



Financial Services Management

AML/CFT Regulatory Reform

Cite

Financial Crimes Enforcement Center (FinCEN),
Request for Information and Comment

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<https://www.federalregister.gov/documents/2021/12/15/2021-27081/review-of-bank-secrecy-act-regulations-and-guidance>

Impact Assessment

- Although FinCEN acknowledges Congressional demands for AML/CFT reform, the pace of change remains slow and its scope uncertain.
- AML/CFT regulatory reform could reduce law-enforcement analytical assets, but FinCEN is focused on ways to make filings more useful and timely. To the extent this occurs, law enforcement and national security would be enhanced and regulatory burden reduced.
- Reform also holds out the promise of greater reliance on regtech and/or suptech, but FinCEN remains hesitant to these options despite request for comment on them.
- A more risk-based AML/CFT construct would reduce de-risking and therefore lessen impact on cross-border payments, humanitarian relief, and remittances.

Overview

As the banking industry has long hoped and Congress last year directed,¹ FinCEN is beginning to develop a new policy framework prioritizing ways to make anti-money laundering (AML) and countering the financing of terrorism (CFT) regulation more risk-based. FinCEN is taking the opportunity of its request for information (RFI) also to seek views on ways to modernize AML/CFT standards, make them more efficient, ensure adherence to global protocols, and toughen rules where necessary to protect national security. Last year's law required Treasury to enhance law enforcement and submit a report on AML/CFT reform by January of 2022. Given that this RFI was only issued at the end of 2021, this report will clearly come after its statutory deadline, pushing FinCEN decisions about desirable change and action to advance them years beyond the pace for which many had hoped.

¹ See **AML133**, *Financial Services Management*, January 12, 2021.

Impact

As detailed below, this RFI's focus on modernization and regulatory streamlining targets the extent to which all the information financial institutions – especially banks – file under the Bank Secrecy Act (BSA) is of actual use to law-enforcement authorities. Critics of the current AML/CFT regime have long argued that the deluge of suspicious-activity reports (SARs) and currency-transaction reports (CTRs) makes it difficult for governmental bodies quickly to spot problematic activities, confining most SAR/CTR filings to retrospective use by law enforcement once there are other indications of crime or financial support for arms proliferation. Although recognizing this concern, Congress has refused to alter decades-old dollar thresholds mandating these filings. With the changes contemplated in the RFI, it may be possible both for financial institutions to meet AML/CFT requirements for efficiently and for law enforcement to use them more effectively.

As required by law, FinCEN focuses also on determining the extent to which AML/CFT filings could be more risk-based, a result that would not only make reporting more efficient, but perhaps improve rapid action on emerging law-enforcement and national-security risks. A risk-based approach could also tailor AML/CFT requirements for smaller banks with a predominantly local business in which customers are generally well known, single out transactions at greatest AML/CFT risk (e.g., cryptocurrency), and allow banks to work cooperatively with FinCEN and law enforcement to prioritize higher-risk transactions without the time and burden associated with formal federal orders for AML/CFT targeting.

As noted, FinCEN also seeks views on the extent to which emerging technology such as AI/ML could be used to make BSA compliance more efficient and/or risk-based. There has been extensive discussion about the benefits of doing so by both banking organizations (i.e., regtech) and supervisors (i.e., suptech), but FinCEN and other federal agencies remain concerned that opacity, complexity, or other tech attributes may undermine regtech/suptech effectiveness. Comments in the course of this RFI may move the tech needle, but the pace of innovation remains uncertain.

What's Next

This RFI was issued on December 15, with comments due February 14. Following comment, Treasury in consultation with other agencies will not only make the overdue Congressional report cited above, but also advance rulemakings or other actions to further the conclusions it draws from this effort.

Analysis

The RFI describes many prior FinCEN releases addressing the scope, scale, burden, and effectiveness of BSA/CFT filings, but generally does not revisit them; instead, it says that comments filed on all of these prior initiatives will guide FinCEN as it pursues this latest review. Issues on which comment is expressly solicited include:

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- the financial activities that pose the most AML, CFT, or proliferation risk that may not be well addressed in current rules and how these risks can best be addressed;
 - ineffective BSA rules or guidance that are insufficiently risk-based;
 - any outdated, contradictory, or duplicative standards;
 - any standards that undermine efficient AML/CFT resource allocation;
 - U.S. standards at odds with international protocols;
 - ways to implement FATF recommendations for the U.S.;
 - the extent to which AML/CFT standards safeguard U.S. national security;
 - ways to ensure that reporting and record-keeping promote timely, high-use filings;
 - the benefits of automatic updates to key rules;
 - customized adjustments for specific risks;
 - ways to facilitate innovative compliance as digital IDs, AI/ML, and other technologies advance;
 - areas where a risk-based approach is problematic;
 - specific changes to key rules or guidance to promote both efficiency and a risk-based approach; and
 - any standards that should be repealed.