



AML program effectiveness: A new focus on outcomes for law enforcement

There is a growing consensus among regulators, legislators, law enforcement, and industry that compliance with AML requirements has evolved into a layered and inefficient system that does not optimally serve the needs of law enforcement.¹ In many instances, this has resulted in regulated financial institutions (FIs) spending time on activities that may do little to mitigate the risks associated with financial crime. In a newly released Advance Notice of Proposed Rulemaking (ANPRM) on AML Program Effectiveness, the path forward could potentially become clearer.²

The ANPRM introduces a new proposed definition of AML program effectiveness, the concept of Strategic AML Priorities (Priorities), and a possible regulatory requirement for risk assessments. In a welcome and potentially fundamental change, the primary focus for AML programs would shift from maintaining technical compliance to focusing on outcomes and improving the usefulness of reporting to law enforcement in priority areas. Further, the ANPRM acknowledges that FIs “may reallocate resources from other lower-priority risks or practices to manage and

mitigate higher-priority risks, including any identified as Strategic AML Priorities.” It also explicitly reinforces the overall goal of facilitating the ability of FIs to leverage new technologies and techniques, and discard inefficient and unnecessary practices.

There are numerous challenges associated with making this pivot a reality including addressing the question of how examiners and auditors will evaluate programs against these new expectations. The ANPRM seeks input on these and other challenges that will need to be addressed as the rulemaking process continues over the coming years.

Despite the associated implementation challenges, the potential shift in focus outlined in the ANPRM is a positive and welcome signal from the regulatory community. When considered in concert with recent regulatory guidance, FIs are presented with an immediate opportunity to rethink how they will drive AML program effectiveness in line with the concept of Priorities and direction outlined in the ANPRM.³ This will be a long-term journey that can also deliver significant benefits in terms of efficiency and return on compliance spend.



On September 16, 2020, the Financial Crimes Enforcement Network (FinCEN) signaled the start of a multi-year effort to fundamentally reform the anti-money laundering (AML) regime in the United States

A new definition of AML effectiveness

The ANPRM seeks input on a new definition of an effective and reasonably designed AML program that:

- Identifies, assesses, and reasonably mitigates the risks resulting from illicit financial activity, consistent with both the institution's risk profile and the Priorities;
- Assures and monitors compliance with the recordkeeping and reporting requirements of the Bank Secrecy Act (BSA); and,
- Provides information with a high degree of usefulness to government authorities, consistent with both the institution's risk assessment and the Priorities.

If implemented, FIs will be required to: more deeply integrate the Priorities into their risk assessments and operations; enhance their AML programs (including Know Your Customer (KYC) and monitoring controls); and demonstrate how the results of these changes assist law enforcement. In the new regime, auditors and examiners would need to alter the focus of their reviews to address the new definition of an effective AML program, including its impact on governance, culture, training, and operational controls.

While the implementation timeline is uncertain, going forward FIs should focus their attention on the following challenges:

- Enhancing outcomes for law enforcement in Priority areas
- Refocusing resources on higher value AML activities
- Rethinking AML monitoring, investigations, and information sharing

Enhancing outcomes for law enforcement in Priority areas

It is reasonable to expect that the Priorities will include highly dynamic threats such as cybercrime, human trafficking, proliferation financing, terrorist financing, as well as emerging risks such as coronavirus related frauds. For identified Priorities, FIs should think through how each area of their AML program contributes to the production of highly useful information for law enforcement. FIs should also expect that law enforcement, through existing

and new channels, will also share more specific information on risks, threats, and typologies with FIs related to these Priorities. The ANPRM also acknowledges that future reforms will seek to provide a framework to recognize collaboration with law enforcement as an indicator of effectiveness.

FIs could orient their AML programs toward the Priorities through several avenues:

- FIs could adapt their risk assessment processes and capabilities to dive deeper into the Priorities that apply to their business, leveraging additional information and input from a variety of public and private sector sources to increase knowledge of typologies and red flags.
- FIs could review their own history of suspicious activity reporting and law enforcement interaction to gain insight into what was provided and could be expanded. From there, FIs could: embed those Priority insights in control enhancements, which could range from:
 - Realigning due diligence questions in certain situations,
 - Enhancing monitoring to address new red flags, and
 - Developing additional investigation procedures to provide information law enforcement has identified as useful.
- An FI's understanding of its ability to provide highly useful information to law enforcement can be improved through interaction and dialogue with law enforcement through traditional channels (31(a) requests, subpoenas, and demand letters) as well as new mechanisms.

