)(1) and this section, unless there is a significant or systemic failure to establish the minimum requirements of an AML/CFT program, as noted in subsection (d) below.

(4) A bank's program shall not be deemed ineffective solely because it does not detect or report all potential illicit activity, provided the program is reasonably designed, risk-based, and implemented in all material respects. Minor, isolated, or immaterial deficiencies in a bank's AML/CFT program implementation, standing alone, do not constitute a failure to implement an AML/CFT program in all materials respects.

(b) ***Program establishment.*** A bank establishes an AML/CFT program in accordance with this paragraph if the bank:

(1) Establishes a risk-based set of internal policies, procedures, and controls that is reasonably designed to ensure compliance with the Bank Secrecy Act and this chapter and to:

(i) Identify, assess, and document the bank's money laundering, terrorist financing, and other illicit finance activity risks through risk assessment processes that:

(A) Evaluate the money laundering, terrorist financing, and other illicit finance activity risks of the bank's business activities~~, including its products, services, distribution channels, customers, and geographic locations~~;

(B) Review and, as appropriate, incorporate the AML/CFT priorities; and

(C) Update the performance of any relevant risk assessment processes as necessary within a reasonable time after identifying a material change to the bank's products, structure, or any factor that, in the bank's reasonable determination, is likely to affect the bank's money laundering or terrorist financing risk. Where a bank identifies an update to be required under this section, it may rely on its established change management framework or processes to update any relevant policies, procedures, and controls;

~~(C) Are updated promptly upon any change that the bank knows or has reason to know significantly changes the bank's money laundering, terrorist financing, and other illicit finance activity risks;~~

(ii) Reasonably m~~M~~itigates the bank's money laundering, terrorist financing, and other illicit finance activity risks consistent with the risk assessment processes required under paragraph(b)(1)(i)of this section, including by directing more attention and resources toward higher-risk customers and activities, consistent with the risk profile of the bank, rather than toward lower-risk customers and activities. For the purposes of this section:

(A) Banks have the flexibility and discretion to direct attention and resources in a manner consistent with their reasonable determinations, informed by its money laundering, terrorist financing, and illicit finance risk profile, and when doing so would advance AML/CFT program effectiveness; and

(B) A risk-based AML/CFT program may be considered reasonably designed if it allocates resources and attention in a way that prioritizes identification of potentially suspicious activity in line with the institution's internal processes, including toward higher-risk activities in line with its reasonable determinations as based on its risk assessment processes, even when this prioritization may direct resources away from identification of lower-risk activity that is likely to be of lower usefulness to law enforcement;

~~; and~~

(iii) Conduct ongoing customer due diligence, including to:

(A) Understand the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(B) Conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information (including information regarding the beneficial owners of legal entity customers, as defined in § 1010.230 of this chapter);

(2) Establishes risk-based independent AML/CFT program testing to be conducted by bank personnel or by an outside party;

(3) Designates an individual, who is (i) located in the United States, (ii) accessible to, and subject to oversight and supervision by, FinCEN and its designee, and (iii) responsible for establishing and implementing the AML/CFT program and coordinating and monitoring day-to-day compliance; and

(4) Establishes an ongoing employee training program.

(c) ***Program implementation.*** A bank implements an AML/CFT program in accordance with this paragraph if the bank implements, in all material respects, the AML/CFT program required under paragraph (b) of this section.

(1) ***Failure to implement in all material respects.*** For purposes of this paragraph (c), a bank fails to implement its AML/CFT program in all material respects when deficiencies in the program— (i) are widespread across one or more program components; or (ii) materially impair the bank's overall ability to identify, monitor, mitigate, or report risks identified as material in the bank’s risk assessment processes.

(2) ***Presumption of implementation; self-identified gaps.*** A bank is presumed to have implemented its AML/CFT program in all material respects where the bank's governance and control functions have identified all material implementation gaps and the bank has initiated reasonable steps to remediate the identified gaps.

(3) ***Totality of the circumstances.*** An assessment of whether a bank has implemented its AML/CFT program in all material respects shall be based on the totality of the relevant facts and circumstances, including but not limited to the considerations identified in paragraphs (c)(1) and (2) of this section.

(d) ***Written AML/CFT program and approval.*** A bank’s AML/CFT program must be written, and it must be approved by the bank’s board of directors, an equivalent governing body within the bank, or appropriate senior management. The bank must make a copy of its AML/CFT program available to FinCEN or its designee upon request.

