

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network

31 CFR Chapter X (<https://www.ecfr.gov/current/title-31/chapter-X>)

Authority and Issuance

For the reasons set forth in the preamble, the U.S. Department of the Treasury and Financial Crimes Enforcement Network propose to amend 31 CFR parts 1010 (<https://www.ecfr.gov/current/title-31/part-1010>), 1020 (<https://www.ecfr.gov/current/title-31/part-1020>), 1021 (<https://www.ecfr.gov/current/title-31/part-1021>), 1022 (<https://www.ecfr.gov/current/title-31/part-1022>), 1023 (<https://www.ecfr.gov/current/title-31/part-1023>), 1024 (<https://www.ecfr.gov/current/title-31/part-1024>), 1025 (<https://www.ecfr.gov/current/title-31/part-1025>), 1026 (<https://www.ecfr.gov/current/title-31/part-1026>), 1027 (<https://www.ecfr.gov/current/title-31/part-1027>), 1028 (<https://www.ecfr.gov/current/title-31/part-1028>), 1029 (<https://www.ecfr.gov/current/title-31/part-1029>), and 1030 (<https://www.ecfr.gov/current/title-31/part-1030>) as follows:

PART 1010—GENERAL PROVISIONS

1. The authority citation for part 1010 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 2006, Pub. L. 114-41 (<https://www.govinfo.gov/link/plaw/114/public/41>), 129 Stat. 457; sec. 701, Pub. L. 114-74 (<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599; sec. 6403, Pub. L. 116-283 (<https://www.govinfo.gov/link/plaw/116/public/283>), 134 Stat. 4605.

2. Amend § 1010.100 by revising paragraphs (e) and (r) and adding paragraphs (nnn) and (ooo) to read as follows:

§ 1010.100 General definitions.

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(e) *Bank Secrecy Act*. Certain parts of the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the Bank Secrecy Act. These statutes are codified at 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>), 12 U.S.C. 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>), 18 U.S.C. 1956 (<https://www.govinfo.gov/link/uscode/18/1956>), 18 U.S.C. 1957 (<https://www.govinfo.gov/link/uscode/18/1957>), 18 U.S.C. 1960 (<https://www.govinfo.gov/link/uscode/18/1960>), and 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>) and notes thereto.

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(r) *Federal functional regulator*. (1) The Board of Governors of the Federal Reserve System;

- (2) The Office of the Comptroller of the Currency;
- (3) The Board of Directors of the Federal Deposit Insurance Corporation;
- (4) The National Credit Union Administration;
- (5) The Securities and Exchange Commission; or
- (6) The Commodity Futures Trading Commission.

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(nnn) *AML/CFT Priorities*. As used in this chapter, AML/CFT Priorities means the most recent statement of Anti-Money Laundering and Countering the Financing of Terrorism National Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>).

(ooo) *AML/CFT program*. As used in this chapter, an AML/CFT program means a system of internal policies, procedures, and controls meant to ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter and to prevent an institution from being used for money laundering, terrorist financing, or other illicit finance activity risks. The minimum requirements for a financial institution's AML/CFT program are governed by the applicable regulatory part.

3. Revise § 1010.210 to read as follows:

§ 1010.210 Purpose of Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) Program Requirement.

(a) The purpose of this section is to ensure that a financial institution implements an effective, risk-based, and reasonably designed AML/CFT program to identify, manage, and mitigate illicit finance activity risks that: complies with the Bank Secrecy Act and the requirements and prohibitions of this chapter; focuses attention and resources in a manner consistent with the risk profile of the financial institution; may include consideration and evaluation of innovative approaches to meet its AML/ CFT compliance obligations; provides highly useful reports or records to relevant government authorities; protects the financial system of the United States from criminal abuse; and safeguards the national security of the United States, including by preventing the flow of illicit funds in the financial system.

(b) Each financial institution (as defined in 31 U.S.C. 5312(a)(2) (<https://www.govinfo.gov/link/uscode/31/5312>) or (c)(1) (<https://www.govinfo.gov/link/uscode/31/5312>)) should refer to subpart B of its chapter X part for any additional anti-money laundering program requirements.

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PART 1020—RULES FOR BANKS

4. The authority citation for part 1020 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336

(<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56

(<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74

(<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

5. Revise § 1020.210 to read as follows:

§ 1020.210 AML/CFT program requirements for banks.

A bank must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the bank's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the bank's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4)

(<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the bank based on the bank's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the bank pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under this paragraph (a)(1) on a periodic basis, including, at a minimum, when there are material changes to the bank's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a bank's consideration, evaluation, and, as warranted by the bank's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified bank personnel or by a qualified outside party; and

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter);

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the bank's board of directors or, if the bank does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the bank's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

6. Amend § 1020.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1020.220 Customer identification program requirements for banks.

(a) * * *

(1) *In general.* A bank required to have an AML/CFT program under the regulations implementing 31 U.S.C. 5318(h) (<https://www.govinfo.gov/link/uscode/31/5318>), 12 U.S.C. 1818(s) (<https://www.govinfo.gov/link/uscode/12/1818>), or 12 U.S.C. 1786(q)(1) (<https://www.govinfo.gov/link/uscode/12/1786>) must implement a written Customer Identification Program (CIP) appropriate for the bank's size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the AML/CFT program.

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(iii) The other financial institution enters into a contract requiring it to certify annually to the bank that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the bank's CIP.

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PART 1021—RULES FOR CASINOS AND CARD CLUBS

7. The authority citation for part 1021 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74 (<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

8. Revise § 1021.210 to read as follows:

§ 1021.210 AML/CFT program requirements for casinos.

A casino must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the casino's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the casino's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the casino's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the casino based on the ☐ casino's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the casino pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the casino's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a casino's consideration, evaluation, and, as warranted by the casino's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program, including training in the identification of unusual or suspicious transactions, to the extent that the reporting of such transactions is required by this chapter, by other applicable law or regulation, or by the casino's own administrative and compliance policies;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified casino personnel or by a qualified outside party;

(6) Include procedures for using all available information to determine:

(i) When required by this chapter, the name, address, social security number, and other information, and verification of the same, of a person;

(ii) The occurrence of any transactions or patterns of transactions required to be reported pursuant to § 1021.320; and

(iii) Whether any record as described in subpart D of part 1010 of this chapter or subpart D of this part must be made and retained;

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the casino's board of directors or, if the casino does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the casino's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

10. Amend § 1021.410 by revising paragraph (b)(10) to read as follows:

§ 1021.410 Additional records to be made and retained by casinos.

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(b) * * *

(10) A copy of the AML/CFT program described in § 1021.210.

