**First Listening Session Regarding the Notice of Proposed Rulemaking Titled**

**“Anti-Money Laundering and Countering the Financing of Terrorism Programs”**

This document summarizes a listening session that the Financial Crimes Enforcement Network (FinCEN), a bureau within the U.S. Department of the Treasury (Treasury), held with representatives of financial institutions about the notice of proposed rulemaking (NPRM) titled *Anti-Money Laundering and Countering the Financing of Terrorism Programs* published on July 3, 2024 (Docket Number FINCEN-2024-0013) (Program NPRM). FinCEN is adding this summary of the listening session to the docket for the Program NPRM to help ensure that the public is aware of the listening session and understands the information that was provided to FinCEN in this session. FinCEN did not provide any new substantive information about either proposed rules or substantively respond to any comments during the listening session.

DATE: August 19, 2024

TIME: 1:00 p.m. – 2:00 p.m., Eastern Time

LOCATION: Virtual

ATTENDEES:

FinCEN and Treasury

* James Martinelli, Acting Associate Director, Policy Division
* Staff from FinCEN, Treasury’s Office of Terrorist Financing and Financial Crimes, and Treasury’s Office of the General Counsel

Other Attendees[[1]](#footnote-2)

* Alix Roberts, Bank Policy Institute (BPI)
* Molly McLane, Morgan Stanley
* Kevin Lampeter, HSBC
* Bernard Canepa, Securities Industry and Financial Markets Association (SIFMA)
* Margaret Edmunds, RW Baird
* Monty Engel, J.P. Morgan Chase (JPMC)
* Kelly Cooper, J.P. Morgan Chase
* Tracy Paradise, HSBC
* Alan Ketley, Wolfsberg Group
* Sharon Cohen Levin, Sullivan & Cromwell (representing BPI)
* Keara Reluzco, Barclays
* Logan Anderson, Charles Schwab
* Elizabeth David, Citibank
* Ainsley Cathcart, Citibank
* Erin Finger, Bank of America
* Tharinee Charintranont, Goldman Sachs
* Jon Easton, Goldman Sachs

SUMMARY

FinCEN noted at the outset that the comment period is currently open and closes on September 3, 2024, so participants should be aware that FinCEN will be taking notes and will include the notes in the public comment file. FinCEN also explained that it would not be providing substantive remarks on the proposed rule during the listening session and encouraged participants to submit comments through the Federal Register. FinCEN then asked for any reaction or general comments on the Program NPRM.

BPI stated that while it supports the goals of the NPRM, it believes that there were significant missed opportunities in shifting away from minimum anti-money laundering and countering the financing of terrorism (AML/CFT) program standards set by individual examiners to allowing financial institutions (FIs) to determine how to reallocate resources to incorporate the National AML/CFT Priorities (Priorities).[[2]](#footnote-3) BPI believes that the critical parts of the NPRM are in the preamble instead of in the regulatory text itself, and that financial institutions should have explicit authority to reallocate resources based on their judgment, including which risk assessment process to use, how to incorporate the Priorities, and how often to update the risk assessment. BPI believes that examiners should give financial institutions a certain amount of deference, and that since examiners are also focused on safety and soundness, FinCEN is better positioned to set standards and determine whether banks are taking a risk-based approach. Without greater deference, BPI believes that the rule will be additive for financial institutions and will not alter examiners’ current practices.

The comment letter that BPI will submit will explicitly ask that the final rule grant financial institutions the discretion to reallocate resources from low to higher-risk activities, and will offer a three-pronged approach to AML/CFT program requirements: (1) an AML/CFT program should assess and manage risk as informed by the risk assessment processes, including the Priorities and the FI’s business activities, as appropriate; (2) a program should be reasonably designed to promote compliance; and (3) a program should report information that the institution reasonably believes is highly useful to law enforcement and government authorities. BPI believes that the final rule should replace what it views to be a prescriptive risk assessment process laid out in the Program NPRM with a more holistic and deferential approach and, in particular, that the use of the Priorities and the timing of updates to the risk assessment should be more flexible.

BPI also expressed concern about the six-month effective date and argued that two years would be needed. Further, BPI believes that the final rule should allow financial institutions to continue using offshore personnel to conduct AML/CFT program activities, with only senior management required to remain in the United States subject to FinCEN and U.S. regulators. BPI requested confirmation that a financial institution’s decision to innovate rests with the institution. BPI recommended that FinCEN also consult with the Federal Banking Agencies (FBAs) to ensure consistency in the application of FinCEN’s rules and supervision of the new rule.

