Money Services Business Association
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November 16, 2020

Financial Crimes Enforcement Network
P.O. Box 39
Vienna, VA 22183
Via email to: frc@fincen.gov

Re: Docket Number FINCEN-2020-0011 - Anti-Money Laundering Program Effectiveness

Dear Deputy Director Mosier,

This letter is written on behalf of the members and constituents of the Money Services Business Association[1] ("MSBA") regarding Regulatory Identification Number (RIN) 1506- AB44 The MSBA is grateful for the opportunity to provide comments to the Financial Crimes Enforcement Network ("FinCEN") in response to the Advance Notice of Proposed Rulemaking ("ANPR") regarding potential regulatory amendments requiring that all covered financial institutions must maintain an "effective and reasonably designed" anti-money laundering program.

Recognizing that your goal is to ensure that the BSA's AML regime adapts to the evolving threats of financial crime while providing financial institutions with additional flexibility to address these threats, here are our responses to a select number of ANPR questions:

Issues for comment

Question 1: Does this ANPRM make clear the concept that FinCEN is considering for an "effective and reasonably designed" AML program through regulatory amendments to the AML program rules? If not, how should the concept be modified to provide greater clarity?

Yes, the ANPRM made that clear.

Question 2: Are this ANPRM's three proposed core elements and objectives of an "effective and reasonably designed" AML program appropriate? Should FinCEN make

[1] The MSBA is a trade association focused on the non-bank money services industry, including licensed money transmitters and their agents and/or authorized delegates, payment card issuers and distributors, payment processors, international remittance companies, bill payment companies, mobile payment application providers, payment aggregators, virtual currency exchanges and administrators, money orders and other similar money services providers that are engaged in payments. *See* www.msbassociation.org.

any changes to the three proposed elements of an "effective and reasonably designed" AML program in a future notice of proposed rulemaking?

We understand that the three core elements for an "effective and reasonably designed" AML program include having a program that:

- Identifies, assesses, and reasonably mitigates risks
- Assures and monitors compliance with recordkeeping
- Provides information with a high degree of usefulness

While we believe the current regulations also seek to achieve similar goals, we applaud the greater emphasis given to the "quality" of information provided, rather than the "quantity." As you know, MSBs are heavily regulated at the State Level, and the examiners look at the number of SARs that are issued. An emphasis with a new approach focused on 'quality" will assist in re-enforcing that a number of SARs is not indicative of a program's quality.

The only area that we suggest might be considered for express inclusion in this list is a reference to customer identification verification. This could be incorporated in the second bullet point above. "Assures and monitors compliance with recordkeeping and identity verification requirements."

Question 3: Are the changes to the AML regulations under consideration in this ANPRM an appropriate mechanism to achieve the objective of increasing the effectiveness of AML programs? If not, what different or additional mechanisms should FinCEN consider?

The proposed changes to AML regulations (as opposed to legislative action) appear to be an appropriate mechanism for the contemplated revisions to implement an effective and reasonably designed AML program. However, making these changes additive and not as a revision will place an even greater burden on MSBs.

Question 4: Should regulatory amendments to incorporate the requirement for an "effective and reasonably designed" AML program be proposed for all financial institutions currently subject to AML program rules? Are there any industry-specific issues that Fin GEN should consider in a future notice of proposed rulemaking to further define an "effective and reasonably designed" AML program?

At the present time, we believe it is appropriate to apply the regulatory amendments to all regulated institutions, including licensed money transmitters. However, the details can be complicated and cause problems and until we actually see the language underlying the proposed changes, it is difficult to answer this question. We do have a concern that a "one-size-fits-all" solution that imposes the same kinds of requirements across all industries; there may be instances when requirements for a jewelry dealer may not really

fit a global banking institution. However, as we discuss below in response to Question 8, differing levels of regulation based on a company's size my not be advisable.

There is one area where we do urge consideration: permitting all financial institutions (including those that are state licensed money transmitters) the same latitude provided to banks with respect to the ability to share and rely on Customer Identification Program (CIP) data. Licensed money transmitters undergo significant and ongoing regulatory scrutiny; we question why information sharing is restricted only to those institutions that have a "federal functional regulator."

Question 5: Would it be appropriate to impose an explicit requirement for a risk-assessment process that identifies, assesses, and reasonably mitigates risks in order to achieve an "effective and reasonably designed" AML program? If not, why? Are there other alternatives that FinCEN should consider? Are there factors unique to how certain institutions or industries develop and apply a risk assessment that FinCEN should consider? Should there be carveouts or waivers to this requirement, and if so, what factors should FinCEN evaluate to determine the application thereof?

An explicit requirement for a risk-assessment process that identifies, assesses, and reasonably mitigates risks make a tremendous amount of sense. Indeed, our members tell us that they are "more than fine" with the express addition of a risk assessment requirement since our members already treat risk assessments as a requirement. Although the need for a risk assessment has always been implicit, having it included expressly is very helpful.

We urge caution, however, when it comes to determining how such a requirement is implemented and assessed by examiners. Certainly, financial institutions should not be expected to hire high-priced consultants in order to make these assessments nor to hire third parties to separately audit these requirements. No one knows the risks of a financial institution's products or services better than the institution's own staff. We would propose that a chart or rubric with a brief list of questions that each institution should consider when making the assessment, together with a standardized rating format, should be sufficient for both large and small financial institutions. The goal of the process is to ensure that a risk assessment is undertaken of all products and services; it should not be expected that this additional requirement will necessitate hiring and training new staff, making changes to computer systems, or retaining paid third party auditors or consultants.

A risk-assessment chart or matrix, with a standardized rating format, also would help ensure that all financial institutions consider the same factors and are uniformly judged during examinations. Any risk-assessment requires judgment calls and decisions, so we understand that it can be difficult to establish strict guidelines. On the other hand, in the absence of regulatory guidelines regarding the appropriate factors to consider and how

best to weight such factors, a risk-assessment that one examiner finds to be appropriate will not necessarily satisfy another examiner.

Question 6: Should FinCEN issue Strategic AML Priorities, and should it do so every two years or at a different interval? Is an explicit requirement that risk assessments consider the Strategic AML Priorities appropriate? If not, why? Are there alternatives that FinCEN should consider?

We endorse this proposal enthusiastically. Understanding what FinCEN's Strategic AML Priorities are can only aid in providing more useful data, record-keeping, and risk assessments.