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PART 1022—RULES FOR MONEY SERVICES BUSINESSES

11. The authority citation for part 1022 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336

(<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56

(<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74

(<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

12. Revise § 1022.210 to read as follows:

§ 1022.210 AML/CFT program requirements for money services businesses.

A money services business, as defined by § 1010.100(ff) of this chapter, must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the money service business's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the money services business's AML/CFT program, including implementation of the components required under paragraphs (a) (2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the money services business's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4)

(<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the money services business based on the money services business's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the money services business pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the money services business's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks, ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a money services business's consideration, evaluation, and, as warranted by the money services business's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(i) Internal policies, procedures, and controls developed and implemented under this section must include provisions for complying with the requirements of this chapter including, to the extent applicable to the money services business, requirements for:

(A) Verifying customer identification, including as set forth in paragraph (a)(2)(iii) of this section;

(B) Filing reports;

(C) Creating and retaining records; and

(D) Responding to law enforcement requests.

(ii) A person that is a money services business solely because it is an agent for another money services business, as set forth in § 1022.380(a)(3), and the money services business for which it serves as agent, may by agreement allocate between them responsibility for development of internal policies, procedures, and controls required by this paragraph (a)(2). Each money services business will remain solely responsible for implementation of the requirements set forth in this section, and nothing in this paragraph (a)(2) relieves any money services business from its obligation to establish, implement, and maintain an effective AML/CFT program. □

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(iii) A money services business that is a provider or seller of prepaid access must establish, implement, and maintain procedures to verify the identity of a person who obtains prepaid access under a prepaid program and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Sellers of prepaid access must also establish, implement, and maintain procedures to verify the identity of a person who obtains prepaid access to funds that exceed \$10,000 during any one day and obtain identifying information concerning such a person, including name, date of birth, address, and identification number. Providers of prepaid access must retain access to such identifying information for five years after the last use of the prepaid access device or vehicle; such information obtained by sellers of prepaid access must be retained for five years from the date of the sale of the prepaid access device or vehicle.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the money services business or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the money services business's board of directors or, if the money services business does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the money services business's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the 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, FinCEN and the appropriate Federal functional regulator.

(d) A money services business must develop and implement an anti-money laundering program that complies with the requirements of this section on or before the end of the 90-day period beginning on the day following the date the business is established.

PART 1023—RULES FOR BROKERS OR DEALERS IN SECURITIES

12. The authority citation for part 1023 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74 (<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

13. Revise § 1023.210 to read as follows:

§ 1023.210 AML/CFT program requirements for broker-dealers.

A broker-dealer must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the broker-dealer's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the broker-dealer's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the broker-dealer's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the broker-dealer based on the broker-dealer's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the broker-dealer pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the broker-dealer's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a broker-dealer's consideration, evaluation, and, as warranted by the broker-dealer's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the broker-dealer or by a qualified outside party; and

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter).

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the broker-dealer's board of directors or, if the broker-dealer does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the broker-dealer's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) The AML/CFT program must comply with the rules, regulations, or requirements of the broker-dealer's self-regulatory organization that govern such programs, provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Securities Exchange Act of 1934 by the appropriate Federal functional regulator in consultation with FinCEN. □

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14. Amend § 1023.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1023.220 Customer identification programs for broker-dealers.

(a) * * *

(1) *In general.* A broker-dealer must establish, document, and maintain a written Customer Identification Program (“CIP”) appropriate for its size and the type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the broker-dealer's AML/CFT program required under 31 U.S.C. 5318(h) (<https://www.govinfo.gov/link/uscode/31/5318>).

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(iii) The other financial institution enters into a contract requiring it to certify annually to the broker-dealer that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the broker-dealer's CIP.

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PART 1024—RULES FOR MUTUAL FUNDS

15. The authority citation for part 1024 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74 (<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

16. Revise § 1024.210 to read as follows:

§ 1024.210 AML/CFT program requirements for mutual funds.

A mutual fund must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the mutual fund's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the mutual fund's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the mutual fund's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the mutual fund based on the mutual fund's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the mutual fund pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the mutual fund's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a mutual fund's consideration, evaluation, and, as warranted by the mutual fund's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the mutual fund or by a qualified outside party; and

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter).

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the mutual fund's board of directors or, if the mutual fund does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the mutual fund's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

17. Amend § 1024.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1024.220 Customer identification programs for mutual funds.

(a) * * *

(1) *In general.* A mutual fund must implement a written Customer Identification Program ("CIP") appropriate for its size and type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of the mutual fund's AML/CFT program required under the regulations implementing 31 U.S.C. 5318(h) (<https://www.govinfo.gov/link/uscode/31/5318>)."

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(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the mutual fund that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the mutual fund's CIP.

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PART 1025—RULES FOR INSURANCE COMPANIES

18. The authority citation for part 1025 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74 (<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

19. Revise § 1025.210 to read as follows:

§ 1025.210 AML/CFT program requirements for insurance companies.

An insurance company must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program applicable to its covered products.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the insurance company's risk profile that takes into account higher-risk and lower-risk □ customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the insurance company's AML/CFT program, including implementation of the components required under paragraphs (a) (2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the insurance company's money laundering, terrorist financing, and other illicit finance activity risks associated with its covered products, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the insurance company based on the insurance company's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the insurance company pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the insurance company's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for an insurance company's consideration, evaluation, and, as warranted by the insurance company's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. Internal policies, procedures, and controls developed and implemented by an insurance company under this section must include provisions for integrating the company's insurance agents and insurance brokers into its AML/CFT program and for obtaining all relevant customer-related information.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program. An insurance company may satisfy this requirement with respect to its employees, insurance agents, and insurance brokers by directly training such persons or verifying that persons have received training by another insurance company or by a competent third party with respect to the covered products offered by the insurance company; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the insurance company or by a qualified outside party. The testing must include an evaluation of the compliance of the insurance company's insurance agents and insurance brokers with their obligations under the AML/CFT program applicable to its covered products.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the insurance company's board of directors or, if the insurance company does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the insurance company's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) An insurance company that is registered or required to register with the Securities and Exchange Commission as a broker-dealer in securities will be deemed to have satisfied the requirements of this section for its broker-dealer activities to the extent that the company is required to establish and has established an AML/CFT program pursuant to § 1023.210 of this chapter and complies with such program.

PART 1026—RULES FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS IN COMMODITIES

20. The authority citation for part 1026 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307; sec. 701, Pub. L. 114-74 (<https://www.govinfo.gov/link/plaw/114/public/74>), 129 Stat. 599.

21. Revise § 1026.210 to read as follows:

§ 1026.210 AML/CFT program requirements for futures commission merchants and introducing brokers in commodities.

