**Fourth 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 28, 2024

TIME: 1 p.m. – 2 p.m., Eastern Time

LOCATION: Virtual

ATTENDEES:

FinCEN and Treasury

* Jared Elosta, Senior Regulations Advisor, Office of Regulatory Policy, 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)

* Harry Cupp, Chair of AML Committee, Financial & International Banking Association (FIBA) and BSA Officer, Sunwest Bank
* Marina Olman, Chair of Legal & Regulatory Committee, Greenberg Traurig (representing FIBA)
* Kathy Tomasofsky, Money Services Business Association (MSBA)
* Andrew Park, Americans for Financial Reform
* Zorka Milin, The FACT Coalition
* Dr. Debbie Almontaser, Yemeni American Merchants Association (YAMA)

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.

FIBA acknowledged the necessity of the proposed rule as a requirement under the Anti-Money Laundering Act of 2020 (AML Act). However, both FIBA and MSBA shared concerns about the burdens that would be imposed on smaller financial institutions, particularly money services businesses (MSBs), small fintechs, and gaming companies, by the proposed standardized requirement for financial institutions to have a risk assessment process. FIBA also stated that while larger financial institutions, primarily at the banking level, generally already have a risk assessment process, some international banks have implementation and cost concerns with the proposed risk assessment requirement. MSBA stated most MSBs have a risk assessment process, but the proposed rule would require MSBs to reevaluate those processes to ensure they comply with the rule.

MSBA raised examination-related and de-risking concerns to the degree bank examiners scrutinize MSBs as customers of banks. According to MSBA, banks may determine that it is not cost effective in this volatile banking environment to work with higher risk companies given the high level of investment needed to better understand the associated illicit finance risks. MSBA stated that these conditions can cause banks to de-risk even more.

FIBA stated it had proactively conducted an internal exercise of incorporating the elements proposed in the NPRM to a financial institution’s current risk assessment. FIBA indicated it had shared its results with other members of the financial services industry and found a high level of variability in approaches. FIBA requested that there be a standard that regulators can use to evaluate risk assessments consistently across financial institutions and that FinCEN provide further guidance on this issue. FIBA further requested clarity on both the timing and definition of material changes that warrant updates to a financial institution’s risk assessment. FIBA also asked FinCEN to address the distinction between updating an enterprise-wide, or firm-wide, risk assessment, which is highly resource- and time-intensive, and a more targeted risk assessment based on a new product or service, or new business line.

FIBA also raised implementation and burden concerns about the proposed requirement to ensure those individuals with the duty to maintain and enforce an anti-money laundering and countering the financing of terrorism (AML/CFT) program must be located in the United States. FIBA believes that there would be a substantial burden associated with having foreign-located staff that assist with AML/CFT functions such as customer due diligence and suspicious activity monitoring being required to be physically located in the United States. FIBA stated the benefits of foreign-located staff for financial institutions with better access to specialized resources and expertise such as large investigative units. FIBA suggested that as long as the head of the AML/CFT program is located in the United States, then it should not matter where the staff is located. MSBA stated that it had interpreted the proposed requirement differently than FIBA, concluding that third parties located outside of the United States would be permissible as long as the Bank Secrecy Act (BSA) officer is located in the United States.

YAMA explained the great hardships faced by its members and organizations in accessing financial services. YAMA asked FinCEN to set minimum standards in the rule regarding the credibility of the information sources financial institutions use for investigations related to their risk assessments.

MSBA also stated difficulties with maintaining banking services such as Zelle, and stated that suspended or rejected payments impose burdens on business owners who must expend time and resources in contacting their financial institutions.

MSBA also found the burden estimates in the NPRM of $600 for a financial institution’s board of directors to review the AML/CFT program to be significantly too low. It expects large costs with formalizing and documenting AML/CFT programs.

FIBA advocated for more clarity on certain terms in the proposed rule such as the term “effective” AML/CFT programs, board oversight, and innovation. FIBA asked if the BSA officer should expect to report directly to the board under the proposed rule. FIBA asked whether financial institutions would be expected to have certain controls around innovation, and how they would be expected to incorporate innovation in their AML/CFT programs. FIBA asked FinCEN to consider that the technology associated with innovation was constantly changing, and to be cognizant that financial institutions do not have a technology background, so there is an education component to innovation for third-party providers and financial institutions. FIBA also noted that its members found it challenging to monitor innovation. FIBA requested more clarity from FinCEN in terms of perspectives and guidance.

FIBA also conveyed that the proposed rule’s 6-month compliance date would be a challenge for smaller financial institutions. FIBA stated that many financial institutions have a 12-18 month cycle for updating their enterprise-wide, or firm-wide, risk assessments, and asked FinCEN to consider that cycle when establishing an effective date. Otherwise, according to FIBA, there may be financial institutions that will have to update their risk assessments in 6 months rather than in accordance with their 12-18 month cycle.

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)