

Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—Agencies propose changes to bank AML/CFT program requirements, issue joint statement, (Jul. 22, 2024)

Banking and Finance Law Daily Wrap Up

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The proposed amendments align with changes recently proposed by FinCEN based on the Anti-Money Laundering Act of 2020.

The Office of the Comptroller of the Currency, the Federal Reserve Board, the Federal Deposit Insurance Corporation, and the National Credit Union Administration have issued a joint notice of proposed rulemaking to amend each agency's Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) programs and requirements to align with changes being proposed by the Financial Crimes Enforcement Network (FinCEN) to comply with the AML Act of 2020 ([OCC Bulletin 2024-19](#)). The agencies and FinCEN also issued a [joint statement](#) describing the proposed rules and additional steps the agencies believe are necessary to implement the AML Act.

Proposed changes. The proposed changes, previously approved by the FDIC Board of Directors last month (see [Banking and Finance Law Daily](#), June 21, 2024), focus on implementing requirements centered on risk assessment to ensure banks are taking effective steps to identify, manage, and mitigate illicit finance activity risks. The amendments also align with changes that are being concurrently proposed by the Financial Crimes Enforcement Network (FinCEN) as a result of the AML Act (see [Banking and Finance Law Daily](#), June 28, 2024). Key proposed changes to banks' AML/CFT Programs include:

- incorporating a risk assessment process in AML/CFT program rules to require the consideration of national AML/CFT priorities published by FinCEN;
- including customer due diligence requirements to reflect prior changes to FinCEN's requirements;
- including amendments to codify longstanding supervisory expectations and to conform with changes made by the AML Act; and
- encouraging banks to consider, evaluate, and implement innovative approaches to meet compliance obligations pursuant to the BSA.

The proposal also includes a new statement of the purpose of AML/CFT program requirements in an effort to provide further clarity.

Joint statement. According to the 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." The statement further noted that in aligning the agencies' proposed changes with FinCEN's changes, "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."

The agencies' statement also stressed "the importance of feedback to financial institutions on BSA-related reporting." In that regard, "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," the statement said. "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.”

Bowman statement. Fed Governor Michelle Bowman did not support the proposal. In a [statement](#), Bowman contended the proposal, as written, would impose new burdens on smaller banks. Bowman noted that, while the Fed was not required to amend its regulations, it “elected to do so to mirror those being issued by FinCEN.” She cautioned that “[t]ailoring our regulations recognizes that there are trade-offs between the costs and benefits of our regulatory actions and the unintended consequences.” Bowman added, “While I support efforts to reduce duplicative regulations and the burden that would be associated with our regulated institutions being required to comply with multiple overlapping requirements, I would have preferred that compliance expectations for this new rule be expressly tailored to the size, business model, complexity, and risks presented by institutions, particularly for community banks, and those with assets below \$10 billion.”

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