(e) ***Evaluation of AML/CFT Program Effectiveness***. In evaluating whether a bank has reasonably established and maintained a risk-based AML/CFT program under paragraphs (a)-(c) of this subsection, FinCEN and/or the Federal Financial Institution Regulatory Agencies acting pursuant to their delegated authority under this Chapter may consider the following factors, where relevant:

(i) Allocation of resources to higher risk activities or other activities that a bank reasonably believes are likely to be, or which have been demonstrated to be, effective in mitigating illicit finance risk, even if this results in not detecting and/or reporting all lower-risk activity;

(ii) Decisions to cease performing activities that are not specifically required by law or regulation that a bank reasonably determines, based on experience, past practice, feedback from law enforcement or other available information either do not or are not likely to meaningfully mitigate illicit finance risk or produce highly useful information to law enforcement; and

(iii) The extent to which a bank has engaged in responsible use of innovative technologies and/or participated in public-private partnerships that are likely to produce, or that have produced, information that is highly useful to law enforcement or national security officials.

For the purposes of this subsection, *responsible use of innovative technologies* includes but is not limited to the implementation of artificial intelligence (AI), machine learning, advanced analytics, large language models, generative AI, agentic AI, digital identity and verification solutions, and privacy-enhancing technologies, where such implementation is supported by appropriate controls, validation and oversight.

Amend § 1020.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1020.220 Customer identification program requirements for banks.

(a) * * *

(1) ***In general.*** A bank required to have an AML/CFT program under the regulations implementing 31 U.S.C. 5318(h), 12 U.S.C. 1818(s), or 12 U.S.C. 1786(q)(1) must implement a written Customer Identification Program (CIP) appropriate for the bank's size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the AML/CFT program.

* * * * *

(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

Add § 1020.221 to read as follows:

§ 1020.221 Supervision and enforcement.

(a) ***Definitions.*** For purposes of this section:

(1) **AML/CFT enforcement action** means any formal or informal action taken by FinCEN that seeks to penalize, remedy, prevent, or respond to noncompliance with past or ongoing material or widespread violations of, or past or ongoing deficiencies relating to, an AML/CFT requirement. The term includes—

(i) A cease-and-desist order, consent order, or memorandum of understanding; or

(ii) The assessment of a civil money penalty.

(2) **AML/CFT requirement** means a requirement of the Bank Secrecy Act or this chapter.

(3) **Significant AML/CFT supervisory action** means any written communication or other formal supervisory determination issued by FinCEN or a Federal Financial Institutions Regulatory Agency when acting pursuant to authority delegated under this chapter that, in either case—

(i) Identifies one or more alleged material or widespread deficiencies, weaknesses, violations of law, or unsafe or unsound practices or conditions relating to an AML/CFT requirement;

(ii) Communicates supervisory expectations to a bank regarding actions or remedial measures required to correct the deficiency, weakness, violation, or practice or condition; and

(iii) Contemplates significant or programmatic actions or remedial measures to be taken by the bank.

The term does not include examiner observations, suggestions, or other informal comments.

(b) ***FinCEN enforcement and supervision policy***.

(1) ***In general***. Except with respect to a significant or systemic failure to implement the AML/CFT program in accordance with § 1020.210(c), a bank that has established an AML/CFT program in accordance with § 1020.210(b) will not be subject to:

(A) an AML/CFT enforcement action related to the requirements of 31 U.S.C. 5318(h)(1) or 31 CFR 1020.210 by FinCEN; ~~or~~

(B) a significant AML/CFT supervisory action related to the requirements of 31 U.S.C. 5318(h)(1) or 31 CFR 1020.210 by FinCEN or by a Federal Financial Institutions Regulatory Agency when acting pursuant to authority delegated under this chapter; or

(C) a significant AML/CFT supervisory action arising solely based on the use of innovative technologies, so long as deployment of innovative technologies:

(i) is undertaken pursuant to a financial institution's policies and procedures governing the adoption of new technologies;

(ii) has been evaluated by the relevant bank functions to determine whether, and at what point, innovative approaches may be considered to be sufficiently developed to augment or replace existing AML/CFT processes or technologies.

(2) ***Program establishment violations.*** Nothing in this paragraph (b) may be construed to restrict an AML/CFT enforcement action by FinCEN, or a significant AML/CFT supervisory action by FinCEN or a Federal Financial Institutions Regulatory Agency when acting pursuant to authority delegated under this chapter with respect to any failure to establish an AML/CFT program in accordance with § 1020.210(b).