A futures commission merchant and an introducing broker in commodities must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the risk profile of the futures commission merchant or introducing broker in commodities that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the risks of the futures commission merchant or introducing broker in commodities, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the futures commission merchant or introducing broker in commodities based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the futures commission merchant or introducing broker in commodities pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the money laundering, terrorist financing, or other illicit finance activity risks of the futures commission merchant or introducing broker in commodities;

(2) Reasonably manage and mitigate money laundering, terrorist financing, or other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a

futures commission merchant's or an introducing broker's in commodities consideration, evaluation, and, as warranted by the futures commission merchant's or introducing broker's in commodities risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program;

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the futures commission merchant or introducing broker in commodities or by a qualified outside party;

(6) Include appropriate risk-based procedures for conducting ongoing customer due diligence, to include, but not be limited to:

(i) Understanding the nature and purpose of customer relationships for the purpose of developing a customer risk profile; and

(ii) Conducting ongoing monitoring to identify and report suspicious transactions and to maintain and update customer information. For purposes of this paragraph, customer information must include information regarding the beneficial owners of legal entity customers (as defined in § 1010.230 of this chapter); and

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (6) of this section, must be documented and approved by the board of directors or, if the futures commission merchant or introducing broker in commodities does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the board of directors, or equivalent governing body, of the futures commission merchant or introducing broker in commodities.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

(d) The AML/CFT program must comply with the rules, regulations, or requirements of the futures commission merchant's or introducing broker's in commodities self-regulatory organization that govern such programs, provided that the rules, regulations, or requirements of the self-regulatory organization governing such programs have been made effective under the Commodity Exchange Act by the appropriate Federal functional regulator in consultation with FinCEN.

22. Amend § 1026.220 by revising paragraphs (a)(1) and (a)(6)(iii) to read as follows:

§ 1026.220 Customer identification programs for futures commission merchants and introducing brokers.

(a) * * *

(1) *In general.* Each futures commission merchant and introducing broker must implement a written Customer Identification Program (CIP) appropriate for its size and the type of business that, at a minimum, includes each of the requirements of paragraphs (a)(1) through (5) of this section. The CIP must be a part of each futures commission merchant's and introducing broker's AML/CFT program required under 31 U.S.C. 5318(h) (<https://www.govinfo.gov/link/uscode/31/5318>).

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(6) * * *

(iii) The other financial institution enters into a contract requiring it to certify annually to the futures commission merchant or introducing broker that it has implemented its AML/CFT program, and that it will perform (or its agent will perform) the specified requirements of the futures commission merchant's or introducing broker's CIP.

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PART 1027—RULES FOR DEALERS IN PRECIOUS METALS, PRECIOUS STONES, OR JEWELS

23. The authority citation for part 1027 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307.

24. Amend § 1027.100 by revising paragraph (b)(4) to read as follows:

§ 1027.100 Definitions.

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(b) * * *

(4) For purposes of this paragraph (b) and § 1027.210, the terms “purchase” and “sale” do not include the purchase of jewels, precious metals, or precious stones that are incorporated into machinery or equipment to be used for industrial purposes, and the purchase and sale of such machinery or equipment.

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25. Revise § 1027.210 to read as follows:

§ 1027.210 AML/CFT program requirements for dealers in precious metals, precious stones, or jewels.

A dealer must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program applicable to the purchase and sale of covered goods.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the dealer's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the dealer's AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (6) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the dealer's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the dealer based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations;

(C) As applicable, the reports filed by the dealer pursuant to this chapter;

(D) The extent to which the dealer engages in transactions other than with established customers or sources of supply, or other dealers subject to this rule; and

(E) Whether the dealer engages in transactions for which payment or account reconciliation is routed to or from accounts located in a country whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371 (<https://www.govinfo.gov/link/uscode/22/2371>); designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member and with which designation the United States representative or organization concurs; or designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A (<https://www.govinfo.gov/link/uscode/31/5318A>) as warranting special measures due to money laundering concerns;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the broker's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, or other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a dealer's consideration, evaluation, and, as warranted by the dealer's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. The internal policies, procedures, and controls must assist the dealer in identifying transactions that may involve use of the dealer to facilitate money laundering, terrorist financing, or other illicit finance activity, including provisions for making reasonable inquiries to determine whether a transaction involves money laundering or terrorist financing, and

for refusing to consummate, withdrawing from, or terminating such transactions. Factors that may indicate a transaction is designed to involve use of the dealer to facilitate money laundering or terrorist financing include, but are not limited to:

- (i) Unusual payment methods, such as the use of large amounts of cash, multiple or sequentially numbered money orders, traveler's checks, or cashier's checks, or payment from third parties;
 - (ii) Unwillingness by a customer or supplier to provide complete or accurate contact information, financial references, or business affiliations;
 - (iii) Attempts by a customer or supplier to maintain an unusual degree of secrecy with respect to the transaction, such as a request that normal business records not be kept;
 - (iv) Purchases or sales that are unusual for the particular customer or supplier, or type of customer or supplier; and
 - (v) Purchases or sales that are not in conformity with standard industry practice;
- (3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;
- (4) Include an ongoing employee training program; and
- (5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the dealer or by a qualified outside party.
- (b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the dealer's board of directors or, if the dealer does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the dealer's board of directors, or equivalent governing body.
- (c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN.
- (d) To the extent that a retailer's purchases from persons other than dealers and other retailers exceeds the \$50,000 threshold contained in § 1027.100(b)(2)(i), the AML/CFT program required of the retailer under this paragraph need only address such purchases.
- (e) A dealer must develop and implement an anti-money laundering program that complies with the requirements of this section on or before six months after the date a dealer becomes subject to the requirements of this section.

PART 1028—RULES FOR OPERATORS OF CREDIT CARD SYSTEMS

26.The authority citation for part 1028 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314, Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307.

27. Revise § 1028.210 to read as follows:

§ 1028.210 AML/CFT program requirements for operators of credit card systems.

