

Compliance Check Up

October 1, 2024



Friends,

Welcome to another edition of the Compliance Check Up.

It was another relatively slow month of information coming out of D.C., so we should enjoy it while it lasts. This month our BSA gurus Katie Ferrell and Sandy Panella take you inside the proposed rule that FinCEN issued in July to create risk-based AML/CFT management systems. Many of the concepts in that issuance, and the subsequent support by our own regulators are not new, but several items that were considered best practices have been codified in this latest set of issuances. Those rules are likely to be finalized as early as January 2025.

The CFPB did issue a few things this month, most notably Circular 2024-05, that reminds banks that a customer's opt-in to allowing overdrafts caused by an electronic funds transfer must be documented and maintained. If you have not looked at this lately, now would be a good time to do so.

Thank you for subscribing to our newsletter. Please share this [link](#) with those at your organization or peers who aren't already signed up for the Check Up. If you have any questions or concerns, call us or email your questions to our [Compliance Hotline](#).

Sincerely,

The UBB Compliance Services Team
614-400-2699

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AML/CFT Program Proposed Facelift

By: Katie Ferrell, CRCM, CAMS and Sandy Panella, CRCM

For the first time in decades, all banks may need to schedule a mandated facelift for their AML/CFT program (program). On July 3rd, FinCEN published a proposed [rule](#) (NPRM) and [fact sheet](#) based on changes enacted by Congress' AML Act of 2020 (Act) that intends to *modernize* program requirements but does **not** alter existing obligations. Following suit, the Federal Reserve Board, OCC, and FDIC (agencies) issued a [statement](#) on July 19th and a proposed [rule](#) on August 9th to pledge their support and commitment to issue subsequent rules that will align with the NPRM. FinCEN proposed an effective date of six months from the rule's issuance, or **January 3, 2025**, which is right around the corner!

In recent years, agency guidance and industry conversations have promoted a *flexible, reasonably designed, and risk-based* approach to program management. UBB Compliance Services continually reminds

clients of the importance of thoughtful alignment of controls to identified risks, the criticality of qualitative and quantifiable data to identify trends or changes in direction of risks, meaningful SAR reporting, and consideration of *de-risking*.

Unfortunately, the overarching *flexible* theme may result in ambiguity and subjective application. Such concerns were revealed through comments to the NPRM that were due September 3rd. The ABA, for example, [commented](#) the NPRM is unlikely to result in *meaningful* reform and leave examinations *open to interpretation*. While we understand some of the concerns, this article is intended to summarize the NRPM and presumes the rule will be finalized as proposed in approximately three months. Comments to the agencies' proposal are due October 8th.

Overall, the proposals emphasize six key elements outlined below:

FinCEN's National Priorities

The Act mandated FinCEN publish a [statement](#) on *AML/CFT National Priorities* (priorities) that were first issued on June 30, 2021 and must be updated at least every four years. Therefore, it is possible priorities may differ next year. The NPRM requires banks to incorporate the priorities into their programs, which currently include corruption, cybercrime and virtual currency, foreign and domestic terrorist financing, fraud, transnational crime organizations, drug and human trafficking/smuggling, and proliferation financing. FinCEN recognizes not all are relevant to every bank, but each threat should be considered and documented during the risk assessment.

Risk Assessment (assessment) Process

The NPRM would legally require banks to prioritize risks during the assessment process and considerably direct appropriate attention and controls toward mitigation. While most banks already conduct a formal assessment, it is not currently a concrete requirement, but rather a supervisory *expectation*. Although the NPRM does not offer a particular format or process, it requires the assessment to consider:

- The priorities, where appropriate;
- Money Laundering/Terrorism Financing (ML/TF) risks based on evaluation of the bank's unique business model, including products, services, delivery channels, customers, intermediaries, and geographical markets;
- Regulatory reporting, such as CTR and SAR filings; and
- *Periodic* review when material changes to ML/TF risks arise.

While most banks are familiar with the above, 'delivery channels' may be a newer term, which refers to the method(s) and tools in which a bank opens accounts and provides services, including those not 'face to face.' 'Intermediaries' may also be a newer term, which includes brokers, agents, and suppliers that facilitate transactions, such as financial technology (Fintech) or Banking as a service (BaaS) providers.

FinCEN's rule does not indicate a prescribed frequency to update the assessment but indicates it must occur on a *periodic* basis or when material changes to the program occur, including to reflect *material* changes to products, services, customers, and geographic locations, as well as changes as a result of mergers and acquisitions. The agencies' rule informally notes an **annual** assessment would be in line with other requirements such as independent testing, but an updated assessment would be required at time of examination, at minimum.

De-Risking Strategy

The NPRM reminds banks of the [2023 De-Risking Strategy](#), also mandated by the Act and set forth by the U.S. Treasury in April 2023, that stresses the avoidance of a 'one size, fits all' approach to customer risk that could lead to blanket denial of services to certain categories of customers or the underbanked.

