

Interagency Statement on the Issuance of the AML/CFT Program Notices of Proposed Rulemaking

July 19, 2024

On June 28, 2024, the U.S. Department of the Treasury’s Financial Crimes Enforcement Network (FinCEN) issued a [Notice of Proposed Rulemaking \(NPRM\)](#) that proposes amendments to anti-money laundering/countering the financing of terrorism (AML/CFT) program requirements for all financial institutions subject to the Bank Secrecy Act (BSA) with AML/CFT program obligations.¹ Additionally, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency (collectively, the “Agencies”) issued NPRMs today that propose amendments to their respective AML/CFT program (currently referred to as “BSA compliance programs”) rules for their supervised institutions (collectively, with FinCEN’s AML/CFT Program NPRM, “AML/CFT Program NPRMs”).

Covered financial institutions, including banks,² are already required to have BSA compliance programs, but the AML/CFT Program NPRMs would amend the requirements based, in part, on changes enacted by the Anti-Money Laundering Act of 2020 (the “AML Act”). The Agencies are proposing to make changes to their respective BSA compliance program rules to align those rules with FinCEN’s proposed revisions to its existing program rule for banks. In that way, banks would comply with one standard rather than differing program rule requirements between FinCEN and the Agencies. The amendments also would incorporate certain long standing supervisory expectations and technical amendments.

FinCEN and the Agencies recognize that the issuance of the AML/CFT Program NPRMs is one of multiple steps needed to fully implement the AML Act and to carry out Congress’ purposes set out in the AML Act in requiring financial institutions to establish reasonably designed and risk-based AML/CFT programs. In light of this key milestone, FinCEN and the Agencies issue this statement to highlight how the proposed amendments are intended

1. This proposal was issued pursuant to 31 U.S.C. 5318(h)(4)(D), as amended by section 6101(b) of the Anti-Money Laundering Act of 2020 (the “AML Act”). The AML Act was enacted into law as Division F, §§ 6001-6511, of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, H.R. 6395, 116th Cong. (FY2021 NYDAA) (enrolled bill available at <https://www.govinfo.gov/content/pkg/BILLS-116hr6395enr/pdf/BILLS-116hr6395enr.pdf>).
2. The term “bank” used here is as defined in BSA regulations at 31 CFR 1010.100(d) and includes each agent, agency, branch, or office within the United States of banks, savings associations, credit unions, and foreign banks.

to complement and build upon current and anticipated AML Act implementation efforts, such as how the proposed amendments would codify into regulation existing risk-based practices and continue to foster the risk-based nature of AML/CFT programs. This statement does not alter existing BSA/AML legal or regulatory requirements, nor does it establish new supervisory expectations. This statement is also not intended to signal any particular outcome or emphasis in the final rule.

Fulfilling the Purposes of the AML Act

In addition to implementing certain substantive provisions of the AML Act, FinCEN and the Agencies intend for the AML/CFT Program NPRMs, and other AML Act implementation efforts, to further the AML Act's overarching purposes in section 6002, including "to modernize anti-money laundering and countering the financing of terrorism laws to adapt the government and private sector response to new and emerging threats."³ The changes proposed in the AML/CFT Program NPRMs would further other purposes of the AML Act as well. These purposes include "encourage[ing] technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism", and "reinforc[ing] that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk-based."⁴

The AML/CFT Program NPRMs propose to support these purposes by requiring financial institutions to establish, implement, and maintain effective, risk-based, and reasonably designed AML/CFT programs. FinCEN and the Agencies intend for the changes proposed in the AML/CFT Program NPRMs to reinforce the focus of an AML/CFT regime toward more effective, risk-based, and reasonably designed programs aimed at preventing the flow of illicit funds in the financial system and providing highly useful reports or records to relevant government authorities.⁵

Key Proposed Changes to AML/CFT Programs

Purpose of AML/CFT Programs

To provide further clarity, the AML/CFT Program NPRMs include a new statement of the purpose of AML/CFT program requirements. This purpose would be to ensure that a financial institution implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the BSA and the requirements and prohibitions of its implementing regulations; focuses attention and resources in a manner consistent with the risk profile of the financial institution; may include consideration and evaluation of innovative approaches to meet its AML/CFT compliance obligations; provides highly useful reports or records to relevant

