



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

August 16, 2024

Via Email

Dear Tribal Leader:

On behalf of the U.S. Department of the Treasury (Treasury), I invite you to a consultation on a Notice of Proposed Rulemaking (NPRM) entitled “[Anti-Money Laundering and Countering the Financing of Terrorism Programs](#)”¹ issued by Treasury’s Financial Crimes Enforcement Network (FinCEN). Pursuant to the Anti-Money Laundering Act of 2020, the NPRM proposes revisions to strengthen and modernize the anti-money laundering and countering the financing of terrorism (AML/CFT) programs maintained by financial institutions—including casinos and other financial institutions that may be owned by Tribal governments. The consultation will be held virtually on Friday, September 13, 2024, at 1:00 p.m. ET. [You may register for the consultation here.](#)

Background

Enacted in 1970 and amended several times since, the Currency and Foreign Transactions Reporting Act, generally referred to as the Bank Secrecy Act (BSA), is designed to combat money laundering, the financing of terrorism, and other illicit finance activity risks (collectively, ML/TF). Congress has authorized the Secretary of the Treasury to administer the BSA, and that authority has been delegated to the FinCEN. Under the BSA, financial institutions must establish AML programs to ensure compliance with the BSA and guard against ML/TF. Regulations have been issued to specify how financial institutions should comply with this requirement. Financial institutions include casinos and banks that may be operated by a Tribe.²

In 2021, Congress passed the Anti-Money Laundering Act of 2020 (AML Act)³ to comprehensively update the BSA to “modernize anti-money laundering and countering the financing of terrorism laws to adapt the government and private sector response to new and emerging threats.”⁴ The AML Act provides that AML/CFT programs are to be “risk-based” and

¹ 89 FR 55428 (July 3, 2024).

² For the purposes of the program rules, the term “financial institutions” include: banks; casinos and card clubs (casinos); money services businesses (MSBs); brokers or dealers in securities (broker-dealers); mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or finance companies; and housing government sponsored enterprises.

³ The AML Act is a component of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Public Law 116-283 (Jan. 1, 2021). The aspects of the AML Act most relevant to this consultation are codified in 31 U.S.C. 5318(h).

⁴ AML Act, section 6002(2)–(4) (Purposes).

“reasonably designed to assure and monitor compliance with the requirements of [the BSA].”⁵ FinCEN is proposing a rule consistent with this new statutory requirement, and it is that proposed rule that is the subject of the consultation.

While financial institutions have long maintained AML/CFT programs under existing regulations, this proposed rule would amend those regulations to expressly require that such programs be effective, risk-based, and reasonably designed, enabling financial institutions to focus their resources and attention in a manner consistent with their risk profiles.

Further, the NPRM proposes to fulfill the AML Act’s requirement that FinCEN incorporate government-wide AML/CFT Priorities (updated at least once every four years) into revised program rules. FinCEN issued the inaugural AML/CFT Priorities on June 30, 2021.⁶ This NPRM proposes to incorporate them into financial institutions’ program obligations.

Lastly, the proposed rule reflects certain broader considerations for an effective and risk-based AML/CFT framework as envisioned by the AML Act. For example, as required by the Act, FinCEN has considered the goal of extending financial services to the underbanked and facilitating financial transactions while preventing criminal persons from abusing formal or informal financial services networks. Through its emphasis on risk-based AML/CFT programs, the proposed rule seeks to avoid one-size-fits-all approaches to customer risk that can lead to financial institutions declining to provide financial services to entire categories of customers.

Overview of the Proposed Changes

FinCEN has expected financial institutions to adopt risk-based AML/ CFT programs. The proposed rule would codify these expectations and, consistent with the AML Act, require financial institutions to establish AML/CFT programs that include, at minimum, the following components: (1) a risk assessment process; (2) reasonable management and mitigation of risks through internal policies, procedures, and controls; (3) a qualified AML/CFT officer; (4) an ongoing employee training program; (5) independent, periodic testing conducted by qualified personnel of the financial institution or by a qualified outside party; and (6) other requirements (such as customer due diligence) depending on the type of financial institution.

⁵ 31 U.S.C. 5318(h)(2)(B)(iv).

⁶ See AML/CFT Priorities (June 30, 2021), available at <https://www.fincen.gov/news/news-releases/fincen-issues-firstnational-amlcft-priorities-and-accompanying-statements>. As required by 31 U.S.C. 5318(h)(4)(C), the AML/CFT Priorities are consistent with Treasury’s National Strategy for Combating Terrorist and Other Illicit Financing (May 16, 2024), available at <https://home.treasury.gov/news/press-releases/jy2346>. The AML/CFT Priorities are supported by Treasury’s National Risk Assessments on Money Laundering, Terrorist Financing, and Proliferation Financing (Feb. 7, 2024), available at <https://home.treasury.gov/news/press-releases/jy2080>. The AML/CFT Priorities set out the priorities for AML/CFT policy as required by the AML Act. As also required by 31 U.S.C. 5318(h)(4)(B), the Secretary, in consultation with the Attorney General, Federal functional regulators, relevant State financial regulators, and relevant national security agencies, must update the AML/CFT Priorities not less frequently than once every four years.

