

FinCEN requests comments on modernization of AML/CFT framework

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FinCEN is seeking feedback on ways to modernize regulations and guidance on anti-money laundering and countering the financing of terrorism.

On December 14, 2021, the Financial Crimes Enforcement Network (FinCEN) released a [Request for Information](#) (the RFI), seeking comment on ways to streamline and update the anti-money laundering and countering the financing of terrorism (AML/CFT) regime of the United States. The agency requests comment, in particular, on ways in which its regulations and guidance implementing the Bank Secrecy Act (BSA) may be modernized to respond to emerging financial crime risks and adapt to new technologies. FinCEN issued the RFI pursuant to Section 6216 of the Anti-Money Laundering Act of 2020 (the AML Act), which requires the agency to review its regulations and guidance to: (i) ensure that the United States Department of the Treasury (the Treasury) continues to provide adequate safeguards to the financial system against illicit finance; (ii) ensure that BSA reporting and recordkeeping requirements continue to provide highly useful information to counter financial crime; and (iii) identify outdated or inefficient rules and regulatory guidance. The AML Act requires FinCEN to report to Congress on its findings and to engage with key stakeholders.¹

The RFI provides an opportunity for the financial services industry to provide comments to FinCEN as it begins the process of modernizing the U.S. AML/CFT framework. For financial institutions, key issues for comment include modifications to inefficient regulatory requirements and ways to update BSA regulations and guidance in light of changing industry practices and new technology. The comment period closes on February 14, 2022.²

Questions for comment

FinCEN provided a list of 26 questions, which address issues including the following:

- **Emerging financial crime threats:** FinCEN seeks information on financial crimes risks or vulnerabilities that the Treasury is not aware of or sufficiently responding to, or that current AML program requirements are not adequately addressing. FinCEN seeks comment on ways in which the Treasury may respond to such risks, including through additional safeguards and on potential changes to AML program requirements.
- **Reporting and recordkeeping requirements:** FinCEN seeks comment on the effectiveness of the BSA's reporting and recordkeeping requirements, particularly whether the current requirements meet the BSA's goal of providing information that is highly useful in countering financial crime. FinCEN asks for recommended changes to the BSA regulations in this regard, including both structural changes to the reporting requirements and modifications to the type of information that financial institutions collect and report.
- **Outdated, inefficient, or redundant regulations:** FinCEN asks for comments that identify any BSA regulations and guidance that are obsolete, redundant, or no longer promote risk-based compliance or the efficient allocation of resources. The agency asks, for example, if changes in technology or industry practices have rendered any FinCEN guidance or regulatory requirements outdated, or if there is significant redundancy between the requirements imposed under the BSA and other regulatory schemes. FinCEN asks for suggested reforms that would better promote a risk-based approach and allow financial institutions to incorporate new technologies into their compliance programs.
- **Changes to regulations and guidance to promote efficiency:** FinCEN seeks comment on ways in which BSA regulations and guidance may be amended to promote efficiency, remove unnecessary and excessive compliance

burdens, or adapt to new technologies. FinCEN asks, for example, if BSA regulations and guidance should account for technological advances such as machine learning, artificial intelligence, and digital identification.

The outlook for BSA reform in 2022

There will be numerous opportunities for public comment on BSA reforms over 2022, as FinCEN implements the AML Act's wide-ranging changes to the national AML/CFT framework. Those opportunities will include both comment periods during formal rulemakings and additional requests for information. As both regulators and financial institutions adapt to the evolving landscape of financial crime, FinCEN encourages stakeholders to make their voices heard.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

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- ¹ Under Section 6216(a) of the AML Act, the Treasury Secretary is required to consult with the Federal functional regulators, the Federal Financial Institutions Examination Council, the Attorney General, Federal law enforcement agencies, the Director of National Intelligence, the Secretary of Homeland Security, and the Commissioner of Internal Revenue.
- ² Comments may be submitted through the Federal E-rulemaking Portal at <https://www.regulations.gov>, referring to Docket Number FINCEN-2021-0008. Comments may also be submitted by mail to: Policy Division, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Refer to Docket Number FINCEN-2021-0008.