3. See AML Act, section 6002(2) (Purposes).

4. See AML Act, section 6002(3) and (4) (Purposes).

5. See 31 U.S.C. 5311.

government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

Risk Assessment Process Requirements

The AML/CFT Program NPRMs would require financial institutions to establish a risk assessment process to serve as the basis of the AML/CFT program. Specifically, the AML/CFT Program NPRMs would require a financial institution’s risk assessment process to identify, evaluate, and document the financial institution’s money laundering, terrorist financing, and other illicit finance activity (collectively “ML/TF”) risks, including consideration of: (1) the AML/CFT Priorities⁶ issued by FinCEN, as appropriate; (2) the ML/TF risks of the financial institution based on the financial institution’s business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and (3) reports filed by the financial institution pursuant to 31 CFR chapter X. The AML/CFT Program NPRMs also would require financial institutions to update their risk assessments using the process proposed in the NPRMs on a periodic basis, including, at a minimum, when there are material changes to a financial institution’s ML/TF risks.

The proposed risk assessment requirement would ensure that financial institutions integrate the results of a risk assessment process into their AML/CFT programs. The risk-based nature of the proposed changes is intended to enable financial institutions to better focus their attention and resources in a manner consistent with their risk profiles. It is expected that in doing so, financial institutions would implement more effective, risk-based, and reasonably designed AML/CFT programs that can better address law enforcement and national security needs and direct private compliance funds and resources in a more risk-based manner.

Fostering Innovative Approaches to BSA Compliance Obligations

The AML Act also encourages technological innovation and supports financial institutions in effectively innovating, testing, and adopting new technologies and approaches. FinCEN and the Agencies have long recognized that responsible innovation, including new ways of using existing tools or adopting new technologies, may help financial institutions identify and report possible ML/TF by enhancing the effectiveness and efficiency of financial institutions’ AML/CFT programs.⁷

In support of these goals, the AML/CFT Program NPRMs include a provision that a financial institution’s internal policies, procedures, and controls may provide for a financial institution’s consideration, evaluation, and, as warranted by the institution’s risk profile

6. Section 6101(b) of the AML Act requires the Secretary of the Treasury to establish and make public government-wide AML/CFT priorities (“AML/CFT Priorities”) and to promulgate regulations, as appropriate, to incorporate those priorities into revised program rules. FinCEN issued the first AML/CFT Priorities on June 30, 2021. *See AML/CFT Priorities (June 30, 2021)*, available at <https://www.fincen.gov/news/news-releases/fincen-issues-first-national-amlcft-priorities-and-accompanying-statements>.
7. *See Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (December 3, 2018)*, available at [Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing \(fincen.gov\)](https://www.fincen.gov/joint-statement-on-innovative-efforts-to-combat-money-laundering-and-terrorist-financing).

and AML/CFT program, implementation of innovative approaches to meet BSA compliance obligations. In addition, FinCEN and the Agencies will continue to explore various regulatory processes to encourage and facilitate financial institutions' use of technology or innovative approaches to meet BSA compliance obligations. In support of this objective, FinCEN and the Agencies intend to build on existing partnerships with the private sector and to engage with the private sector on innovation, including through the BSA Advisory Group Subcommittee on Innovation and Technology.

Other Notable Changes

The AML/CFT Program NPRMs would require financial institutions to have a presence in the United States,⁸ specifying that the duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator. The AML/CFT Program NPRMs would provide clarifying revisions for financial institutions supervised by the Agencies, including that independent testing be conducted by qualified personnel of the financial institution or by a qualified outside party and for an AML/CFT program to be effective, reasonably designed, and risk based, the compliance officer must be qualified. The AML/CFT Program NPRMs would add customer due diligence (CDD) as a required component of the Agencies' AML/CFT compliance program rule requirements. CDD is currently a required component in FinCEN's rule, and, therefore, banks are already required to comply with CDD under FinCEN's rules.

Broader AML Act Implementation

FinCEN and the Agencies recognize that the AML/CFT Program Rule NPRMs represent one part of the significant reform envisioned in the AML Act. As such, FinCEN and the Agencies intend for the proposed rules to work in concert with the broader implementation of the AML Act, as described below.