Technological Innovation

FinCEN encourages adoption of new technology/tools and innovation to counter money laundering and reduce manual monitoring but

reminds banks of responsible third-party management. To support this objective, FinCEN and the agencies plan to strengthen relationships with the private sector through the recently formed *BSA Advisory Subcommittee on Innovation and Technology*, which should provide a channel for banks to collaborate to understand responsible use of technology.

Qualified AML/CFT Personnel and Board Oversight

The NPRM reinforces the importance of program governance and resource allocation by the board of directors (board) to AML/CFT programs. Multiple enforcement actions over the past year have reiterated the responsibility of the board to the program, as well as those responsible, specifically a *qualified* BSA Compliance Officer, for its day-to-day administration. The agencies' rule also makes clear programs must include an ongoing training program that responds to the results of the assessment, as well as firmly states a very important warning, 'Board approval of the AML/CFT program alone is not sufficient to meet program requirements since the board, or the equivalent governing body, may approve AML/CFT programs without a reasonable understanding of a bank's risk profile or the measures necessary to identify, manage, and mitigate its ML/TF risks on an ongoing basis.'

Useful Regulatory Reporting

FinCEN and the agencies recognize the importance of effective regulatory reporting between banks and law enforcement. We certainly hope this initiative provides a better understanding of what is considered a quality SAR and reduces what is referred to in the industry as 'defensive SARs,' which are those filed because banks would rather err out of caution to avoid getting dinged by their regulator versus truly basing filings on illicit activities.

The rules would also formally add the AML/CFT terminology to the program. In conclusion, while the NPRM and interagency statement present no major surprises or significant changes, finalizing the rule would formalize a *risk-based approach* to ML/TF risk management.

We genuinely hope this approach will be reflected in future examinations.



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LENDING

September 11 – The CFPB [released](#) its *Fair Debt Collection Practices Act Annual Report 2024*, which highlights consumer complaints and enforcement actions.

September 18 – The CFPB issued [FAQs](#) that provide guidance on applying Regulation Z to Pay-in- Four Buy Now, Pay Later (BNPL) products.

DEPOSITS

September 17 – The CFPB published [Circular 2024-05](#) regarding how a financial institution can violate the law if there is no proof a consumer's affirmative consent was obtained before imposing overdraft fees for ATM and one-time debit card transactions.

AML/CFT & FRAUD

September 5 – FinCEN and the Department of Treasury [brought](#) together public and private section participants, particularly the financial sector and law enforcement, to combat

illicit fentanyl.

September 9 – FinCEN [released](#) its *Financial Trend Analysis* regarding mail-theft related check fraud. Between February 27 and August 31, 2023, the agency received 15,417 BSA reports associated with more than \$688 million in actual and attempted transactions.

September 18 – The FDIC, CFPB, and AARP will [host](#) a virtual town hall on scams and older adults on October 30th at 1:00pmET.

September 19 – FinCEN [created](#) a toolkit to help small businesses with Beneficial Ownership Registry reporting.

September 24 – The Federal Reserve [released](#) a video tutorial to help the industry understand the connection points between their free *FraudClassifier* and *ScamClassifier* models.

MISCELLANEOUS

September 4 – The FDIC [published](#) the monthly list of banks examined for CRA compliance. Two banks earned ‘needs improvement’ for anti-redlining.

September 4 – The OCC [announced](#) CRA performance evaluations for August. All 17 banks were rated outstanding or satisfactory.

September 5 – The OCC issued [Bulletin-2024-26](#) announcing the FFIEC’s issuance of the FFIEC IT examination handbook.

September 5 – The FDIC issued [FIL-61-2024](#) announced the sunset of the FFIEC’s Cybersecurity Asset Tool (CAT).

September 13 – The comment [period](#) on the Request for Information on bank-fintech arrangements was extended to October 30, 2024.

September 17 – The FDIC and OCC [approved](#) the final rule and policy statement on bank mergers.

September 17 – The FDIC [proposed](#) deposit insurance recordkeeping rule for banks' third-party accounts. The rule follows the bankruptcy this spring of nonbank entity Synapse.

ENFORCEMENT ACTIONS

September 12 – The OCC [entered](#) a formal agreement with Wells Fargo relating to deficient financial crimes management practices and AML controls.

September 27 – The FDIC [released](#) enforcement actions related to rewards program and payment processing, breach of fiduciary duties, and several consent orders imposed to individuals.

HOTLINE QUESTION OF THE MONTH

Q: I have a Loan Officer that has given her customer both a Loan Estimate and Closing Disclosure. The customer now is requesting a change in terms of additional money. Does the Loan Officer need to start over with a new Loan Estimate or can the changes be reflected in a revised Closing Disclosure?

A: Once the initial CD is issued, any changes must be reflected in a revised CD. You cannot go back to the LE phase once the CD has been issued. The rules regarding changed circumstances don't change, meaning that the changed circumstance has to be valid and only fees directly affected by the changed circumstance can be altered. These changes and the revised CD will get scrutinized if the examiners see it, so make sure the story is well documented as to why you needed to change fees after the CD was initially issued.

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