**Second 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 20, 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-1)

* Jennifer Gardner, Marquette Bank
* Carol Slattery, Regions Bank
* Kim Lacey, KeyBank
* Mark Twombly, KeyBank
* Luke Martone, America’s Credit Unions
* Rhonda Whitley, Independent Community Bankers of America (ICBA)
* Jennifer Papenhagen, Fifth Third Bank
* Patricia O’Connell, America’s Credit Unions
* Tawny Giles, Fifth Third Bank

SUMMARY

FinCEN noted at the outset that we are currently in the comment period so participants should be aware that we are 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 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.

KeyBank appreciated the mention of effectiveness in the Program NPRM but stated that it would be helpful to have a definition of what effectiveness means and how it is measured, or at the very least what it does not mean. KeyBank conveyed that financial institutions want to ensure their AML/CFT programs are identifying and reporting suspicious activity to the government and exiting the customer if there is something illegal. However, KeyBank explained that, at times, a gray area can exist where it is not clear that an activity is illegal. KeyBank believes that FinCEN should clarify that effectiveness should not be measured by 20/20 hindsight – financial institutions do the best they can, but they are not going to get it right 100 percent of the time.

Marquette Bank stated that in the NPRM there are examples of distribution channels, but distribution channels at financial institutions differ; thus, it would be helpful if FinCEN provided context on how to identify “distribution channels” so that financial institutions could assess risk appropriately. Marquette Bank stated it would also be helpful for FinCEN to provide more context about what “intermediaries” the proposed rule expected financial institutions to consider when assessing risk. KeyBank agreed that it would be helpful for the NPRM to include more examples of distribution channels and intermediaries since they view investment advisors and Banking as a Service as intermediaries. Marquette Bank also believes that it would be helpful for the National AML/CFT Priorities[[2]](#footnote-2) to have definitions because terms like “fraud” are very broad.

Fifth Third Bank explained that, in its view, to date, financial institutions have had flexibility in how they conduct risk assessments and what kind of data they use. Fifth Third Bank asked if the Federal Banking Agencies plan to update the Federal Financial Institutions Examination Council (FFIEC) manual and whether there would be more prescriptive requirements around quantitative analysis in the risk assessment. FinCEN did not respond to the question.

KeyBank requested a more explicit statement in the final rule that banks are able to reallocate resources from lower value work to higher value work since the industry is concerned that the NPRM’s requirements would be additive instead of allowing reallocation of resources. KeyBank believes that currently there is too much of a focus on administrative tasks instead of high-risk activity, and it would be helpful for the rule to explicitly empower banks to make more decisions about use of resources. Fifth Third Bank agreed with this concern and stated that the rule should allow financial institutions to direct more attention on higher risk customers since today financial institutions are not filing the bulk of their suspicious activity reports (SARs) on these kinds of customers.

FinCEN asked if there are any reactions to the proposed purpose statement, and KeyBank responded that it would be helpful to have some of that language in the regulation text.

Marquette Bank asked if there was any consideration for extending the timeframe for the effective date from six months. Marquette Bank explained that, although it does much of what is in the proposed rule already, six months would be a very short period to comply with the proposed rule across all institutions.

America’s Credit Union agreed that a six-month period seemed too short for many financial institutions to comply with the proposed rule, although most credit unions are already fulfilling many of the NPRM’s proposed requirements. America’s Credit Union also stated that credit unions have a unique board structure in that their boards are made up of volunteers, and it may be difficult for some credit unions to have an active and engaged board of directors.

FinCEN welcomed comments to the Federal Register on the compliance date.

KeyBank requested clarification and further guidance on the idea in the NPRM of incorporating SARs and currency transaction reports (CTRs) into the risk assessment since it is not clear what was intended, especially concerning CTRs. KeyBank stated that an example of how this is supposed to work would be helpful.

Marquette Bank expressed the need to work on fixing SAR reporting if SAR data is going to be a consideration for the risk assessment.

Fifth Third Bank views the NPRM as seeking to give financial institutions the flexibility to bank any legal customer where it is lawful to do so and stated that there seemed to be a push not to de-risk any particular industry. Fifth Third Bank believes the NPRM allows financial institutions to onboard customers and not deny them access because they are in a certain industry, but institutions would need to devote more resources to these types of customers. The bank further stated that financial institutions do not want to be criticized if they choose not to bank a certain customer, which can be a business decision. KeyBank agreed and added that small credit unions would not have the infrastructure to support foreign correspondent banking and that it would not be a good use of resources. KeyBank believes that financial institutions should be able to make a risk-based decision on when they choose not to bank based on their size and the complexity involved.

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-1)
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-2)