An operator of a credit card system must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the operator's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the operator's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the operator of a credit card system based on the operator's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) As applicable, reports filed by the operator pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the operator's money laundering, terrorist financing, or other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, or other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks, ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for an operator's consideration, evaluation, and, as warranted by the operator's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. An operator's AML/CFT program must incorporate internal policies, procedures, and controls designed to ensure the following:

(i) That the operator does not authorize, or maintain authorization for, any person to serve as an issuing or acquiring institution without the operator taking appropriate steps, based upon the operator's money laundering, terrorist financing, or other illicit finance activity risk assessment,

required by paragraph (a)(1) of this section, to guard against that person issuing the operator's credit card or acquiring merchants who accept the operator's credit card in circumstances that facilitate money laundering or the financing of terrorist activities; and

(ii) For purposes of making the risk assessment required by paragraph (a)(1) of this section, the following persons are presumed to pose a heightened risk of money laundering or terrorist financing when evaluating whether and under what circumstances to authorize, or to maintain authorization for, any such ☐ person to serve as an issuing or acquiring institution:

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(A) A foreign shell bank that is not a regulated affiliate, as those terms are defined in § 1010.605(g) and (n) of this chapter;

(B) A person appearing on the Specially Designated Nationals and Blocked Persons List issued by the Department of the Treasury's Office of Foreign Assets Control;

(C) A person located in, or operating under a license issued by, a country whose government has been identified by the Department of State as a sponsor of international terrorism under 22 U.S.C. 2371 (<https://www.govinfo.gov/link/uscode/22/2371>);

(D) A foreign bank operating under an offshore banking license, other than a branch of a foreign bank if such foreign bank has been found by the Board of Governors of the Federal Reserve System under the Bank Holding Company Act (12 U.S.C. 1841 (<https://www.govinfo.gov/link/uscode/12/1841>), *et seq.*) or the International Banking Act (12 U.S.C. 3101 (<https://www.govinfo.gov/link/uscode/12/3101>), *et seq.*) to be subject to comprehensive supervision or regulation on a consolidated basis by the relevant supervisors in that jurisdiction;

(E) A person located in, or operating under a license issued by, a jurisdiction that has been designated as non-cooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which designation the United States representative to the group or organization concurs; and

(F) A person located in, or operating under a license issued by, a jurisdiction that has been designated by the Secretary of the Treasury pursuant to 31 U.S.C. 5318A (<https://www.govinfo.gov/link/uscode/31/5318A>) as warranting special measures due to money laundering concerns;

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the operator or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the operator's board of directors or, if the operator does not have a board of directors, an equivalent governing body. Such

documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the operator's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

PART 1029—RULES FOR LOAN OR FINANCE COMPANIES

28. The authority citation for part 1029 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314 Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307.

29. Revise § 1029.210 to read as follows:

§ 1029.210 AML/CFT program requirements for loan or finance companies.

A loan or finance company must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the loan or finance company's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the loan or finance company's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the company based on the company's business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the loan or finance company pursuant to this chapter;

(ii) Provide for updating the risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the company's money laundering, terrorist financing, and other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks, ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a loan or finance company's consideration, evaluation, and, as warranted by the loan or finance company's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter. Internal policies, procedures, and controls developed and implemented by the loan or finance company under this section must include provisions for integrating the loan or finance company's agents and brokers, and for obtaining all relevant customer-related information.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program. A loan or finance company may satisfy this requirement with respect to its employees, agents, and brokers by directly training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the loan or finance company; and

(5) Include independent, periodic AML/CFT program testing to be conducted by the qualified loan or finance company personnel or by a qualified outside party. The testing must include an evaluation of the compliance of the loan or finance company's agents and brokers with their obligations under the AML/CFT program.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the company's board of directors or, if the loan or finance company does not have a board of directors, an equivalent governing body. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the loan or finance company's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

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§ 1029.320 [Amended]

30. Amend § 1029.320 by removing paragraph (g).

PART 1030—RULES FOR HOUSING GOVERNMENT SPONSORED ENTERPRISES

31. The authority citation for part 1030 is revised to read as follows:

Authority: 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>) and 1951-1960 (<https://www.govinfo.gov/link/uscode/12/1951>); 31 U.S.C. 5311-5314 (<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336 (<https://www.govinfo.gov/link/uscode/31/5316>); title III, sec. 314 Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 307.

32. Revise § 1030.210 to read as follows:

§ 1030.210 AML/CFT program requirements for housing government sponsored enterprises.

A housing government sponsored enterprise must establish, implement, and maintain an effective, risk-based, and reasonably designed AML/CFT program.

(a) An effective, risk-based, and reasonably designed AML/CFT program focuses attention and resources in a manner consistent with the bank's risk profile that takes into account higher-risk and lower-risk customers and activities and must, at a minimum:

(1) Establish a risk assessment process that serves as the basis for the AML/CFT program, including implementation of the components required under paragraphs (a)(2) through (5) of this section. The risk assessment process must:

(i) Identify, evaluate, and document the housing government sponsored enterprise's money laundering, terrorist financing, and other illicit finance activity risks, including consideration of the following:

(A) The AML/CFT Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), as appropriate;

(B) The money laundering, terrorist financing, and other illicit finance activity risks of the housing government sponsored enterprise based on its business activities, including products, services, distribution channels, customers, intermediaries, and geographic locations; and

(C) Reports filed by the housing government sponsored enterprise pursuant to this chapter;

(ii) Provide for updating the housing government sponsored enterprise's risk assessment using the process required under paragraph (a)(1)(i) of this section on a periodic basis, including, at a minimum, when there are material changes to the housing government sponsored enterprise's money laundering, terrorist financing, and other illicit finance activity risks;

(2) Reasonably manage and mitigate money laundering, terrorist financing, and other illicit finance activity risks through internal policies, procedures, and controls that are commensurate with those risks and ensure ongoing compliance with the Bank Secrecy Act and the requirements and prohibitions of this chapter. Such internal policies, procedures, and controls may provide for a housing government sponsored enterprise's consideration, evaluation, and, as warranted by the housing government sponsored enterprise's risk profile and AML/CFT program, implementation of innovative approaches to meet compliance obligations pursuant to the Bank Secrecy Act and this chapter.

(3) Designate one or more qualified individuals to be responsible for coordinating and monitoring day-to-day compliance;

(4) Include an ongoing employee training program. A housing government sponsored enterprise may satisfy this requirement by training such persons or verifying that such persons have received training by a competent third party with respect to the products and services offered by the housing government sponsored enterprise; and

(5) Include independent, periodic AML/CFT program testing to be conducted by qualified personnel of the housing government sponsored enterprise or by a qualified outside party.

(b) The AML/CFT program and each of its components, as required under paragraphs (a)(1) through (5) of this section, must be documented and approved by the housing government sponsored enterprise's board of directors. Such documentation must be made available to FinCEN or its designee upon request. The AML/CFT program must be subject to oversight by the housing government sponsored enterprise's board of directors, or equivalent governing body.

(c) The duty to establish, maintain, and enforce the AML/CFT program must remain the responsibility of, and be performed by, persons in the United States who are accessible to, and subject to oversight and supervision by, FinCEN and the appropriate Federal functional regulator.

§ 1030.320 [Amended]

33. Amend § 1030.320 by removing paragraph (g).

Andrea M. Gacki,

Director, Financial Crimes Enforcement Network.