However, since our members are regulated money transmitters subject often to forty or more difference licensing regimes, frequently with different reporting and renewal requirements, we suggest a cautious approach. While issuance of such Strategic AML Priorities every two years appears to us to be a reasonable plan, imposing strict timing requirements as to how quickly regulated institutions must adjust their AML procedures and programs to reflect the updated Strategic Priorities would likely be inappropriate and burdensome. We have heard concerns from our members about change management with the Strategic AML Priorities process; most companies would find it difficult to pivot to change priorities in a short timeframe. We suggest plenty of two-way communications and sufficient time for companies to implement changes in priorities.

It would also be useful get some examples of what some typical Strategic AML Priorities would be. We assume they may focus on a particular geographic location, or on specific kinds of products known to be subject to criminal misuse. And we would also anticipate that a financial institution's products and services that do *not* implicate these Strategic AML Priorities could be subject, with FinCEN's approval, to a reduced level of monitoring and oversight, allowing the financial institution to allocate its resources instead toward the Strategic AML Priorities.

While we appreciate the proactive spirit behind the proposed sharing of Strategic AML Priorities, it would also be useful to have a more collaborative approach. Not only would it be helpful for our members to know where to focus resources, but they would also be grateful to get feedback from FinCEN and law enforcement which could help them to design their own programs and annual objectives.

Finally, our members have asked whether a limited safe harbor would be considered if some significant criminal activity is missed because it was not a FinCEN Strategic AML Priority, and resources were directed elsewhere. In other words, would regulated companies be expected to maintain their current level of controls on all their products and business lines, *plus* enhanced controls on the Strategic AML Priorities? If so, that would be a very costly and burdensome endeavor.

Question 7: Aside from policies and procedures related to the risk assessment process, what additional changes to AML program policies, procedures, or processes would financial institutions need to implement if FinCEN implemented regulatory changes to incorporate the requirement for an "effective and reasonably designed" AML program, as described in this ANPRM? Overall, how long of a period should FinCEN provide for implementing such changes?

We believe this change will require a substantial amount of operational and procedural changes for financial institutions. This would include:

- Reviewing and revising the financial institution's existing AML compliance program, controls, and procedures. Depending on the size of the organization and the number of products and services offered, this could be a significant and time-consuming undertaking.
- Establishing a method to integrate Strategic AML Priorities. Each financial institution will need to determine who is responsible for reviewing and integrating Strategic AML Priorities, including changes to internal procedures and the institution's AML compliance program. The financial institution will need to consider how to change existing compliance procedures and how to reallocate resources with each new issuance of Strategic AML Priorities. Such changes will likely require senior level approvals and training.
- Other implications arising from the addition of a formal risk assessment process. In addition to updating policies and procedures, the addition of a formal risk assessment process can trigger other obligations. Depending on how this is implemented, such a new requirement could necessitate hiring new staff, purchasing risk assessment software, undergoing training, implementing a third-party audit, etc. As noted above, we hope FinCEN considers a simple, low-key method of instituting a risk-assessment process, and one that might avoid the more costly aspects of adding this requirement.

We would suggest at least a [12-18] month period to implement these changes initially, plus a [3-6] month window for retooling for each new issuance of Strategic AML Priorities.

Question 8: As financial institutions vary widely in business models and risk profiles, even within the same category of financial institution, should FinCEN consider any regulatory changes to appropriately reflect such differences in risk profile? For example, should regulatory amendments to incorporate the requirement for an "effective and reasonably designed" AML program be proposed for all financial institutions within each industry type, or should this requirement differ based on the size or operational complexity of these

financial institutions, or some other factors? Should smaller, less complex financial institutions, or institutions that already maintain effective BSA compliance programs with risk assessments that sufficiently manage and mitigate the risks identified as Strategic AML Priorities, have the ability to "opt in" to making changes to AML programs as described in this ANPRM?

Certainly, this issue deserves careful consideration. As noted above, we do not endorse a "one-size-fits-all" approach; indeed, some of our members offer a limited scope of traditional remittance services that do not raise the same complex issues as do many banks and larger financial institutions.

Nevertheless, many of our members are very much against the idea of varying the levels of compliance based simply on the size of a business. Compliance obligations should have a level playing field. Small companies can be taken advantage of by criminals in much the same way that large companies can. The risk of a small company having lesser compliance requirements could actually impact the reputation of the entire industry.

On the other hand, our members agree that consideration should be given to having different requirements depending on the line of business of the entity and associated risks of such line of business. However, each company within that line of business should have the same requirements regardless of size. For instance, a jeweler should not have the same requirements as a remittance company, but all jewelers should have the same requirements within their own industry whether they are large or small.

Nevertheless, if the overall change can be implemented in such a way so as not to be overly burdensome and complex, we believe a simple risk assessment procedure and the addition of Strategic AML Priorities, could appropriately apply across the board to all financial institutions, both large and small. The key is whether this change can truly be implemented in a basic, constructive, manner without overly prescriptive rules and requirements.

An additional challenge that FinCEN should note is that de-risking continues to impact MSBs. This wave of "de-risking" – the categorical termination of customer accounts by Banks (as well as state banks) -- which has resulted in the loss of access to the banking system for scores of businesses and adding additional compliance burdens will further add to the de-risking. De-risking constitutes an ongoing hurdle and burden to many Bank customers that are regulated MSBs. Now that the COVID19 pandemic has made consumer and business customers even more reliant on MSB services, the concerns about potentially losing access to Banking services have increased.

Many MSBs have had their bank and correspondent bank accounts terminated, with even more difficulty establishing and maintaining new accounts.

On the other hand, if FinCEN determines that it will have to implement this change through a complex layer of additional requirements and specific obligations, then it does make good sense to allow certain smaller financial institutions with less complex products and services to "opt in."

Should this occur, we would urge the use of clear, concrete, easy-to-implement guidelines. For example, having a rule that allows an opt-in for entities "that already maintain effective BSA compliance programs" could, in our view, muddy the waters. Determining whether a financial institution already maintains an effective BSA compliance program seem on its face to be very subjective. (Most chief compliance officers will take the position that they already have an effective compliant program.) Instead, to the extent a carve-out is permitted for certain financial institutions, we would suggest consideration of the following factors - -

- The number of different products/services offered;
- The nature of products and business lines offered;
- Whether their products are online or virtual, or rely on relatively new technologies, such as AI, mobile applications, cloud computing, and blockchain or distributed ledger technology;
- How long the entity has been in business and how long they offered their products and services; and
- Any recent changes in ownership, structure, or business model.

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Question 9: Are there ways to articulate objective criteria and/or a rubric for examination of how financial institutions would conduct their risk assessment processes and report in accordance with those assessments based on the regulatory proposals under consideration in this ANPRM?

