

Key Changes in FinCEN’s Proposed Rule to Refocus AML/CFT Programs on Higher-Risk Activity While Reducing Unnecessary Burden

As part of the U.S. Department of the Treasury’s efforts to modernize the Bank Secrecy Act (BSA), FinCEN has issued a proposed rule that would fundamentally reform the requirements for financial institutions’ anti-money laundering and countering the financing of terrorism (AML/CFT) programs. Public comments on the proposed rule must be received 60 days after publication of the NPRM in the *Federal Register*, and the text of the proposed rule is available [here](#).

The proposed rule would:

Reduce unnecessary regulatory burden by allowing financial institutions to focus their resources on higher-risk areas in their AML/CFT programs.

- The proposed rule would provide flexibility and discretion to financial institutions in mitigating illicit finance risks so they can direct more resources toward higher-risk areas rather than lower-risk areas.
- This flexibility would shift AML/CFT programs away from a purely “check-the-box” exercise that is unnecessarily burdensome.

Elevate FinCEN’s role in the AML/CFT supervision process for banks to promote consistent, risk-focused supervision by bank examiners.

- The proposed rule would, for the first time, require Federal banking regulators to consult with FinCEN prior to taking certain types of supervisory or enforcement actions related to AML/CFT programs of banks.
- The proposed rule would also better align the Federal AML/CFT supervisory framework with Treasury’s focus on program effectiveness. Once a bank has properly established an AML/CFT program, bank regulators would be able to bring certain supervisory or enforcement actions only for the most serious deficiencies in the bank’s implementation of its program.

Refocus financial institutions’ AML/CFT programs on effectiveness in combatting and preventing illicit finance activity, rather than mere technical compliance.

- The proposed rule clarifies the standards for an effective AML/CFT program. Financial institutions’ programs must establish and maintain existing program requirements with certain updates, including a risk-based set of internal policies, procedures, and controls that are reasonably designed to ensure compliance with BSA and FinCEN’s regulations. Existing program rules do not provide standards for program effectiveness.
- These changes would ensure financial institutions’ AML/CFT programs are focused on providing law enforcement and national security agencies with the most highly useful information about the most serious threats.

The proposed rule was prepared in consultation with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency in order to collectively issue proposed amendments to their respective BSA compliance program rules for the institutions they supervise.