Footnotes

1. The program rules are located at 31 CFR 1020.210 (<https://www.ecfr.gov/current/title-31/section-1020.210>) (banks), 1021.210 (casinos and card clubs), 1022.210 (money services businesses), 1023.210 (brokers or dealers in securities, or broker-dealers), 1024.210 (mutual funds), 1025.210 (insurance companies), 1026.210 (futures commission merchants and introducing brokers in commodities), 1027.210 (dealers in precious metals, precious stones, or jewels), 1028.210 (operators of credit card systems), 1029.210 (loan or finance companies), and 1030.210 (housing government sponsored enterprises).

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2. See 31 CFR 1010.100(t) ([https://www.ecfr.gov/current/title-31/section-1010.100#p-1010.100\(t\)](https://www.ecfr.gov/current/title-31/section-1010.100#p-1010.100(t))) and (ff) ([https://www.ecfr.gov/current/title-31/section-1010.100#p-1010.100\(ff\)](https://www.ecfr.gov/current/title-31/section-1010.100#p-1010.100(ff))) for a list of financial institutions defined by FinCEN with AML/CFT program requirements. On February 15, 2024, FinCEN proposed certain Bank Secrecy Act (BSA) requirements for investment advisers that, among other things, would add investment advisers in the definition of “financial institution” under the BSA and impose BSA program, reporting, and recordkeeping requirements. The proposed rule for certain investment advisers does not generally reflect proposals contained in this document and instead reflects current program requirements for financial institutions engaged in activity that is similar to, related to, or a substitute for activities of investment advisers. See *Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers*, 89 FR 12108 (/citation/89-FR-12108) (Feb. 15, 2024), available at <https://www.federalregister.gov/documents/2024/02/15/2024-02854/financial-crimes-enforcement-network-anti-money-launderingcountering-the-financing-of-terrorism> (<https://www.federalregister.gov/documents/2024/02/15/2024-02854/financial-crimes-enforcement-network-anti-money-launderingcountering-the-financing-of-terrorism>).

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3. Certain parts of the Currency and Foreign Transactions Reporting Act, its amendments, and the other statutes relating to the subject matter of that Act, have come to be referred to as the BSA. These statutes are codified at 12 U.S.C. 1829b (<https://www.govinfo.gov/link/uscode/12/1829b>), 12 U.S.C. 1951-1960

(<https://www.govinfo.gov/link/uscode/12/1951>), 18 U.S.C. 1956
(<https://www.govinfo.gov/link/uscode/18/1956>), 18 U.S.C. 1957
(<https://www.govinfo.gov/link/uscode/18/1957>), 18 U.S.C. 1960
(<https://www.govinfo.gov/link/uscode/18/1960>), and 31 U.S.C. 5311-5314
(<https://www.govinfo.gov/link/uscode/31/5311>) and 5316-5336
(<https://www.govinfo.gov/link/uscode/31/5316>) and notes thereto.

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4. 31 U.S.C. 5311(1) (<https://www.govinfo.gov/link/uscode/31/5311>).

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5. Treasury Order 180-01 (Jan. 14, 2020), Paragraph 3, available at <https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>
(<https://home.treasury.gov/about/general-information/orders-and-directives/treasury-order-180-01>).

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6. 31 U.S.C. 5318(a)(2) (<https://www.govinfo.gov/link/uscode/31/5318>), (h)(1), and (h)(2).

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7. Section 1517 of the Annunzio-Wylie Anti-Money Laundering Act, Public Law 102-550, 106 Stat. 3672
(Oct. 28, 1992).

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8. 31 U.S.C. 5318(h)(1) (<https://www.govinfo.gov/link/uscode/31/5318>), as added by section 1517(b) of the
Annunzio-Wylie Anti-Money Laundering Act, Public Law 102-550 (Oct. 28, 1992).

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9. 31 U.S.C. 5312(a)(2)(E) (<https://www.govinfo.gov/link/uscode/31/5312>) and 31 U.S.C. 5312(c)
(<https://www.govinfo.gov/link/uscode/31/5312>), as added by section 321 of the USA PATRIOT Act, Public
Law 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>), 115 Stat. 272 (Oct. 26, 2001).

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10. 31 U.S.C. 5318(h) (<https://www.govinfo.gov/link/uscode/31/5318>), as added by section 352 of the USA
PATRIOT Act (Pub. L. 107-56 (<https://www.govinfo.gov/link/plaw/107/public/56>)).

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11. See Customer Due Diligence Requirements for Financial Institutions, 81 FR 29398 (/citation/81-FR-
29398) (May 11, 2016).

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12. Public Law 116-283 (<https://www.govinfo.gov/link/plaw/116/public/283>) (Jan. 1, 2021).

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13. H.R. Rep. No. 6395 (2020) at pp. 731-732 (Joint Explanatory Statement of the Committee of
Conference), available at [https://docs.house.gov/billsthisweek/20201207/116hrpt617-
JointExplanatoryStatement.pdf](https://docs.house.gov/billsthisweek/20201207/116hrpt617-JointExplanatoryStatement.pdf) ([https://docs.house.gov/billsthisweek/20201207/116hrpt617-
JointExplanatoryStatement.pdf](https://docs.house.gov/billsthisweek/20201207/116hrpt617-JointExplanatoryStatement.pdf)).

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14. *Id.*

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15. *Id.* See also Government Accountability Office (GAO) report, “Anti-Money Laundering: Better
Information Needed on Effectiveness of Federal Efforts” (Feb. 2024), available at [https://www.gao.gov/
products/gao-24-106301](https://www.gao.gov/products/gao-24-106301) (<https://www.gao.gov/products/gao-24-106301>), for further description of
outcomes of illicit finance investigations by Federal law enforcement agencies.

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16. AML Act, section 6002(3) (Purposes).

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17. 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>). As required by 31 U.S.C. 5318(h)(4)(C)

(<https://www.govinfo.gov/link/uscode/31/5318>), 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> (<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> (<https://home.treasury.gov/news/press-releases/jy2080>). As also required by 31 U.S.C. 5318(h)(4)(B)

(<https://www.govinfo.gov/link/uscode/31/5318>), 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.

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18. 31 U.S.C. 5318(h)(2)(B) (<https://www.govinfo.gov/link/uscode/31/5318>).

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19. Anti-Money Laundering Program Effectiveness, 85 FR 58023 (/citation/85-FR-58023) (Sept. 17, 2020), available at <https://www.federalregister.gov/documents/2020/09/17/2020-20527/anti-money-laundering-program-effectiveness> (<https://www.federalregister.gov/documents/2020/09/17/2020-20527/anti-money-laundering-program-effectiveness>).

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20. *Id.* at 58026.

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21. *Id.*

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22. *Id.*

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23. *Id.*

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24. *Id.* at 58023.

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25. *Id.* at 58028.