Supervision and Examination

FinCEN and the Agencies, as applicable, are committed to fully implementing the supervision- and examination-related measures in the AML Act. In particular, section 6101 of the AML Act requires that the review by a bank of the AML/CFT Priorities and the incorporation of those priorities, as appropriate, into its risk-based AML/CFT program, be included as a measure on which a bank is supervised and examined.⁹ As indicated previously in the *Interagency Statement on the Issuance of the AML/CFT National Priorities*, the Agencies and FinCEN recognize the need to provide revised regulations and timely

8. Section 6101(b)(2)(C), of the AML Act, codified at 31 U.S.C. 5318(h)(5), provides that the duty to establish, maintain, and enforce an AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator.
9. 31 U.S.C. 5318(h)(4)(E) (as amended by AML Act, section 6101(b)(2)(C)).

guidance to assist banks in complying with the BSA. In addition, the Agencies are committed to working with FinCEN to develop any necessary corresponding guidance and examination procedures for examiners.¹⁰

Further, section 6307 of the AML Act requires the Secretary of the Treasury, in consultation with the Federal Financial Institutions Examination Council (FFIEC), FinCEN, and Federal, State, Tribal, and local law enforcement agencies, to establish appropriate training materials and standards and provide examiner training on various risk and AML/CFT topics.¹¹ As members of the FFIEC, the Agencies stand ready to consult with FinCEN on this examiner training requirement.

Measures to Enhance Feedback Loops

FinCEN and the Agencies also recognize the importance of feedback to financial institutions on BSA-related reporting provided by financial institutions. To that end, FinCEN and the Agencies intend for the proposed changes in the AML/CFT Program NPRMs to lay the groundwork for AML/CFT programs to enhance iterative feedback—or feedback loops—between financial institutions and law enforcement to improve the effectiveness of the AML/CFT programs. While various feedback loops currently exist between the United States government and financial institutions, they are limited in scope, frequency, and type of feedback shared. FinCEN and the Agencies are committed to working together to support risk-based AML/CFT programs by enhancing feedback loops in this collective effort to protect the U.S. financial system and safeguard the national security of the United States.

Additional AML Act Reviews

The AML Act also requires FinCEN to conduct certain reviews related to the existing AML/CFT framework, and FinCEN is committed to working with the Agencies in their consultative role on these efforts. Among these, pursuant to AML Act section 6216, FinCEN, in consultation with the Agencies and other government stakeholders, is conducting a broad review of AML/CFT regulations and guidance and plans to issue a report to Congress that contains administrative or legislative recommendations and fulfills certain objectives. FinCEN also intends to complete its review regarding streamlined BSA reporting requirements, including Currency Transaction Reports and Suspicious Activity Reports, pursuant to AML Act section 6204, as well as its review regarding dollar reporting thresholds for applicable BSA reports under AML Act section 6205. These AML Act reviews and reports, including their results, recommendations, and ultimately any implementation, would complement and build upon the proposed changes to AML/CFT programs in the AML/CFT Program NPRMs to promote a more effective and risk-based AML/CFT regime.

10. See Interagency Statement on the Issuance of the Anti-Money Laundering/Countering the Financing of Terrorism National Priorities (June 30, 2021), available at [https://www.fincen.gov/sites/default/files/shared/Statement%20for%20Banks%20\(June%2030%2C%202021\).pdf](https://www.fincen.gov/sites/default/files/shared/Statement%20for%20Banks%20(June%2030%2C%202021).pdf).
11. 31 U.S.C. 5318(h)(4)(E), as amended by section 6101 of the AML Act. 31 U.S.C. 5334, as amended by section 6307 of the AML Act.

Corporate Transparency Act

The AML/CFT Program NPRMs are unrelated to the implementation of the Corporate Transparency Act (CTA), which aims to improve financial transparency and prevent criminals and terrorists from misusing companies to disguise their illicit activities and launder their ill-gotten gains. As required by the CTA, and in consultation with the Agencies, FinCEN intends to issue a proposed rule to revise the beneficial ownership information collection requirements for legal entity customers.

Conclusion

The AML Act envisions significant reforms to the U.S. AML/CFT regime, and the proposed amendments in the AML/CFT Program NPRMs would set a critical foundation for potential future changes in the AML/CFT framework in the multi-step, multi-year implementation of the AML Act. FinCEN and the Agencies recognize that banks already have BSA compliance programs with many of the features described in the AML/CFT Program NPRMs. With the AML/CFT Program NPRMs and this joint statement, FinCEN and the Agencies are communicating their commitment to the AML Act's purposes of modernizing the AML/CFT regime, encouraging innovation to more effectively counter money laundering and the financing of terrorism, improving law enforcement and national security objectives, and further safeguarding the financial system from illicit activity.