Yes, we believe there are objective criteria that could be used to develop a rubric for risk-based risk assessment purposes. We have worked on risk-assessment factors in the past and would be happy to collaborate with FinCEN on how to develop such a rubric.

Question 10: Are there ways to articulate objective criteria and/or a rubric for independent testing of how financial institutions would conduct their risk-assessment processes and report in accordance with those assessments, based on the regulatory proposals under consideration in this ANPRM?

We support FinCEN's plans to require a risk-based "effective and reasonably designed" anti-money laundering program. We support the concept of expressly including a risk assessment process as well as distribution of Strategic AML Priorities, that will allow regulated financial institutions to allocate their resources in order to provide more useful

information. But we do *not* believe that independent testing of the risk-assessment process should be necessary or required.

Under the classic "four pillars," all financial institutions are already required to undergo an independent audit of their AML compliance program. Other than confirming that the risk assessment has taken place, the independent third-party audit, as it currently exists, should not be expanded to require an in-depth review of the risk assessment process. By imposing this extra unnecessary audit layer, FinCEN would be making this good, common-sense change to AML programs, into a much more burdensome and costly endeavor.

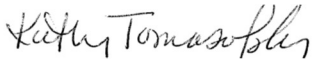
Question 11: A core objective of the incorporation of a requirement for an "effective and reasonably designed" AML program would be to provide financial institutions with greater flexibility to reallocate resources towards Strategic AML Priorities, as appropriate. FinCEN seeks comment on whether such regulatory changes would increase or decrease the regulatory burden on financial institutions. How can FinCEN, through future rulemaking or any other mechanisms, best ensure a clear and shared understanding in the financial industry that AML resources should not merely be reduced as a result of such regulatory amendments, but rather should, as appropriate, be reallocated to higher priority areas?

We understand this concern, and we believe it can be addressed in a simple and easy manner. As part of the financial institutions' independent audit, the question should be asked "have you reallocated any resources, and if so, how and for what purpose?" By requiring financial institutions to keep track of any reallocation of resources and to include this information in its independent audits, FinCEN will be able to monitor how financial institutions are complying with the new capability to reallocate resources. Only if it appears, over time, that AML resources are not be appropriately reallocated but instead are being simply reduced, should new rulemaking be considered.

As noted earlier, it is our hope that these new changes to AML programs will not result in additional costs and resources, but instead, in a reallocation of resources that will provide a successful and effective win-win approach for combatting financial crime and terrorist financing.

We hope our thoughts and comments have been helpful. Please feel free to contact us if you have any follow-up questions or would like to schedule a call or meeting. And again, thank you for issuing this thoughtful ANPR, which we believe will help financial institutions to reduce the requirements burden and produce a more effective, AML compliance program.

Sincerely,



Kathy Tomasofsky
Executive Director
Money Services Business Association, Inc.

Cc: Judith Rinearson, Partner, K&L Gates
Money Services Business Association, Inc. Advisor

(5) If the Commission determines that a dispute exists regarding the authority to make submissions on behalf of a filer, the Commission may prevent a filer's ability to make submissions until the dispute is resolved by the disputing parties or by a court of competent jurisdiction;

(6) If the Commission has reason to believe that an attempted submission may be misleading or manipulative, the Commission may prevent acceptance or dissemination of the submission while evaluating the circumstances surrounding the submission. The Commission may allow acceptance or dissemination if its concerns are satisfactorily addressed;

(7) If the Commission has reason to believe that a filer has made an unauthorized submission or attempted to make an unauthorized submission, the Commission may prevent any further submissions by the filer or otherwise remove the filer's access to EDGAR; and

(8) If the Commission otherwise has reason to believe that, to promote the reliability and integrity of submissions made through EDGAR, it must address a submission issue that cannot be addressed solely by filer corrective disclosure or by the actions set forth in paragraphs (a)(1) through (7) above, the Commission may take such further steps as are appropriate to address the matter and communicate as necessary with the filer regarding the submission.

(b) The Commission may act under paragraph (a) without providing advance notice to the filer or any other person. As soon as reasonably practicable after taking action under paragraph (a), the Commission will provide written notice and a brief factual statement of the basis for the action to the filer and any other person the Commission determines is relevant to the matter (''relevant persons''). The Commission will send the notice and factual statement by electronic mail to the email address on record in the filer's EDGAR account, and to the email address of any relevant persons. The Commission may also send, if necessary, the notice and factual statement by registered, certified, or express mail to the physical address on record in the filer's EDGAR account and the physical address of any relevant persons.

(c) Nothing in this rule prevents a filer from addressing an error or mistake in the filer's submission by making a filer corrective disclosure.

By the Commission.

Dated: August 21, 2020.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2020–18825 Filed 9–16–20; 8:45 am]

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DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X

[Docket No. FinCEN–2020–0011]

RIN 1506–AB44

Anti-Money Laundering Program Effectiveness

AGENCY: Financial Crimes Enforcement Network (FinCEN), Treasury.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This document seeks public comment on potential regulatory amendments to establish that all covered financial institutions subject to an anti-money laundering program requirement must maintain an ''effective and reasonably designed'' anti-money laundering program. Any such amendments would be expected to further clarify that such a program assesses and manages risk as informed by a financial institution's risk assessment, including consideration of anti-money laundering priorities to be issued by FinCEN consistent with the proposed amendments; provides for compliance with Bank Secrecy Act requirements; and provides for the reporting of information with a high degree of usefulness to government authorities. The regulatory amendments under consideration are intended to modernize the regulatory regime to address the evolving threats of illicit finance, and provide financial institutions with greater flexibility in the allocation of resources, resulting in the enhanced effectiveness and efficiency of anti-money laundering programs.

DATES: Written comments are welcome, and must be received on or before November 16, 2020.

ADDRESSES: Comments may be submitted, identified by Regulatory Identification Number (RIN) 1506–AB44, by any of the following methods:

- *Federal E-rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. Include RIN 1506–AB44 in the submission. Refer to Docket Number FINCEN–2020–0011.
- *Mail:* Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183. Include 1506–AB44 in the body of the text. Refer to Docket Number FINCEN–2020–0011.

Please submit comments by one method only. All comments submitted in response to this ANPRM will become a matter of public record. Therefore, you should submit only information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: The FinCEN Regulatory Support Section at 1–800–767–2825 or electronically at *frc@fincen.gov.*

SUPPLEMENTARY INFORMATION:

I. Scope of ANPRM

The scope of program rules under consideration for amendment in this ANPRM includes those applicable to all of the industries that have anti-money laundering (AML) program requirements under FinCEN's regulations, including banks (which includes credit unions and other depository institutions, as defined in 31 CFR 1010.100(d)); casinos and card clubs; money services businesses; brokers or dealers in securities; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises.[1] FinCEN particularly requests comment regarding any industry-specific considerations that FinCEN should evaluate with regard to the scope of possible rulemaking described in this ANPRM.