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26. The BSAAG was established by the Annunzio-Wylie Anti-Money Laundering Act. The BSAAG consists of representatives from Federal agencies and interested persons and financial institutions subject to the regulatory requirements of the BSA. The BSAAG is the means by which the Treasury receives advice on the reporting requirements of the BSA and informs private sector representatives on how the information they provide is used.

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27. The CTA is Title LXIV of the FY21 NDAA. Division F of the FY21 NDAA is the AML Act, which includes the CTA. Section 6403 of the CTA, among other things, amends the BSA by adding a new section 5336, Beneficial Ownership Information Reporting Requirements, to subchapter II of Chapter 53 of Title 31,

United States Code. (<https://www.govinfo.gov/link/uscode/31/5301>)

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28. With this proposed rulemaking, FinCEN consulted with the Federal functional regulators and relevant State financial regulators as required under AML Act, section 6101(b). Additionally, as noted in the “Interagency Statement on the Issuance of the AML/CFT National 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>), “although not required by the AML Act, the [Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), collectively, the “Agencies,”] plan to revise their BSA regulations, as necessary, to address how the AML/CFT Priorities will be incorporated into banks’ BSA requirements.” To promote consistency and clarity, FinCEN consulted with the Agencies, and other Federal functional regulators, including the Federal Housing Finance Agency (FHFA), the Commodity Futures Trading Commission (CFTC), the Internal Revenue Service (IRS), and the staff of the Securities and Exchange Commission (SEC). FinCEN also consulted with relevant Departmental offices and operating bureaus of the United States Department of the Treasury, including, among others, the Office of Terrorism and Financial Intelligence (TFI), the Office of Domestic Finance, the Office of Terrorist Financing and Financial Crimes (TFFC), and the Office of Foreign Assets Control (OFAC), and other government stakeholders such as State financial regulators, the Department of Justice (DOJ), and other relevant law enforcement and national security agencies.

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29. See *supra* note 13.

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30. 31 U.S.C. 5311 (<https://www.govinfo.gov/link/uscode/31/5311>).

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31. Consistent with its long-standing and authoritative interpretation, FinCEN continues to interpret the term “implement” throughout the proposed rule to mean not only to develop and create an “effective, risk-based, and reasonably designed” AML/CFT program, but also to effectuate that program and ensure that it is followed in practice.

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32. 31 U.S.C. 5318(h)(2)(B)(iii) (<https://www.govinfo.gov/link/uscode/31/5318>).

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33. 31 U.S.C. 5318(h)(2)(B)(iv) (<https://www.govinfo.gov/link/uscode/31/5318>).

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34. 31 U.S.C. 5311(2) (<https://www.govinfo.gov/link/uscode/31/5311>); 31 U.S.C. 5318(h)(2) (<https://www.govinfo.gov/link/uscode/31/5318>).

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35. See *Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering (BSA/AML) Supervision* (July 22, 2019), available at <https://www.fincen.gov/news/news-releases/joint-statement-risk-focused-bank-secrecy-actanti-money-laundering-supervision> (<https://www.fincen.gov/news/news-releases/joint-statement-risk-focused-bank-secrecy-actanti-money-laundering-supervision>), in which FinCEN and the Agencies remind financial institutions that compliance programs are to be risk-based in order to enable directing of attention and resources commensurate with their risk profile.

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36. FinCEN notes a June 2019 Senate Banking hearing in which testimony by a financial institution representative summarized the results of an empirical study of 19 U.S. financial institutions and their spending of private compliance funds towards AML/CFT compliance. Specifically, the study revealed 19

*U.S. financial institutions employing 14,000 individuals, spending approximately \$2.4 billion and utilizing as many as over 20 different information technology systems per financial institution. See Senate Committee on Banking, Housing, and Urban Affairs full hearing entitled, “Outside Perspectives on the Collection of Beneficial Ownership Information” (June 20, 2019), available at <https://www.banking.senate.gov/hearings/outside-perspectives-on-the-collection-of-beneficial-ownership-information> (<https://www.banking.senate.gov/hearings/outside-perspectives-on-the-collection-of-beneficial-ownership-information>). See also *infra* section VII.4.a.*

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37. *AML Act, section 6101(b) (Establishment of national exam and supervision priorities—Anti-money laundering programs).*

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38. *AML Act, sections 6204 (Streamlining requirements for currency transaction reports and suspicious activity reports) and 6205 (Currency transaction reports and suspicious activity reports thresholds review).*

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39. *31 U.S.C. 5318(h)(2)(B)(ii) (<https://www.govinfo.gov/link/uscode/31/5318>).*

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40. *See Joint Statement on the Risk-Based Approach to Assessing Customer Relationships and Conducting Customer Due Diligence (July 6, 2022), available at <https://www.fincen.gov/news/news-releases/joint-statement-risk-based-approach-assessing-customer-relationships-and> (<https://www.fincen.gov/news/news-releases/joint-statement-risk-based-approach-assessing-customer-relationships-and>).*

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41. *See the U.S. Department of the Treasury 2023 De-Risking Strategy, available at <https://home.treasury.gov/news/press-releases/jy1438> (<https://home.treasury.gov/news/press-releases/jy1438>).*

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42. *See supra note 13.*

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43. *In addition to the more recent programs from the AML Act, FinCEN has had several information sharing initiatives in place prior to this legislation. These initiatives include the BSAAG, the Law Enforcement Awards Program, the section 314 Program, FinCEN Advisories, and FinCEN Exchange. See Kenneth A. Blanco, Testimony for the Record, U.S. Senate Committee on Banking, Housing and Urban Affairs (Nov. 29, 2018), available at <https://www.fincen.gov/news/testimony/testimony-fincen-director-kenneth-blanco-senate-committee-banking-housing-and-urban> (<https://www.fincen.gov/news/testimony/testimony-fincen-director-kenneth-blanco-senate-committee-banking-housing-and-urban>).*

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44. *See FinCEN's 314(a) Fact Sheet, Financial Crimes Enforcement Network, U.S. Department of the Treasury, available at <https://www.fincen.gov/sites/default/files/shared/314afactsheet.pdf> (<https://www.fincen.gov/sites/default/files/shared/314afactsheet.pdf>).*

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45. *See Cornerstone, U.S. Immigration and Customs Enforcement-Homeland Security Investigations, U.S. Department of Homeland Security, available at <https://www.ice.gov/outreach-programs/cornerstone> (<https://www.ice.gov/outreach-programs/cornerstone>); see Money Mule Initiative, U.S. Department of Justice, available at <https://www.justice.gov/civil/consumer-protection-branch/money-mule-initiative> (<https://www.justice.gov/civil/consumer-protection-branch/money-mule-initiative>).*

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46. 31 U.S.C. 310(d) (<https://www.govinfo.gov/link/uscode/31/310>).

