



Money Service Business Association

Phone: 201-781-2590

Email: info@msbassociation.org

September 3, 2024

Policy Division

Financial Crimes Enforcement Network

P.O. Box 39

Vienna, VA 22183

Via Email: Federal e-Rulemaking Portal <http://www.regulations.gov>

Re: Notice of Proposed Rulemaking; Anti-Money Laundering and Countering the Financing of Terrorism Programs; Docket Number FINCEN-2024-0013 (July 3, 2024)

Ladies and Gentlemen,

Thank you for the opportunity to review and provide comments on the proposed amendments aimed at strengthening and modernizing Anti-Money Laundering ("AML") and Countering Financing of Terrorism ("CFT") programs. On behalf of the Money Services Business Association ("MSBA"), the largest national trade association that represents licensed money services businesses, we write to stress the need for (1) clarification of certain proposed requirements to ensure alignment of interpretation among regulators and financial institutions, (2) modification of other proposed requirements to ensure a balance is struck between effectiveness and not being overly burdensome and (3) request an appropriate implementation period to allow companies time for implementation.

Requirement for US-Based AML Program

The proposed rulemaking provides that the responsibility for establishing, maintaining, and enforcing the AML/CFT program must remain the responsibility of and be performed by, persons in the United States who are accessible to and subject to oversight, and supervision by, FinCEN and the appropriate Federal functional regulator. The proposed rule could have a significant adverse impact in terms of cost and resources on the cross-border industry who commonly rely on local staff for AML/CFT program support if FinCEN expects that all AML/CFT program staff will be located in the United States. FinCEN should clarify that the proposed rulemaking *does not require* that the performance of all tasks related to the execution of an AML program (whether carried out by employees or third-party service providers) must occur in the US, only that the person ultimately responsible for a financial institution's AML program be located in the US. Taking this approach would also support the efficient implementation of AML/CFT programs since, for example, some KYC functions may be more effectively performed by local personnel knowledgeable of the local typologies, news media and other relevant aspects of the local market.

Furthermore, FinCEN should reconsider requiring that the AML officer be located in the U.S. So long as the AML officer agrees to make themselves available to regulators, requiring that such individual be located within the U.S. brings no additional benefit to a financial institution's AML program.

"Effective" AML Program

Existing regulations mandate that financial institutions maintain an AML program "reasonably" designed to meet current AML expectations. The AML program should be risk-based and tailored to the specific

risks of each financial institution. The proposed rulemaking, however, imposes a novel “effectiveness” standard. While both the “reasonable” and “effective” standards are ambiguous, financial institutions and their regulators have arrived at a mutual understanding of the basic parameters of a “reasonably” designed AML program. The effective standard will sow confusion unless FinCEN provides clear guidelines for regulators and financial institutions and may ultimately lead to implementation not aligning with regulators’ interpretation of the proposed rule. This is especially detrimental to smaller entities with limited resources, which FinCEN recognizes as comprising a large portion of the impacted entities under the proposed rule (using a Small Business Administration size threshold).

Dynamic Risk Assessment

The proposed rulemaking sets forth that risk assessments should be dynamic without clarifying what defines a dynamic risk assessment. Updating a risk assessment requires significant effort and time to develop and update. The MSBA would encourage FinCEN to interpret dynamic to mean that risk assessments should be updated under two conditions: (1) ad hoc to reflect new risk factors – such as new products or services only, instead of in response to changes in existing risk factors; and (2) periodically to ensure that all relevant quantitative and qualitative data is accurate.

AML Priorities

The proposed rulemaking provides that financial institutions’ risk assessments should contemplate FinCEN’s AML priorities, issued every four years. This NPR incorporates the priorities that FinCEN first defined in June 2021. At the time, financial institutions noted that the priorities were not actionable, and covered risks that were already present in reasonably designed risk assessments.

By listing the priorities here, FinCEN is not providing actionable guidance that financial institutions can use to develop responsive controls. FinCEN should ensure that the AML priorities are insightful, providing financial institutions with actionable information, as opposed to outlining generic AML concerns that AML professionals are aware of and that are likely covered in existing risk assessments.

Underestimating Effort and Cost

FinCEN appears to be underestimating the cost and effort of implementing the requirements provided in the proposed rulemaking. It is difficult to quantify at this point, since there is a great deal of ambiguity, and companies can interpret differently – everything from evaluating the current risk assessment to training of personnel.

Implementation Time

Given the significant effort and costs that will be imposed on financial institutions by the new regulations, FinCEN should extend the implementation period to give *all* financial institutions more time to implement the proposed rulemaking’s requirements. We request that companies be provided with an 18-month implementation period. This would provide sufficient time for companies to evaluate the new proposed regulation and update accordingly.



Money Service Business Association
Phone: 201-781-2590
Email: info@msbassociation.org

Nonetheless, at the very least, FinCEN should provide an accommodation of additional time for implementation by "small businesses" pursuant to the Small Business Administration size threshold.

The Proposed Rule will bring significant work to all financial institutions. Throughout the NPR, FinCEN notes that the changes that they are imposing are not new compliance obligations. However, as we note in the summary of our major concerns above, without clearer definitions and direction, this rule will impose new compliance obligations without the desired effect of establishing a strengthened and modernized AML/CFT environment for all.

We request that FinCEN provide additional guidance and allow a minimum of 18 months for implementation. We are concerned about the unintended consequences of increased compliance obligations, and the potential for financial institutions to terminate their relationships with MSBs because they will require more effort to manage.

Please contact us to discuss our comments.

Sincerely,

Kathy Tomasofsky
Executive Director
Money Services Business Association, Inc.