II. Background

A. History of the Bank Secrecy Act (BSA)

The Currency and Foreign Transactions Reporting Act of 1970, generally referred to as the BSA,[2] authorizes the Secretary of the U.S. Department of the Treasury (Secretary) to require financial institutions to keep records and file reports that ''have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence

[1] *See* 31 CFR 1020.210 (banks); 31 CFR 1021.210 (casinos and card clubs); 31 CFR 1022.210 (money services businesses); 31 CFR 1023.210 (brokers or dealers in securities); 31 CFR 1024.210 (mutual funds); 31 CFR 1025.210 (insurance companies); 31 CFR 1026.210 (futures commission merchants and introducing brokers in commodities); 31 CFR 1027.210 (dealers in precious metals, precious stones, or jewels); 31 CFR 1028.210 (operators of credit card systems); 31 CFR 1029.210 (loan or finance companies); and 31 CFR 1030.210 (housing government sponsored enterprises).

[2] 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314; 5316–5332.

activities, including analysis to protect against international terrorism.''[3] The Secretary has delegated to the Director of FinCEN the authority to implement, administer, and enforce compliance with the BSA and its related authorities.[4] As a result, FinCEN may require financial institutions to maintain procedures to ensure compliance with the BSA and its related regulations and to guard against money laundering, including AML program requirements.[5]

The Money Laundering Control Act of 1986 (MLCA)[6] made money laundering a Federal crime. It also amended the BSA, underscoring the importance of reporting information with a high degree of usefulness to government authorities. For example, Section 1359 of the MLCA amended section 8 of the Federal Deposit Insurance Act[7] and section 206 of the Federal Credit Union Act,[8] among other similar statutes, to require the Federal Banking Agencies[9] to issue regulations for covered financial institutions to ''establish and maintain procedures reasonably designed to assure and monitor the compliance'' of such institutions with the reporting and some recordkeeping requirements of the BSA.

The Annunzio-Wylie Anti-Money Laundering Act of 1992 (Annunzio-Wylie) amended the BSA[10] by strengthening the sanctions for BSA violations and Treasury's role.[11] Annunzio-Wylie authorized Treasury to issue regulations requiring all financial institutions, as defined in BSA regulations, to maintain ''minimum standards'' of an AML program.[12] The minimum standards set forth in the statute were substantially similar to the standards set forth by the Federal Banking Agencies in their BSA compliance program regulations, which required depository institutions under their supervision to establish and maintain procedures ''reasonably designed'' to assure and monitor compliance with the requirements of the BSA.[13]

The Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act) further amended the BSA, reinforcing the framework established earlier by Annunzio-Wylie, to require, among other things, customer identification requirements and Treasury's further expansion of AML program rules to cover certain other industries.[14] In 2003, FinCEN and the Federal Banking Agencies issued a joint final rule on customer identification program (CIP) requirements.[15] The USA PATRIOT Act also ushered in an expanded role for AML and other financial and economic measures in countering threats to U.S. national security and protecting the U.S. financial system. The range of authorities and measures introduced in Title III were intended to, among other purposes, ''increase the strength of United States measures to prevent, detect, and prosecute international money laundering and the financing of terrorism.''[16]

FinCEN's most recent significant change to BSA regulations was the implementation of customer due diligence and beneficial ownership requirements in 2016. These rules resulted in: (i) The expansion of FinCEN's AML program rules for financial institutions regulated by a Federal functional regulator to expressly incorporate the minimum statutory elements of an AML program prescribed by 31 U.S.C. 5318(h)(1); and (ii) the incorporation of minimum standards for customer due diligence and the collection of beneficial ownership information for depository institutions, broker-dealers, mutual funds, and futures commission merchants and introducing brokers in commodities.[17]

B. Recent Efforts To Modernize the National AML Regime

Over the past several years, there have been significant innovations in the financial sector and the development of new business models, products, and services, fueled in part by rapid technological change. As a result, financial institutions have confronted new opportunities and challenges in meeting BSA compliance obligations and providing information with a high degree of usefulness to government authorities in an efficient manner. FinCEN seeks to ensure that the BSA's AML regime adapts to address the evolving threats of illicit finance, such as money laundering, terrorist financing, and related crimes—some of which have changed considerably in scope, nature, and impact since the initial passage of the BSA—while simultaneously providing financial institutions with additional flexibility in addressing these threats. FinCEN, in collaboration with supervisory partners, law enforcement, and, where appropriate, the financial industry, has undertaken recent initiatives that collectively re-examine the BSA regulatory framework and the broader national AML regime. The overall goal of these initiatives is to upgrade and modernize the national AML regime, where appropriate, and to facilitate the ability of the financial industry and corresponding supervisory authorities to leverage new technologies and risk-management techniques, share information, discard inefficient and unnecessary practices, and focus resources on fulfilling the BSA's stated purpose of providing information with a high degree of usefulness to government authorities. This ANPRM is intended to further these efforts.

1. The Bank Secrecy Act Advisory Group's AML Effectiveness Working Group and Recommendations

Annunzio-Wylie required the Secretary to establish a Bank Secrecy Act Advisory Group (BSAAG).[18] The statutory purposes of the BSAAG are to keep private sector representatives informed on a regular basis of the ways in which BSA reports filed by financial institutions, including suspicious

[3] 31 U.S.C. 5311.

[4] Treasury Order 180–01 (Jan. 14, 2020).

[5] 31 U.S.C. 5318(a)(2), (h)(2).

[6] Public Law 99–570, 100 Stat. 3207 (Oct. 27, 1986).

[7] 12 U.S.C. 1818.

[8] 12 U.S.C. 1786.

[9] The Federal Banking Agencies include the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration, and the Office of the Comptroller of the Currency.

[10] Title XV of Public Law 102–550, 106 Stat. 3672 (Oct. 28, 1992).

[11] *See* Title XV, sec. 1503 (authorizing the termination of FDIC insurance of insured depository institutions convicted of a criminal violation of the BSA), sec. 1504 (authorizing the removal officers or directors of such institutions found to have violated a BSA requirement), and sec. 1517 (authorizing Treasury to require the reporting of suspicious transactions) of Public Law 102–550.

[12] Title XV, sec. 1517 of Public Law 102–550.