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47. 31 U.S.C. 310(f) (<https://www.govinfo.gov/link/uscode/31/310>) and (g) (<https://www.govinfo.gov/link/uscode/31/310>).

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48. AML Act, section 6214 (Encouraging information sharing and public-private partnerships).

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49. AML Act, section 6206 (Sharing of threat pattern and trend information).

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50. AML Act, section 6201 (Annual [Attorney General] reporting requirements).

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51. AML Act, section 6203 (Law enforcement feedback on suspicious activity reports). FinCEN intends to coordinate with the Department of Justice, appropriate Federal functional regulators, State bank supervisors, or State credit union supervisors on feedback solicited under this AML Act provision.

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52. Internal Revenue Service Criminal Investigation (IRS-CI) noted how the agency uses BSA data in its financial crime investigations. More than 83 percent of IRS-CI criminal investigations over a three-year period that were recommended for prosecution had a primary subject with a related BSA filing. Convictions in those cases resulted in average prison sentences of 38 months, \$7.7 billion in asset seizures, \$256 million in restitution, and \$225 million in asset forfeitures. See IRS press release, “BSA data serves key role in investigating financial crimes” (Jan. 18, 2023), available at <https://www.irs.gov/compliance/criminal-investigation/bsa-data-serves-key-role-in-investigating-financial-crimes> (<https://www.irs.gov/compliance/criminal-investigation/bsa-data-serves-key-role-in-investigating-financial-crimes>). Also, FinCEN reported in its FinCEN Year in Review for Fiscal Year 2022 that BSA filings from Fiscal Year 2020 through Fiscal Year 2022 supported a significant portion of investigations by the FBI. Specifically, BSA filings supported 46 percent of active investigations of transnational criminal organizations, 39.6 percent of active Organized Crime Drug Enforcement Task Force investigations with FBI participations, 36.3 percent of active complex financial crimes investigations, 27.5 percent of active public corruption investigations, 20.6 percent of active international terrorism investigations, and 15.7 percent of active FBI investigations. See “FinCEN Year in Review for FY 2022,” available at <https://www.fincen.gov/news/news-releases/fincen-fiscal-year-2022-review> (<https://www.fincen.gov/news/news-releases/fincen-fiscal-year-2022-review>).

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53. See GAO report, “Bank Secrecy Act: Agencies and Financial Institutions Share Information but Metrics and Feedback Not Regularly Provided” (Aug. 2019), available at <https://www.gao.gov/assets/gao-19-582.pdf> (<https://www.gao.gov/assets/gao-19-582.pdf>).

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54. AML Act, section 6203(a) (Law enforcement feedback on suspicious activity reports).

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55. For example, the AML Act notes that the incorporation of the AML/CFT Priorities, as appropriate, into the risk-based programs established by financial institutions shall be included as a measure on which a financial institution is supervised and examined for compliance with the BSA. 31 U.S.C. 5318(h)(4)(E) (<https://www.govinfo.gov/link/uscode/31/5318>).

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56. 31 U.S.C. 5334 (<https://www.govinfo.gov/link/uscode/31/5334>), as added by AML Act, section 6307 (Training for examiners on anti-money laundering and countering the financing of terrorism).

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57. 31 U.S.C. 310(g)(5)(A)(ii) (<https://www.govinfo.gov/link/uscode/31/310>).

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58. 31 U.S.C. 310(g)(5)(A)(i) (<https://www.govinfo.gov/link/uscode/31/310>), (iii) and (iv).

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59. See supra note 54.

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60. See supra note 16.

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61. See supra note 36. In 2017, 17 U.S. financial institutions “collectively reviewed approximately 16 million AML alerts and filed over 633,000 SARs, with an implied aggregate conversion rate to SARs of 4 percent.”

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62. The AML Act builds on prior interagency efforts encouraging financial institutions to take innovative approaches to combating money laundering, terrorist financing, and other illicit finance activity threats. See Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing (Dec. 3, 2018), available at <https://www.fincen.gov/news/news-releases/treasurys-fincen-and-federal-banking-agencies-issue-joint-statement-encouraging> (<https://www.fincen.gov/news/news-releases/treasurys-fincen-and-federal-banking-agencies-issue-joint-statement-encouraging>).

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63. See supra note 13 at 732-733.

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64. AML Act, section 6207 (Subcommittee of Innovation and Technology) requires the establishment of a Subcommittee on Innovation and Technology within BSAAG to “encourage and support technological innovation in the area of anti-money laundering and countering the financing of terrorism and proliferation; and to reduce [] obstacles to innovation that may arise from existing regulations, guidance, and examination practices related to compliance of financial institutions with the Bank Secrecy Act.”

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65. See supra note 62.

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66. See FIN-2014-A007, Advisory to U.S. Financial Institutions on Promoting a Culture of Compliance (Aug. 11, 2014) (“A financial institution can strengthen its BSA/AML compliance culture by ensuring that (1) its leadership actively supports and understands compliance efforts; (2) efforts to manage and mitigate BSA/AML deficiencies and risks are not compromised by revenue interests; (3) relevant information from the various departments within the organization is shared with compliance staff to further BSA/AML efforts; (4) the institution devotes adequate resources to its compliance function; (5) the compliance program is effective by, among other things, ensuring that it is tested by an independent and competent party; and (6) its leadership and staff understand the purpose of its BSA/AML efforts and how its reporting is used.”), available at <https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2014-a007> (<https://www.fincen.gov/resources/advisories/fincen-advisory-fin-2014-a007>). As part of a broader effort to modernize the AML/CFT regime, alongside this proposed rule, FinCEN is reviewing this and other guidance and welcomes views on whether and what type of additional guidance is needed.

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67. See infra section IV.D.3 for further discussion on appropriate resourcing.

