



FinCEN Proposes New Rule to Strengthen Anti-Money Laundering and Countering the Financing of Terrorism Programs

Of particular interest to: Financial institutions subject to the USA's Bank Secrecy Act

In brief

On 28 June 2024, the Financial Crimes Enforcement Network ("FinCEN") proposed a new rule aimed at enhancing anti-money laundering and countering the financing of terrorism ("AML/CFT") programs. This proposed rule modifies FinCEN's existing regulations that impose the minimum requirements for AML/CFT programs for financial institutions. This follows amendments to the USA's Bank Secrecy Act of 1970 ("BSA"), as amended by the USA's Anti-Money Laundering Act 2020 ("AML Act"), which requires financial institutions to have reasonably designed risk-based programs to prevent money laundering and terrorism financing. The proposed rule mandates that financial institutions establish, implement and maintain effective, risk-based and reasonably designed AML/CFT programs to be integrated into risk-based programs.

Summary

The BSA requires financial institutions to implement AML/CFT programs that include internal policies, procedures and controls, as well as necessitating the designation of a compliance officer, ongoing employee training and an independent audit function at a minimum. The AML Act further provides FinCEN with the opportunity to reevaluate these existing requirements and emphasises the importance of these programs in protecting national security and combatting the flow of illicit funds within the U.S. financial system.

The proposed rule amends existing regulations to explicitly mandate financial institutions to establish, implement and maintain, risk-based and reasonably designed AML/CFT programs. Financial institutions, for the purpose of the new proposed rules include banks, brokers or dealers in securities, mutual funds and finance companies, and the proposed rule takes into account the BSA's emphasis on ensuring the risk-based nature of these programs by ensuring that more attention and resources are directed towards higher-risk activities. Additionally, the proposed rule requires financial institutions to evaluate government-wide AML/CFT priorities and incorporate them into these risk-based programs. These priorities are to be updated at least every four years. The proposed rule does not apply to investment advisors, but it should be noted that on 13 February 2024 FinCEN proposed a new rule that would designate registered investment advisors ("RIAs") and exempt reporting advisors ("ERAs") as financial institutions under the BSA. This would subject them to AML/CFT program requirements.

Effective, Risk-Based and Reasonably Designed

FinCEN's proposed rule explicitly requires financial institutions to establish, implement, and maintain AML/CFT programs that are effective, risk-based and reasonably designed to ensure compliance with the BSA, the protection of national security and to maintain the integrity of the USA's financial system. Moreover, the new proposed rule will encourage financial institutions to modernise their AML/CTF programs to become more innovative.

The Risk Assessment Process

The proposed rule requires financial institutions to implement a risk assessment process as part of their AML/CFT program to analyse their exposure to money laundering and terrorist financing. The results from this assessment will be utilised to formulate risk-based policies and procedures to effectively reduce these risks. This risk assessment process must identify, assess and document the risks associated with its business activities and consider the AML/CTF priorities and reports filed by financial institutions, in accordance with 31 CFR chapter X of the BSA. The proposed rule also requires these risk assessment

processes to be frequently reviewed and updated when there have been changes to money laundering and terrorist financing risks.

Broader Considerations

It is thought that the implementation of more risk-based AML/CFT programs will be a critical step in the implementation of the AML Act, and will ultimately lead to improved feedback between FinCEN, financial institutions, regulators and law enforcement, ultimately aiding in the maintenance and integrity of the USA's financial system.

Lastly, emphasising risk-based programs aligns with the Treasury's De-Risking Strategy, a study which focuses on the process of denying customers services without accurately evaluating the specific risks. A risk-based program will prevent the use of one-size-fits-all approaches and will adequately identify individual risks. The proposed rule and amendments to existing regulations aim to ensure clarity and consistency regarding FinCEN's program requirements.

Next Steps

The AML Act aims to implement significant reforms to the U.S. AML/CFT regime, and the proposed amendments will establish a critical foundation for future changes as part of the implementation of the AML Act. All written comments on FinCEN's proposed rule must be received on or before 60 days following its publication in the Federal Register (on or before 3 September 2024). Comments may be submitted to the Federal E-rulemaking Portal, refer to Docket Number FINCEN-2024-0013, or by mail to Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183, refer to Docket Number FINCEN-2024-0013.

Useful Links

[FinCEN Issues Proposed Rule to Strengthen and Modernize Financial Institutions' AML/CFT Programs](#)
[Fact Sheet: Proposed Rule to Strengthen and Modernize Financial Institution AML/CFT Programs](#)
[Anti-Money Laundering and Countering the Financing of Terrorism Programs](#)
[FinCEN Proposes Rule to Combat Illicit Finance and National Security Threats in Investment Adviser Sector](#)
[Title 31 of the Code of Federal Regulations, Chapter X](#)
[AML Department of the Treasury's De-risking Strategy](#)
[Federal E-rulemaking Portal](#)

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