Importantly, program components (2) through (5) are currently in existing program rules and component (6) is in existing program rules for banks. Proposed revisions to these components are mostly changes to modernize the program rules and promote clarity and consistency. The key changes in the proposed rule involves the risk assessment process as described below. Other proposed changes that may be of interest to Tribes involve board governance, compliance by persons in the United States, and changes specific to casinos that are covered below.

Risk Assessment Process

Under the proposed rule, financial institutions would be expected to use the results of their risk assessment process to develop risk- based internal policies, procedures, and controls in order to manage and mitigate risks, provide highly useful information to government authorities, and further the purposes of the BSA. While many financial institutions already employ risk assessment processes, doing so is not currently a program rule requirement for all financial institutions. The proposed rule standardizes the risk assessment process, which may be new for some types of financial institutions such as banks and casinos. Specifically, the proposed rule would require a financial institution's risk assessment process to identify, evaluate, and document the financial institution's ML/TF risks with the following considerations:

- 1) the AML/CFT Priorities issued by FinCEN,⁷ as appropriate;
- 2) the ML/TF risks of the financial institution based on the financial institution's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and
- 3) reports filed by the financial institution pursuant to 31 CFR chapter X.

Additionally, the proposed rule provides that financial institutions would have to review and update their risk assessments using the process proposed in this rule on a periodic basis, including, at a minimum, when there are material changes to a financial institution's ML/TF risks.

Board Oversight

The proposed rule would also require a financial institution's AML/CFT program to be approved and overseen by the financial institution's board of directors or equivalent governing body. The existing program rules for casinos do not contain specific board approval or oversight requirements. The proposed rule would modify the program rules to make the AML/CFT program approval and oversight requirements consistent across financial institution types.

⁷ Section 6101 of the AML Act provides that the review and incorporation by a financial institution of the AML/CFT Priorities, as appropriate, into a financial institution's AML/CFT program must be included as a measure on which a financial institution is supervised and examined for compliance with the financial institution's obligations under the BSA and other AML/CFT laws and regulations. FinCEN is implementing this statutory requirement by proposing that financial institutions review and consider the AML/CFT Priorities as part of their risk assessment process.

Persons in the United States

The proposed rule reflects the requirement in the BSA, as amended by the AML Act, that the duty to establish, maintain, and enforce a financial institution's AML/CFT program shall remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, the Secretary of the Treasury and the appropriate Federal functional regulator.

Changes Specific to the AML/CFT Program Rule for Casinos

Finally, the NPRM proposes a change specific to casinos' AML/CFT programs. The proposed rule would remove the requirement in the existing rule that each casino program provide for "the use of automated programs to aid in assuring compliance" if the casino has "automated data processing systems."⁸ The proposed rule also would remove a similar provision for automated data processing systems for the AML/CFT program requirements for money services businesses (MSBs). This change is not meant to eliminate any applicable, substantive requirements for casinos and MSBs, but to reflect the risk-based approach taken across the various other program rules.

Consultation Content

Pursuant to [Executive Order 13175](#), the Presidential Memorandum for Tribal Consultation and Strengthening Nation to Nation Relationships; the Presidential Memorandum on Uniform Standards for Tribal Consultation; and Treasury's [Tribal Consultation and Coordination with Tribal Nations Policy](#), Treasury is commencing Tribal consultation for Tribal-owned financial institutions, including Tribal-owned casinos, on this NPRM.

Specifically, Treasury requests assistance of Tribal Leaders, or their designated employees with authority to act on their behalf, in addressing the following topics:

1. The NPRM sets forth six categories of minimum requirements for an effective, risk-based, and reasonably designed AML/CFT program. The first category—the risk assessment process—contains minimum standards that are described above. What comments or recommendations do you have about the risk assessment process criteria?
2. The proposed rule requires that the board (or equivalent governing body) approve and have oversight of the AML/CFT programs. What comments or recommendations do you have about this requirement?
3. The proposed rule provides that individuals responsible for AML/CFT program compliance must be located in the United States. For those that have multinational operations or personnel outside of the United States, what comments and recommendations do you have regarding this requirement?
4. What, if any, difficulties do financial institutions anticipate when incorporating these proposed changes into their existing compliance processes? What recommendations do you have to reduce these identified challenges?

⁸ [31 CFR 1021.210\(b\)\(2\)\(vi\)](#).

5. What other questions or feedback do you have about any other aspects of the proposed rule that are not covered by the above topics?

We respectfully request that each Tribe register one person to participate in the consultation. All others are welcome to register as listen-only participants.

In addition to Tribal consultation, Treasury is accepting written or electronic comments received by November 1, 2024, at 11:59 p.m. Alaska Time.⁹ Written comments should be sent to tribal.consult@treasury.gov.

Please note that consultations are off the record and not for press purposes.

We will send out an Agenda and a list of registered speakers before the consultation.

We hope that you will be able to join us for this important discussion and value your participation.

Sincerely,

Chief Lynn Malerba
Treasurer
U.S. Department of the Treasury

⁹ The original comment deadline of October 18, 2024, was extended based on requests received during the September 13, 2024, Tribal consultation.