Perhaps most importantly, if these reforms progress, each FI would likely need to develop metrics and examples to demonstrate alignment with Priorities and the associated value of reporting to law enforcement.

FinCEN is also seeking input on potential changes to independent testing needed in order to meet the objectives outlined in the ANPRM. This is a critical topic as ultimately if reform is to be successful, examiners, auditors, and other program evaluators will need to be on the same page in terms of how to measure and evaluate AML program effectiveness under the new definition put forth in the ANPRM.

Specific challenges and questions for FIs

- If required in the future, how would you **pivot your AML program to focus on the Priorities?**
 - How and at what frequency would you adapt your current risk assessment practices and capabilities to address the new Priorities?
 - Do you have the required insight and information about Priorities that impact your business?
 - How would you create more useful information for law enforcement?
- How would the **effectiveness of your FI's AML program be evaluated in the future** by the board, auditors, and examiners?
 - What are the possible metrics and examples that could be used to demonstrate effectiveness?
 - How would independent testing of AML programs change, and how would



examiners and auditors determine if FIs have done “enough” to demonstrate focus on the Priorities and assess the value of the information produced?

- What law enforcement feedback could be used to focus and refine your program?

Refocusing resources on higher value AML activities

The ANPRM reinforces, in several aspects, an objective of facilitating the ability of FIs to continually reallocate resources from lower to higher value activities. This will require FIs to be more agile in making AML program changes.

To take advantage of this opportunity, FIs should adopt a consistent, repeatable, and defensible approach to procedural changes that can be applied across AML program areas and satisfy auditors and examiners. A change process with appropriate governance, documentation, and sign off will be key to realign resources on more high value-added activities and, thereby, increasing return on investment for AML compliance spend, which is high on the agenda for many FIs.

By way of example, recent Frequently Asked Questions (FAQs) and guidance released by the regulatory community clarify requirements in a number of important areas. FIs are able to reference this guidance and reexamine their procedures, change

what they are doing, and reallocate resources to meet the objectives of the intended reform.⁴ Examples of areas where this may be appropriate are negative news screening on all customers, frequently conducting periodic reviews for low and medium risk customers with no material trigger events as well as Politically Exposed Person (PEP) screening of US domestic customers/transactions.

Key challenges and questions for FIs

- Given the expectations outlined in the ANPRM, how would you create a repeatable change process to drive ongoing transformation and resource redeployment to high value activity?
 - How would you determine which activities are delivering low AML risk management value?
 - How would you document, justify, and defend AML program risk and procedural changes?
 - Where should you start? What's the right strategy? How could you scale the effort and effectively reallocate resources?

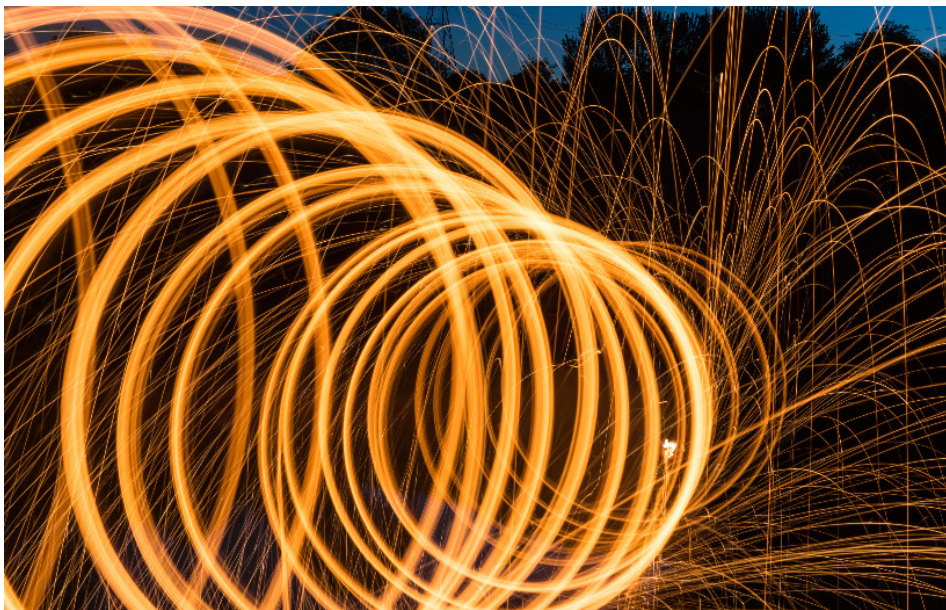
Rethinking AML monitoring, investigations, and information sharing