SIFMA expressed agreement with BPI and noted that FinCEN appears to provide flexibility in the preamble of the NPRM but SIFMA expressed concern about future enforcement and examination. SIFMA also stated that if financial institutions are not able to use their existing risk assessment processes and if they are required to move staff onshore under the final rule, then implementation could not be done in six months. Financial institutions would need two to three years. RW Baird also stated that the NPRM’s risk-based approach is additive in nature and that there is a need for a more deferential approach.

HSBC stated that the preamble in the Program NPRM captures the spirit of the Anti-Money Laundering Act (AMLA) but that the rule text has omissions and that certain rule provisions are vague. HSBC explained that the rule text should clearly outline principles for what constitutes “effective, risk-based, and reasonably designed,” and should explicitly permit financial institutions to allocate resources to higher priorities and risks so there is not an expectation that they must identify all risks.

JPMC requested more clarification of requirements for the risk assessment process laid out in the Program NPRM. JPMC believes that in the preamble and the rule text there are two notions of a risk assessment: (1) ongoing assessment of risk embedded in AML controls, and (2) firm-wide risk assessment that is a static annual exercise and retroactive rather than forward looking. JPMC requested that the final rule text change risk assessment process to “processes” so that financial institutions can assess risk according to their own risk profile. In JPMC’s view, this small change would add value and help avoid a new burden. JPMC also requested a two-year implementation period.

Wolfsberg Group agreed with the other speakers and highlighted a few areas. First, with respect to the rule text regarding shifting resources from low to high-risk activities, Wolfsberg Group stated that there is a concern that the rule text is not clear enough to be supported in the examination process, and its members are concerned that this language will be additive. Second, Wolfsberg Group agrees that risk assessment “process” should be changed to “processes,” and this is very important since the current annual risk assessment is more burdensome than the benefits. Wolfsberg Group also noted that “effectiveness” is a very important concept, but in its view, the NPRM does not define or explain it. Wolfsberg Group has tried to define “effectiveness” in the past and believes that without more clarity in the rule, the rule requirements will be interpreted in different ways. Wolfsberg Group also generally preferred the language in the preamble of the Program NPRM over the language in the rule text.

JPMC agreed with the other speakers and wanted to focus on the factors that are required to go into the risk assessment process. JPMC believes that the reference to suspicious activity reports (SARs) and currency transaction reports (CTRs) in the risk assessment process is a concern because section 6202 of AMLA discusses a reverse process: the National Priorities go into the risk assessment and that directs SAR filing. JPMC stated that the NPRM suggests financial institutions must take the output of the SARs and feed that to the risk assessment, but JPMC believes this is not consistent with the text or spirit of AMLA. JPMC believes that financial institutions should be able to choose whether or not to feed SAR output into the risk assessment but doing so should not be a requirement.

JPMC also expressed a concern about the requirement to update risk assessments because the language in the proposed rule text suggests this must be done both on a periodic basis and when there are material changes. JPMC viewed the language in the preamble as clearer. JPMC stated that past guidance and the Federal Financial Institutions Examination Council (FFIEC) manual do not include a requirement to update the risk assessment on a “periodic basis,” and JPMC believes that the final rule text should clarify that the update occur on a periodic basis or when there are material changes.

Wolfsberg Group agreed that the idea of feeding SARs filed into the risk assessment process is flawed in the absence of feedback about whether the SARs are highly useful. Wolfsberg Group believes that increasing the number of SAR filings does not correlate on a reduction in crime, and the focus should be on better reporting not more reporting.

Bank of America agreed with Wolfsberg Group and JPMC on this point, stating that BSA reporting driving the risk assessment process is backward looking. Each individual financial institution’s internal processes should be based on its risk attributes, but in Bank of America’s view, the NPRM does not allow that. Bank of America views that the ability for institutions to allocate resources away from low-risk areas should be more explicitly stated in the rule text.

FinCEN provided a final opportunity for the participants to provide any further comment or reactions to the NPRM. Since there were no additional comments, FinCEN concluded the listening session.

1. Individual names based on virtual presence. [↑](#footnote-ref-2)
2. *See* AML/CFT Priorities (June 30, 2021), available at [*https://www.fincen.gov/​news/​news-releases/​fincen-issues-first-national-amlcft-priorities-and-accompanying-statements*](https://www.fincen.gov/news/news-releases/fincen-issues-first-national-amlcft-priorities-and-accompanying-statements)*.* [↑](#footnote-ref-3)