(3) Criminal enforcement. Nothing in this paragraph (b) may be construed to affect criminal enforcement liability under the Bank Secrecy Act.

(c) ***FinCEN consultation.***

(1) ***Consultation and consideration requirement.*** Before initiating a significant AML/CFT supervisory action, a Federal Financial Institutions Regulatory Agency when acting pursuant to authority delegated under this chapter will provide the Director, FinCEN an opportunity to review the action and consider any input offered by the Director, FinCEN on the action, which may include any view as to the effectiveness of the bank's AML/CFT program.

(2) ***Notice requirement.*** To provide the Director, FinCEN an opportunity to provide a view under paragraph (c)(1) of this section, a Federal Financial Institutions Regulatory Agency when acting pursuant to authority delegated under this chapter will:

(i) Send written notice to the Director, FinCEN of its intent to take that action at least 30 days before taking the action (unless a shorter period of time is necessary, in the sole discretion of the Federal Financial Institutions Regulatory Agency, to remedy, prevent, or respond to an unsafe or unsound practice or condition), accompanied by the relevant AML/CFT information underlying the proposed action, including the relevant portions of the draft report or enforcement action, the relevant examination workpapers supporting the proposed action, and the relevant AML/CFT information submitted by the bank to the Federal Financial Institutions Regulatory Agency, other than information over which the bank may claim privilege under Federal or State law; and

(ii) Respond to the extent reasonably practicable to requests for additional information from the Director, FinCEN regarding the proposed action.

(d) ***FinCEN considerations***. In determining whether to take an AML/CFT enforcement action or significant AML/CFT supervisory action, or when reviewing a proposed action by a Federal Financial Institutions Regulatory Agency under paragraph (c) of this section or 12 CFR §§ 21.21, 208.63, 211.5(m), 211.24(j), 326.8, or 748.2, the Director, FinCEN shall consider:

(1) the factors under 31 U.S.C. 5318(h)(2)(B), as applicable to actions concerning the AML/CFT program requirements under § 1020.210;

(2) the extent (if any) to which the bank, where appropriate in light of its size, complexity, and risk profile, has advanced the AML/CFT priorities by providing highly useful information to law enforcement authorities or national security officials, conducting proactive analytics, or performing other innovative activities producing demonstrable outputs evincing the effectiveness of the bank’s AML/CFT program (including effective use of artificial intelligence, federated learning, and other advanced monitoring tools); and

(3) the extent to which the proposed action reinforces the Anti-Money Laundering Act's objective of promoting risk-

based, effective programs that provide highly useful information to law enforcement, and the extent to which the proposed action reflects appropriate consultation and coordination between FinCEN and the relevant federal regulators and supports interagency alignment on a risk-based, effectiveness-focused approach to AML/CFT examination and supervision. This includes, but is not limited to, the usefulness of information provided to law enforcement and national security agencies; and

(4~~3~~) any other factor the Director, FinCEN deems appropriate, including the bank's size, complexity, and risk profile, and, as relevant, where the bank's low-risk customers or limited business activities naturally limits the extent to which the bank can meaningfully contribute to AML/CFT priorities.

(e) ***Additional definitions***

(1) **Reasonably designed.** The term "reasonably designed" means – with appropriate deference to a financial institution's deliberative assessments – the policies, procedures, and controls are rooted in sound judgment. This term includes but is not limited to:

a. directs more attention and resources toward higher-risk customers, in accordance with the financial institution's risk assessment processes;

b. allocates fewer resources to lower-risk activity and customers, in accordance with the financial institution's risk assessment processes; and

c. may incorporate novel technologies and innovation, as appropriate and subject to appropriate testing, to meet the requirements of the Bank Secrecy Act and this chapter.

(2) **Attention and Resources:** the term "attention and resources" includes, but is not limited to, a financial institution's budget, human capital, or technological resources.

(3) **As appropriate.** The term "as appropriate" as used in reference to the incorporation of the National AML/CFT Priorities means, with appropriate deference to a financial

institution's deliberative assessments, a financial institution may determine whether and to what extent a particular Priority is applicable and whether and how a particular Priority should be incorporated into its risk assessment processes and reasonably designed policies, procedures, and controls.

(4) **Systemic or significant failure.** The term "systemic" or "significant" failure means a failure that is widespread, recurring, or material enough to impair the bank's ability to effectively identify, monitor, mitigate, or report material money laundering, terrorist financing, or illicit finance risks.