[13] The minimum standards for an AML program set forth in Annunzio-Wylie, and codified at 31 U.S.C. 5318(h), include: ''(A) the development of internal policies, procedures, and controls, (B) the designation of a compliance officer, (C) an ongoing employee training program, and (D) an independent audit function to test programs.''

[14] Public Law 107–56, 115 Stat. 272 (Oct. 26, 2001). FinCEN issued interim final AML program rules for financial institutions regulated by a Federal functional regulator, money services businesses, mutual funds, and operators of credit card systems. 67 FR 21113 (Apr. 29, 2002). FinCEN's rule originally cross-referenced the regulations of the Federal functional regulator and provided that satisfaction of the Federal functional regulator's AML program rule requirements would be deemed to satisfy the requirements of Treasury's rule.

[15] 68 FR 25090 (May 9, 2003). FinCEN issued joint CIP rules separately with the U.S. Securities and Exchange Commission, 68 FR 25113 (May 9, 2003) (brokers or dealers in securities) and 68 FR 25131 (May 9, 2003) (mutual funds), and the U.S. Commodity Futures Trading Commission, 68 FR 25149 (May 9, 2003) (futures commission merchants and introducing brokers).

[16] Title III, sec. 302(b)(1) of Public Law 107–56.

[17] 81 FR 29398 (May 11, 2016).

[18] Title XV, sec. 1564 of Public Law 102–550.

activity reports (SARs), are being used, and to receive advice regarding the modification of those reporting requirements to enhance the ability of law enforcement agencies to use the information provided for law enforcement purposes. The Director of FinCEN chairs the BSAAG, and its membership includes representatives from financial institutions, Federal and state regulatory and law enforcement agencies, and trade groups whose members are subject to the requirements of the BSA and its regulations, or Section 6050I of the Internal Revenue Code of 1986. The purposes and membership of the BSAAG make it an important forum for understanding stakeholder views in efforts to reform and modernize the national AML regime.

The BSAAG created an Anti-Money-Laundering Effectiveness Working Group (AMLE WG) in June 2019 to develop recommendations for strengthening the national AML regime by increasing its effectiveness and efficiency. Member stakeholders worked collaboratively throughout 2019 and into 2020 to identify regulatory initiatives that would allow financial institutions to reallocate resources to better focus on national AML priorities set by government authorities, increase information sharing and public-private partnerships, and leverage new technologies and risk-management techniques—and thus increase the efficiency and effectiveness of the nation's AML regime.

The resulting recommendations, summarized below in broad categories, are a collective set of complementary efforts.[19] The October 2019 BSAAG plenary received and endorsed the recommendations from the AMLE WG. This ANPRM is a result of FinCEN's evaluation of those recommendations and a step toward considering their implementation. FinCEN anticipates taking additional steps, such as issuing guidance where appropriate, as FinCEN continues to evaluate the full set of BSAAG recommendations.

a. Developing and Focusing on AML Priorities

The AMLE WG recommended that stakeholders refocus the national AML regime to place greater emphasis on providing information with a high degree of usefulness to government authorities based on national AML priorities, in order to promote effective outputs over auditable processes and to ensure clearer standards for measuring effectiveness in evaluating AML programs. The AMLE WG recommended that the relevant government agencies consider:

- Publishing a regulatory definition of AML program effectiveness;
- Developing and communicating national AML priorities as set by government authorities; and
- Issuing clarifying guidance for financial institutions on the elements of an effective AML program.

b. Reallocation of Compliance Resources

The AMLE WG recommended that stakeholders facilitate BSA compliance resource reallocation by reducing or eliminating activities that are not required by law or regulation, make limited contributions to meeting risk-management objectives, and supply less useful information to government authorities. Resources freed from these activities could be reallocated to address areas of risk and national AML priorities. The AMLE WG recommended that the relevant government agencies consider:

- Clarifying current requirements and supervisory expectations with respect to risk assessments, negative media searches, customer risk categories, and initial and ongoing customer due diligence; and
- Revising existing guidance or regulations in areas such as Politically Exposed Persons and the application of existing model-risk-management guidance to AML systems, in order to improve clarity, effectiveness, and compliance.

c. Monitoring and Reporting

The AMLE WG recommended that AML monitoring and reporting practices be modernized and streamlined to maximize efficiency, quality, and speed of providing data to government authorities with due consideration for privacy and data security. The AMLE WG recommended that the relevant government agencies consider:

- Clarifying expectations and updating practices for keep-open letters and suspicious activity monitoring, investigation, and reporting, including SARs based on grand jury subpoenas or negative media; and
- Supporting potential automation opportunities for high-frequency/low-complexity SARs and currency transaction reports (CTRs), and exploring the possibility of streamlined SARs on continuing activity.

d. Enhancing Information Sharing

Information sharing among financial institutions, regulators, and law enforcement through partnerships and other existing mechanisms is a key component of an effective BSA/AML regime. The AMLE WG recommended steps for enhancing information sharing mechanisms to communicate national AML priorities, related typologies, and emerging threats, such as:

- Forming a BSAAG-established working group with members from law enforcement agencies, regulators, and financial institutions to identify, prioritize, and recommend national AML priorities and advise on opportunities to communicate typologies, red flags, and other information related to national AML priorities;
- Leveraging existing information-sharing initiatives between the public and private sectors, including enhanced use of the BSA's information sharing provisions, sections 314(a) and (b) of the USA PATRIOT Act, and sharing with foreign affiliates and global institutions, as appropriate; and
- Assessing options for FinCEN and law enforcement agencies to provide more feedback to financial institutions related to the use and utility of BSA reports.

e. Advance Regulatory Innovations

The AMLE WG recommended the continued enhancement of the national AML regime to promote the use of responsible innovations to address new and emerging money laundering and terrorist financing risks and the evolving industry landscape, as well as to encourage financial institutions to pursue more effective and efficient BSA compliance practices. Measures recommended include steps that financial institutions could take to better use responsible innovation in meeting CIP requirements—such as third-party software and service providers—and studying the impact of financial technology and other emerging non-bank financial service providers on the AML regime.

III. Elements of an ''Effective and Reasonably Designed'' AML Program

FinCEN, after consulting with the staffs of various supervisory agencies, and having considered the BSAAG recommendations and other BSA modernization efforts, is publishing this ANPRM seeking comment on whether it is appropriate to clearly define a requirement for an ''effective and reasonably designed'' AML program in BSA regulations. Increasing the

[19] The subsections which follow summarize recommendations issued by the BSAAG and do not necessarily reflect current regulatory initiatives, nor do they imply endorsement of, nor commitment by, the relevant government agencies to implement these recommendations.