In order to meet the objectives of providing highly useful information to law enforcement and refocusing effort toward higher value AML activities, FIs should focus on enhancing AML monitoring and investigations. Under the current AML regime, FIs dedicate

significant resources to routine activities performed by lower level staff, such as clearing of false positive monitoring alerts and documenting case dispositions. In line with the ANPRM's stated objective of facilitating industry's ability to leverage new technologies, FIs should consider rethinking their approach to AML monitoring and investigations, including automating routine activity, reducing false positives through advanced analytical approaches, and further experimenting with advanced next generation (NextGen) models. Models that leverage behavioral analytics, machine learning, and advanced network analysis, are designed to more effectively identify complex patterns of suspicious behavior with far fewer false positives.

Key challenges and questions for FIs

- How can your FI enrich and automate current monitoring, investigating, and reporting approaches to deliver more useful information for law enforcement?
 - Can routine activities be automated to free up resources and utilize standardized processes?
 - Are there areas delivering low AML risk management value, which could be scaled back?
 - What strategies and analytics can be deployed to reduce false positives coming out of your FI's monitoring system(s)?
 - How will your FI better utilize and share information and intelligence from a broader array of internal, external, and public sources?
- How can you appropriately leverage emerging tech and NextGen AML detection models?
 - Can a NextGen approach help achieve the goal of identifying more complex suspicious activity?
 - What are the data, technology, modeling, and regulatory challenges associated with developing, testing, validating, and implementing such models?





Conclusion

The ANPRM and recent regulatory guidance are welcome signals that provide an immediate opportunity for FIs to rethink and influence the focus of their AML programs and start on an effectiveness journey that can deliver significant benefits in terms of efficiency, return on compliance spend, and providing highly useful information to law enforcement.

FIs should consider taking the following actions in the near-term:

- Evaluating how risk assessment processes could be modified to more deeply address expected Priorities, and identifying metrics and examples that could be used to demonstrate effectiveness.
- Assessing areas of low added risk management value, in light of recent regulatory guidance, for potential reductions and/or reallocation of resources.
- Considering ways to further enrich, automate, and innovate AML monitoring and investigations, and to deliver more valuable information to law enforcement in a more efficient and effective manner.

Going forward, Deloitte Risk & Financial Advisory will be monitoring the developments in AML reform through our new series, “AML Effectiveness: Transforming AML Programs” that will highlight practical strategies and approaches that FIs can use to pivot their AML programs to meet new expectations for effectiveness, and create highly useful information for law enforcement in order to better protect the US financial system.

Endnotes

1. Federal Reserve Board of Governors (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA) and FinCEN, “Interagency Statement on Sharing Bank Secrecy Act Resources,” accessed September 16, 2020; FRB, FDIC, OCC, NCUA and FinCEN, “Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing,” accessed September 16, 2020; and, FRB, FDIC, OCC, NCUA and FinCEN, “Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision,” accessed September 16, 2020.
2. FinCEN, “FinCEN Seeks Comments on Enhancing the Effectiveness of Anti-Money Laundering Programs,” accessed September 16, 2020.
3. Federal Financial Institution Examination Council (FFIEC), “Federal and State Regulators Release Updates to BSA/AML Examination Manual,” accessed September 16, 2020; FinCEN, “Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions,” accessed September 16, 2020; FRB, FDIC, OCC, NCUA, and FinCEN, “Joint Statement on Bank Secrecy Act Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons,” accessed September 16, 2020.
4. FinCEN, “Frequently Asked Questions Regarding Customer Due Diligence (CDD) Requirements for Covered Financial Institutions,” accessed September 16, 2020; FRB, FDIC, OCC, NCUA, and FinCEN, “Joint Statement on Bank Secrecy Act Due Diligence Requirements for Customers Who May Be Considered Politically Exposed Persons,” accessed September 16, 2020.

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