

CLIENT ALERT

FinCEN Issues ANPRM Seeking Comment on Requirement for an "Effective and Reasonably Designed" AML Program

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On September 16, 2020, the Financial Crimes Enforcement Network (FinCEN) issued an advanced notice of rulemaking (ANPRM) requesting comments on proposed regulatory changes under the Bank Secrecy Act (BSA) that aim to enhance the effectiveness of anti-money laundering (AML) programs. The proposals reflect the recommendations of a working group within the Bank Secrecy Act Advisory Group (BSAAG), whose membership includes representatives from financial institutions, federal and state regulatory and law enforcement agencies, and trade groups and is chaired by the director of FinCEN, that was convened to develop recommendations to strengthen the national AML regime. Comments are due by November 16, 2020.

Proposed Amendments

FinCEN is seeking comment on whether it is appropriate to clearly define a requirement for an "effective and reasonably designed" AML program in BSA regulations. As proposed in the ANPRM, regulatory amendments would explicitly define an "effective and reasonably designed" AML program as one that:

- Identifies, assesses, and reasonably mitigates the risks resulting from illicit financial activity—including terrorist financing, money laundering, and other related financial crimes—consistent with both the financial institution's risk profile and the risks communicated by relevant government authorities as national AML priorities;
- Assures and monitors compliance with the recordkeeping and reporting requirements of the BSA; and
- Provides information with a high degree of usefulness to government authorities consistent with both the institution's risk assessment and the risks communicated by relevant government authorities as national AML priorities.

The ANPRM also seeks comment on whether the AML program regulations should be amended to establish an explicit requirement for a risk-assessment process, as well as whether the Director of FinCEN should issue, every two years, a list of national AML priorities.

These amendments, which would allow financial institutions greater flexibility in the allocation of their resources to establish an effective AML program, are likely welcomed by industry. The window to submit comments on the proposals allows industry the opportunity to provide the agency with additional insight into resource considerations and other decision-making that informs the effectiveness of an AML program, along with innovations in the financial sector.

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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