''effectiveness'' of the national AML regime is a core objective of recent AML modernization efforts. This term often refers to the implementation and maintenance of a compliant AML program, but has no specific, consistent definition in existing regulation. FinCEN believes that incorporating an ''effective and reasonably designed'' AML program requirement with a clear definition of ''effectiveness'' [20] would allow financial institutions to more efficiently allocate resources and would impose minimal additional burden on existing AML programs that already comply under the existing supervisory approach. This requirement would also seek to implement a common understanding between supervisory agencies and their supervised financial institutions on the necessary AML program elements.

Specifically, FinCEN is considering regulatory amendments that 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 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.

As explained in more detail in the sections that follow, this ANPRM also seeks comment on whether the AML program regulations [21] 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, to be called FinCEN's ''Strategic Anti-Money Laundering Priorities.''

A. Identifying and Assessing Risks

The current AML program rules generally require each financial institution to implement a system of internal controls to ''assure ongoing compliance'' [22] with the BSA. This system of internal controls includes the policies, procedures, and processes that not only mitigate the risks associated with the products and services the financial institution offers and the customers it serves, but also ensures the financial institution meets regulatory requirements under the BSA. Under current practice for most financial institutions, the design of an AML program is based on the risks identified and assessed by the financial institution through a risk-assessment process. FinCEN and other supervisory agencies have traditionally viewed a risk assessment as a critical element of a reasonably designed program, because a program cannot be considered reasonably designed to achieve compliance with the recordkeeping and reporting requirements of the BSA unless the institution understands its risk profile.

Even though a financial institution's risk-assessment process is key to ensuring an effective AML program, it is not an explicit regulatory requirement for all types of institutions. Given the importance of the risk-assessment process to establishing an ''effective and reasonably designed'' AML program, FinCEN believes that it warrants explicit incorporation. FinCEN is considering whether its AML program regulations should be amended to require the establishment of a risk-assessment process that includes the identification and analysis of money laundering, terrorist financing, and other illicit financial activity risks faced by the financial institution based on an evaluation of various factors, including its business activities, products, services, customers, and geographic locations in which the financial institution does business or services customers.

FinCEN and the Federal Banking Agencies issued a *Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision* in 2019 that underscored the importance of a risk-based approach. The statement clarifies that these agencies' long-standing supervisory approach to examining for compliance with the BSA considers a financial institution's risk profile and notes that ''[a] risk-based [AML] compliance program enables a bank to allocate compliance resources commensurate with its risk.'' [23] It further clarifies that a well-developed risk-assessment process assists examiners in understanding a bank's risk profile and evaluating the adequacy of its AML program. The statement also explains that, as part of their risk-focused approach, examiners review a bank's risk-management practices to evaluate whether a bank has developed and implemented a reasonable and effective process to identify, measure, monitor, and control risks. Recognizing that many financial institutions are conducting risk assessments, FinCEN seeks comment on the effect to financial institutions' efforts to comply with AML program requirements of adding a regulatory requirement to conduct a risk assessment, and the effect, if any, on burden to financial institutions' processes for complying with AML program requirements.

B. Consideration of the Strategic AML Priorities in the Risk-Assessment Process

This ANPRM also seeks comment on whether regulatory amendments should be made so that an ''effective and reasonably designed'' AML program would require financial institutions to consider and integrate national AML priorities into their risk-assessment processes, as appropriate. FinCEN is considering whether the Director of FinCEN should issue national AML priorities, to be called its ''Strategic Anti-Money Laundering Priorities,'' every two years (or more frequently as appropriate to inform the public and private sector of new priorities). This ANPRM also seeks comment on whether these priorities should be considered, among other information, in a financial institution's risk assessment.

FinCEN does not expect that its Strategic AML Priorities would capture the universe of all AML priorities, nor would they be intended to serve as the only priorities informing a risk-assessment process. Rather, they would seek to articulate FinCEN's existing AML priorities, informed by a wide range of government and private sector stakeholders, leveraging the broader priorities established by the National

[20] There is some variance in the specific AML program requirements for different types of financial institutions, but current AML program regulations for most financial institutions subject to such requirements contain a requirement that either the AML program as a whole, or the implementation of internal controls, is ''reasonably designed.'' In addition, current AML program requirements vary as to whether a financial institution must implement an AML program that is ''reasonably designed'' to achieve compliance with the BSA, ''reasonably designed'' to prevent money laundering or terrorist financing, or both.

[21] *See supra* note 1.

[22] *See, e.g.,* 31 CFR 1020.210(b)(1).

[23] *See* Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network, National Credit Union Administration, and Office of the Comptroller of the Currency, Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision (July 22, 2019), *available at https://www.fincen.gov/sites/default/files/2019-10/Joint%20Statement%20on%20Risk-Focused%20Bank%20Secrecy%20Act-Anti-Money%20Laundering%20Supervision%20FINAL1.pdf.*

Illicit Finance Strategy as determined by the Secretary of the Treasury—in consultation with the Departments of Justice, State, and Homeland Security, the Office of the Director of National Intelligence, the Office of Management and Budget, and the staffs of the Federal functional regulators—to better aid U.S. institutions in effectively complying with BSA obligations. Other relevant information that the Director of FinCEN may consider in determining Strategic AML Priorities includes, for example, FinCEN Advisories to financial institutions, which identify emerging risks and provide red flags and typologies that assist financial institutions in identifying and reporting suspicious activity; other relevant Treasury Department communications, including the National Risk Assessments; and information from law enforcement and other government agencies, and others.

C. Risk Management and Mitigation Informed by Strategic AML Priorities

Building upon the prior two concepts—an explicit risk-assessment requirement and the publication of Strategic AML Priorities—this ANPRM also seeks comment as to whether an ''effective and reasonably designed'' AML program should require that financial institutions reasonably manage and mitigate the risks identified in the risk-assessment process by taking into consideration the Strategic AML Priorities, as appropriate and among other relevant information. FinCEN believes that the vast majority of financial institutions are effectively and reasonably managing and mitigating the risks that they have identified. Under any proposal to incorporate a requirement for an ''effective and reasonably designed'' AML program, FinCEN understands that institutions may reallocate resources from other lower-priority risks or practices to manage and mitigate higher-priority risks, including any identified as Strategic AML Priorities.

Financial institutions may consider how FinCEN's Strategic AML Priorities impact and inform the risk assessment based on the institution's size, complexity, business activities, products, services, customers, and geographic locations in which the financial institution does business or services customers. This might enhance the financial institution's engagement with law enforcement and FinCEN to provide information with a high degree of usefulness to government authorities. In addition, a financial institution may be better able to engage with the appropriate level of Federal, state, or local law enforcement and other government officials to better understand and address risks within that jurisdiction. This might improve information sharing, to include requests from FinCEN or other government authorities, as well as participation in public-private information sharing forums.

