

Banking and Finance Law Daily Wrap Up, BANK SECRECY ACT—Agencies propose changes to bank AM/CFT program requirements, (Jun. 21, 2024)

Banking and Finance Law Daily Wrap Up

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By Jeff Williams

The proposed changes center on implementing requirements focused on risk assessment to ensure banks are taking effective steps to identify, manage, and mitigate illicit finance activity risks.

The Office of the Comptroller of the Currency, Federal Reserve Board, Federal Deposit Insurance Corporation, and National Credit Union Administration are seeking comment on a [proposed rule](#) that would 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. An FDIC [staff memorandum](#) recommended publication of the proposed rule in the *Federal Register*, with comments due 60 days after the publication.

The notice of proposed rulemaking incorporates a risk assessment process for AML/CFT program rules that requires, among other things, "consideration of the national AML/CFT Priorities published by FinCEN," the agencies said in a notice. The proposed rule also would add customer due diligence requirements "to reflect prior amendments to FinCEN's rule and, concurrently with FinCEN, propose clarifying and other amendments to codify longstanding supervisory expectations and conform to AML Act changes."

The main reason for the changes, the notice said, is "so that the Agencies' BSA compliance program rules will remain aligned with FinCEN's rule to avoid confusion and additional burden on banks," the agencies said, adding: "Although not required by the AML Act, the Agencies are revising their BSA regulations, among other reasons, to address how the AML/CFT Priorities will be incorporated into banks' BSA requirements."

FinCEN and the agencies are proposing the inclusion of a statement regarding an AML/CFT program requirement, "which is to ensure that each bank implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks." The purpose statement is "not intended to establish new obligations separate and apart from the specific requirements set out for banks or impose additional costs or burdens," the agencies said. "Rather, this language is intended to summarize the overarching goals of banks' effective, risk-based, and reasonably designed AML/CFT programs."

Each agency has proposed adding "effective" and "risk-based" to their existing program requirements, and establishing minimum requirements for each agency's AML/CFT program, including a risk assessment process that "serves as the basis for the bank's AML/CFT program;" "reasonable" management and mitigation of risks using internal policies, procedures, and controls; appointing a qualified AML/CFT officer; ongoing employee training programs; "independent, periodic testing conducted by qualified personnel of the bank or by a qualified outside party;" and (vi) customer due diligence."

Among the specific proposed requirements, each bank's particular risk assessment process should be determined by each financial institution "based on its applicable activities and risk profile," the agencies said, noting that most banks already design their BSA compliance programs based on their ML/TF risk.

The agencies also said that the components of an effective, risk-based, and reasonably designed AML/CFT program are "critical because deficiencies in one program component may have a significant impact on the effectiveness of other program components, including on the effectiveness and reasonable design of the AML/CFT program."

The agencies asked numerous questions about various aspects of the proposal, including regarding how banks could incorporate the new requirements into their AML/CFT programs, how their existing risk management

programs could be leveraged to meet new requirements, and whether the proposed changes provide “sufficient flexibility for banks to continue to focus attention and resourced appropriately.”

FDIC Vice Chairman Travis Hill issued a [statement](#) saying he would vote to approve the proposed changes because they are a “positive step in the right direction,” but that the agency could have proposed more. “While it is an encouraging step forward that the Proposal would explicitly require banks to maintain a 'risk-based' BSA compliance program that allows for prioritization of higher-risk customers and activities, I think we could have pushed further to ensure that the result of this effort is an actual shift in focus towards higher-risk activities and away from lower-risk activities, and to explore additional ways to better target our efforts,” he said.

RegulatoryActivity: BankingOperations BankSecrecyAct CrimesOffenses