Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—ABA expresses concerns over FinCEN's revised AML program rule, (Sept. 4, 2024)

Banking and Finance Law Daily Wrap Up

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By Sharon E. Williams

The ABA expressed concerns over revisions identified in FinCEN's Notice of Proposed Rulemaking (NPRM) on Anti-Money Laundering (AML) and Countering the Financing of Terrorism Programs.

In a letter to Financial Crimes Enforcement Network (FinCEN) Director Andrea Gacki, the American Bankers Association (ABA) provided comments on the recent notice of proposed rulemaking published by FinCEN (see *Banking and Finance Law Daily*, June 28, 2024). Amending FinCEN's existing Bank Secrecy Act (BSA) program rule, financial institutions would be required to establish, implement, and maintain "effective, risk-based, and reasonably designed" anti-money laundering (AML)/countering the financing of terrorism (CFT) programs with certain minimum components, including a now-mandatory risk assessment process." The "revised program rule would establish the new risk assessment process as the foundation of banks' BSA compliance programs."

While the ABA supports the reform goals of the AMLA, as well as the four objectives of the proposed program reforms, the ABA expressed concerns that "FinCEN's plan to achieve these objectives is to formalize a new pillar that codifies a nearly universal bank practice—producing and periodically updating a written risk assessment, based on a formal risk assessment process—and to elevate it to become the foundation of all BSA compliance."

The ABA disagrees that this approach will achieve the desired result or even bring about meaningful reform, as is intended. This approach could "prioritize duplicative paperwork and technical compliance over goals of identifying and combating illicit finance activity." Rather, FinCEN must ensure banks' requirement to review (and, if appropriate, incorporate) the AML/CFT Priorities into their compliance programs does not divert compliance resources and attention away from the actual threats the priorities are intended to address.

The ABA proposed the following considerations:

- Banks must be permitted the flexibility to allocate more compliance resources to higher-risk, and fewer resources to lower-risk, customers and activities.
- Responses to emerging and evolving illicit finance risks require focusing resources on actual risks, not on a government mandated risk-assessment process, and the flexibility to focus on the factors most relevant to the bank.
- Banks need more government feedback identifying threats to the U.S. financial system, information and assistance from regulators, law enforcement, and other governmental actors.
- There needs to be an effective program rule reform that balances "mere technical compliance," while reducing "check the box" compliance traps, where banks will prioritize resources on avoiding technical violations instead of addressing risks.
- Allow banks adequate time to review and implement program changes, especially significant changes. ABA proposed two years, instead of the six months proposed by FinCEN.

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