FinCEN recognizes that financial institutions may utilize different means to demonstrate effectiveness and anticipates that some financial institutions may determine that their AML programs already sufficiently assess and mitigate the risks identified as Strategic AML Priorities. FinCEN also anticipates that many financial institutions may determine that their business models and risk profiles reflect limited exposure to risks posed by the threats identified as Strategic AML Priorities, but may reflect greater exposure to significant and legitimate risks that may not be identified as Strategic AML Priorities. FinCEN recognizes and appreciates financial institutions must continue to identify, reasonably manage, and mitigate these risks consistent with financial institutions' risk-management processes.

D. Assuring and Monitoring Compliance With the Recordkeeping and Reporting Requirements of the BSA

FinCEN does not expect that any regulatory changes made in response to this ANPRM would alter the recordkeeping and reporting requirements contained in existing BSA regulations. However, this ANPRM seeks comment as to whether financial institutions' AML program obligations should be based on the risks identified by the financial institution, to include consideration of Strategic AML Priorities, where appropriate and among other information. For example, a financial institution's process for the implementation of certain requirements, such as monitoring for suspicious activity, is based on risk. Making clear that compliance with this aspect of the AML program requirement is risk-based is consistent with the objectives of increasing effectiveness and efficiency. It also reflects long-standing supervisory approaches and expectations.

E. Providing Information With a High Degree of Usefulness

FinCEN believes that the proposed regulatory approach in this ANPRM furthers the statutory BSA purpose of providing information with a high degree of usefulness to government authorities. These regulatory amendments would explicitly define as a goal of the AML program that financial institutions provide information with a high degree of usefulness to government authorities consistent with the financial institution's risk assessment and Strategic AML Priorities, among other relevant information. FinCEN recognizes that many financial institutions have developed specialized units that focus on complex investigations. In addition, financial institutions of all sizes may collaborate with Federal, state, and local law enforcement, receive outreach from the government's SAR Review Teams, and often be willing to engage on relevant issues in their community. FinCEN expects that any future regulatory amendments to incorporate a requirement for an ''effective and reasonably designed'' AML program would seek to provide a framework to recognize that these and other collaborative efforts may provide information with a high degree of usefulness to government authorities. This recognition, in turn, may provide further incentive for financial institutions to undertake and apply resources towards these important initiatives to combat money laundering, terrorist financing, and other related illicit financial crime. Such an approach has the potential to increase the overall effectiveness of the national AML regime by better enabling law enforcement and other users of BSA reporting to address priority threats to the U.S. financial system.

IV. Issues for Comment

Based on the foregoing, FinCEN is seeking comment from the public, including industry, law enforcement, regulators, other consumers of BSA data, and any other interested parties, concerning a potential rulemaking to incorporate a requirement for an ''effective and reasonably designed'' AML program into AML program regulations and to provide clarity on its application. Specifically, FinCEN requests public comment on the following:

Question 1: Does this ANPRM make clear the concept that FinCEN is considering for an ''effective and reasonably designed'' AML program through regulatory amendments to the AML program rules? If not, how should the concept be modified to provide greater clarity?

Question 2: Are this ANPRM's three proposed core elements and objectives of an ''effective and reasonably designed'' AML program appropriate? Should FinCEN make any changes to the three proposed elements of an ''effective and reasonably designed''

AML program in a future notice of proposed rulemaking?

As described above, FinCEN is considering regulatory amendments that would define an ''effective and reasonably designed'' 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 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.

Question 3: Are the changes to the AML regulations under consideration in this ANPRM an appropriate mechanism to achieve the objective of increasing the effectiveness of AML programs? If not, what different or additional mechanisms should FinCEN consider?

Question 4: Should regulatory amendments to incorporate the requirement for an ''effective and reasonably designed'' AML program be proposed for all financial institutions currently subject to AML program rules? Are there any industry-specific issues that FinCEN should consider in a future notice of proposed rulemaking to further define an ''effective and reasonably designed'' AML program?

FinCEN notes that, as regulations for different segments of the financial industry have been promulgated at different times in the past, such AML program regulations have evolved and, consequently, contain provisions that differ among the various industries subject to AML program requirements. For example, the AML program requirement for money services businesses (31 CFR 1022.210(a)) already contains an effectiveness component.[24] FinCEN invites comments from all covered industries subject to AML program regulations as to how a requirement for an ''effective and reasonably designed'' AML program would impact their industry. Furthermore, FinCEN invites comment as to whether any industry-specific modifications would be appropriate to consider in future rulemaking.

Question 5: Would it be appropriate to impose an explicit requirement for a risk-assessment process that identifies, assesses, and reasonably mitigates risks in order to achieve an ''effective and reasonably designed'' AML program? If not, why? Are there other alternatives that FinCEN should consider? Are there factors unique to how certain institutions or industries develop and apply a risk assessment that FinCEN should consider? Should there be carve-outs or waivers to this requirement, and if so, what factors should FinCEN evaluate to determine the application thereof?

Question 6: Should FinCEN issue Strategic AML Priorities, and should it do so every two years or at a different interval? Is an explicit requirement that risk assessments consider the Strategic AML Priorities appropriate? If not, why? Are there alternatives that FinCEN should consider?

Question 7: Aside from policies and procedures related to the risk-assessment process, what additional changes to AML program policies, procedures, or processes would financial institutions need to implement if FinCEN implemented regulatory changes to incorporate the requirement for an ''effective and reasonably designed'' AML program, as described in this ANPRM? Overall, how long of a period should FinCEN provide for implementing such changes?

FinCEN seeks comment on specific programmatic changes. For example, how might the allocation of personnel change because of the possible regulatory amendments discussed in this ANPRM, and what processes would be required to reallocate AML compliance resources for different responsibilities? How long would such programmatic changes take to conceive, test, and implement? Would this vary by size of institution or across industry segments? If so, how? In addition to due diligence and monitoring processes, what other methods to mitigate risks are financial institutions engaged in? Should FinCEN add via future regulation more specific risk-mitigation requirements to ensure that controls are commensurate with the risks undertaken, and how might these risk-mitigation requirements vary by industry?

Question 8: As financial institutions vary widely in business models and risk profiles, even within the same category of financial institution, should FinCEN consider any regulatory changes to appropriately reflect such differences in risk profile? For example, should regulatory amendments to incorporate the requirement for an ''effective and reasonably designed'' AML program be proposed for all financial institutions within each industry type, or should this requirement differ based on the size or operational complexity of these financial institutions, or some other factors? Should smaller, less complex financial institutions, or institutions that already maintain effective BSA compliance programs with risk assessments that sufficiently manage and mitigate the risks identified as Strategic AML Priorities, have the ability to ''opt in'' to making changes to AML programs as described in this ANPRM?

FinCEN appreciates that financial institutions vary considerably in size and complexity, and even well-intentioned regulatory actions that impact such a diverse collection of financial institutions can result in unintended consequences. Accordingly, FinCEN specifically requests comment on how the practical impact of the regulatory proposals described in this ANPRM could vary in implementation for institutions of differing size and complexity, and whether changes in approach—such as an opt-in decision—would be advisable. If greater flexibility is recommended, FinCEN requests comments as to whether any resultant divergence in AML program implementation might present financial crime vulnerabilities, and if so, how such vulnerabilities could be mitigated. If different requirements are recommended based on the size and/or operational complexity of financial institutions, please describe what thresholds and parameters might be appropriate, and why.

Question 9: Are there ways to articulate objective criteria and/or a rubric for examination of how financial institutions would conduct their risk-assessment processes and report in accordance with those assessments, based on the regulatory proposals under consideration in this ANPRM?

FinCEN appreciates that, in order for the regulatory proposals as described in this ANPRM to achieve the objective of increased effectiveness of the overall U.S. AML regime, the supervisory process must support and reinforce this objective. Indeed, FinCEN has consulted with the staffs of various Federal supervisory agencies in developing this ANPRM, and FinCEN requests comments on how the supervisory regime could best support the objectives as identified in this ANPRM.

[24] Specifically it provides that each money services business, as defined by § 1010.100(ff), shall develop, implement, and maintain an effective anti-money laundering program. An effective anti-money laundering program is one that is reasonably designed to prevent the money services business from being used to facilitate money laundering and the financing of terrorist activities.

Question 10: Are there ways to articulate objective criteria and/or a rubric for independent testing of how financial institutions would conduct their risk-assessment processes and report in accordance with those assessments, based on the regulatory proposals under consideration in this ANPRM?

FinCEN appreciates that the regulatory proposals described in this ANPRM may require changes in the implementation of independent testing by financial institutions in order to achieve the objectives as described in this ANPRM. Therefore, FinCEN also seeks comments on how a future rulemaking could best facilitate effective independent testing of risk assessments and other financial institution processes, as may be revised consistent with the proposals set forth in this ANPRM.

Question 11: A core objective of the incorporation of a requirement for an ''effective and reasonably designed'' AML program would be to provide financial institutions with greater flexibility to reallocate resources towards Strategic AML Priorities, as appropriate. FinCEN seeks comment on whether such regulatory changes would increase or decrease the regulatory burden on financial institutions. How can FinCEN, through future rulemaking or any other mechanisms, best ensure a clear and shared understanding in the financial industry that AML resources should not merely be reduced as a result of such regulatory amendments, but rather should, as appropriate, be reallocated to higher priority areas?

FinCEN specifically encourages commenters to provide quantifiable data, if available, that supports any views on whether the regulatory proposals under consideration would impact financial institutions' regulatory burden. FinCEN also invites comment with regard to how FinCEN and other supervisory authorities could best reinforce the importance of maintaining an appropriate level of BSA compliance resources if regulatory amendments are promulgated as described in this ANPRM.

V. Conclusion

With this ANPRM, FinCEN is seeking input on the questions set forth above. FinCEN is soliciting comments on the impact to the public, including industry, law enforcement, regulators, other consumers of BSA data, and any other interested parties, and welcomes comments on all aspects of the ANPRM. All interested parties are encouraged to provide their views.

VI. Special Analysis

This advance notice of proposed rulemaking is a significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget.

Dated: September 14, 2020.

Michael Mosier,

Deputy Director, Financial Crimes Enforcement Network.

[FR Doc. 2020–20527 Filed 9–16–20; 8:45 am]

BILLING CODE 4810–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

45 CFR Part 302

RIN 0970–AC81

Optional Exceptions to the Prohibition Against Treating Incarceration as Voluntary Unemployment Under Child Support Guidelines

AGENCY: Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Child Support Enforcement proposes to provide States the flexibility to incorporate in their State child support guidelines two optional exceptions to the prohibition against treating incarceration as voluntary unemployment. Under the proposal, States have the option to exclude cases where the individual is incarcerated due to intentional nonpayment of child support resulting from a criminal case or civil contempt action in accordance with guidelines established by the state and/or incarceration for any offense of which the individual's dependent child or the child support recipient was a victim. The State may apply the second exception to the individual's other child support cases.

DATES: Consideration will be given to written comments on this notice of proposed rulemaking (NPRM) received on or before November 16, 2020.

ADDRESSES: You may submit comments, identified by [docket number ACF–2020–0002 and/or Regulatory Information Number (RIN) number 0970–AC81], by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Written comments may be submitted to: Office of Child Support Enforcement, *Attention:* Director of Policy and Training, 330 C Street SW, Washington, DC 20201.

Instructions: All submissions received must include the agency name and docket number or RIN for this rulemaking. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Anne Miller, Division of Policy and Training, OCSE, telephone (202) 401–1467. Email inquiries to *ocse.dpt@acf.hhs.gov.* Deaf and hearing impaired individuals may call the Federal Dual Party Relay Service at 1–800–877–8339 between 8 a.m. and 7 p.m. Eastern Time.

SUPPLEMENTARY INFORMATION:

Submission of Comments

Comments should be specific, address issues raised by the proposed rule, and explain reasons for any objections or recommended changes. Additionally, we will be interested in comments that indicate agreement with the proposals. We will not acknowledge receipt of the comments we receive. However, we will review and consider all comments that are germane and are received during the comment period. We will respond to these comments in the preamble to the final rule.

Statutory Authority

This NPRM is published under the authority granted to the Secretary of Health and Human Services by section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). Section 1102 of the Act authorizes the Secretary to publish regulations, not inconsistent with the Act, as may be necessary for the efficient administration of the functions with which the Secretary is responsible under the Act.

Background

The purpose of the Flexibility, Efficiency and Modernization in Child Support Programs (FEM) final rule published in the **Federal Register** on December 20, 2016 (81 FR 93492) was to make Child Support Enforcement program operations and enforcement procedures more flexible, more effective, and more efficient by building on the strengths of existing State enforcement programs, recognizing advancements in technology, and incorporating technical fixes. The final rule was intended to improve and simplify program operations and remove outmoded limitations to program innovations, in order to better serve families.