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68. *Countering the financing of terrorism (CFT) includes laws, rules, regulations, or other measures intended to detect and disrupt the solicitation, collection, or provision of funds to support terrorist acts or terrorist organizations, or other violent extremist groups.*

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69. *31 U.S.C. 5318(h)(4)(B) (<https://www.govinfo.gov/link/uscode/31/5318>).*

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70. *31 U.S.C. 5318(h)(2)(B)(iii) (<https://www.govinfo.gov/link/uscode/31/5318>).*

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71. *31 U.S.C. 5318(h)(2)(B)(iv) (<https://www.govinfo.gov/link/uscode/31/5318>). See also 31 U.S.C. 5311(2) (<https://www.govinfo.gov/link/uscode/31/5311>) (stating that one of the purposes of the BSA is to “prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk-based programs to combat money laundering and the financing of terrorism”).*

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72. *See applicable program rules located at 31 CFR 1021.210(b)(1) ([https://www.ecfr.gov/current/title-31/section-1021.210#p-1021.210\(b\)\(1\)](https://www.ecfr.gov/current/title-31/section-1021.210#p-1021.210(b)(1))) (casinos), 1022.210(a) and (d)(1) (MSBs), 1023.210(b)(1) (broker-dealers), 1024.210(a) and (b)(1) (mutual funds), 1025.210(a) (insurance companies), 1026.210(b)(1) (futures commission merchants and introducing brokers in commodities), 1027.210(a)(1) (dealers in precious metals, precious stones or jewels), 1028.210(a) (operators of credit card systems), 1029.210(a) (loan or finance companies), and 1030.210(a)(housing government sponsored enterprises) (each requiring that a financial institution’s AML program as a whole; its implementation of internal policies, procedures, and controls as part of the AML/CFT program; or both must be “reasonably designed”). In addition, banks with a Federal functional regulator must have compliance programs that are “reasonably designed to assure and monitor [for compliance with the BSA]” pursuant to 12 U.S.C. 1818(s) (<https://www.govinfo.gov/link/uscode/12/1818>), 12 U.S.C. 1786(q)(1) (<https://www.govinfo.gov/link/uscode/12/1786>), and the Agencies’ regulations at 12 CFR 21.21(c)(1) ([https://www.ecfr.gov/current/title-12/section-21.21#p-21.21\(c\)\(1\)](https://www.ecfr.gov/current/title-12/section-21.21#p-21.21(c)(1))), 208.63(b) ([https://www.ecfr.gov/current/title-12/section-208.63#p-208.63\(b\)](https://www.ecfr.gov/current/title-12/section-208.63#p-208.63(b))), 326.8(b)(1) ([https://www.ecfr.gov/current/title-12/section-326.8#p-326.8\(b\)\(1\)](https://www.ecfr.gov/current/title-12/section-326.8#p-326.8(b)(1))), and 748.2(b)(1) ([https://www.ecfr.gov/current/title-12/section-748.2#p-748.2\(b\)\(1\)](https://www.ecfr.gov/current/title-12/section-748.2#p-748.2(b)(1))). There is currently no such requirement for banks lacking a Federal functional regulator.*

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73. *Compare 31 CFR 1022.210(a) ([https://www.ecfr.gov/current/title-31/section-1022.210#p-1022.210\(a\)](https://www.ecfr.gov/current/title-31/section-1022.210#p-1022.210(a))) (MSBs) with 31 CFR 1023.210(b)(1) ([https://www.ecfr.gov/current/title-31/section-1023.210#p-1023.210\(b\)\(1\)](https://www.ecfr.gov/current/title-31/section-1023.210#p-1023.210(b)(1))) (brokers or dealers in securities). See section IV that further describes existing FinCEN regulations requiring “reasonably designed” compliance programs, internal controls, or both.*

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74. *There are references to effective programs in the program rules for financial institutions located at 31 CFR 1022.210 (<https://www.ecfr.gov/current/title-31/section-1022.210>) (MSBs); 1025.210 (insurance companies); 1027.210 (dealers in precious metals, precious stones, or jewels); 1028.210 (operators of credit card system); 1028.210 (loan or finance companies); and 1030.210 (housing government sponsored enterprises). Program rules explicitly requiring effective programs will be a change for the program rules for financial institutions located at 31 CFR 1020.210 (<https://www.ecfr.gov/current/title-31/section-1020.210>) (banks); 1021.210 (casinos and card clubs); 1023.210 (brokers or dealers in securities); 1024.210 (mutual funds); and 1026.210 (futures commission merchants and introducing brokers in commodities).*

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75. *See supra note 13.*

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76. See 31 U.S.C. 5318(h)(2)(B)(iv)(II) (<https://www.govinfo.gov/link/uscode/31/5318>), as added by AML Act section 6101(b)(2)(B)(ii).

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77. For example, compare 31 CFR 1021.210(b)(1) ([https://www.ecfr.gov/current/title-31/section-1021.210#p-1021.210\(b\)\(1\)](https://www.ecfr.gov/current/title-31/section-1021.210#p-1021.210(b)(1))) (casinos) with 31 CFR 1023.210(a) ([https://www.ecfr.gov/current/title-31/section-1023.210#p-1023.210\(a\)](https://www.ecfr.gov/current/title-31/section-1023.210#p-1023.210(a))) (broker-dealers) in which casino program rules require each casino to “develop and implement” a written program whereas broker-dealer program rules require the broker-dealer to “implement[] and maintain[]” a written program.

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78. 31 U.S.C. 5318(h)(2)(B)(iv)(II) (<https://www.govinfo.gov/link/uscode/31/5318>).

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79. 31 U.S.C. 5318(g)(5)(C) (<https://www.govinfo.gov/link/uscode/31/5318>).

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80. See *supra* note 35. The Joint Statement on Risk-Focused Bank Secrecy Act/Anti-Money Laundering Supervision in 2019 (joint supervision statement) underscored the importance of a risk-based approach to AML/CFT compliance. The joint supervision statement noted that a risk-based AML/CFT program enables a bank to allocate compliance resources commensurate with its risk. The joint supervision statement further emphasized that a well-developed risk assessment assists examiners in understanding a bank's risk profile and evaluating the adequacy of its AML/CFT program.

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81. The FATF, of which the United States is a founding member, is an international, inter-governmental task force whose purpose is the development and promotion of international AML/CFT standards and the effective implementation of legal, regulatory, and operational measures to combat money laundering, terrorist financing, the financing of proliferation, and other related threats to the integrity of the international financial system. The FATF assesses over 200 jurisdictions against its minimum standards, known as FATF Recommendations. In its interpretive note to FATF Recommendation 1 on assessing risks and applying a risk-based approach, FATF noted that “[b]y adopting a risk-based approach, competent authorities [and] financial institutions . . . should be able to ensure that measures to prevent or mitigate money laundering and terrorist financing are commensurate with the risks identified, and would enable them to make decisions on how to allocate their own resources in the most effective way.” Available at <https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html> (<https://www.fatf-gafi.org/publications/fatfrecommendations/documents/fatf-recommendations.html>). Further, as detailed in FATF Recommendation 1 and in accompanying non-binding guidance, financial institutions and designated non-financial businesses and professions (DNFBPs) need not conduct a stand-alone proliferation financing (PF) risk assessment if existing processes (for example, within the framework of their existing targeted financial sanctions and/or compliance programs) can adequately identify proliferation financing risks and ensure mitigation measures are commensurate with those risks. The proposed rule would be consistent with FATF guidance on this topic.

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82. The current program rules referring to some form of risk assessment are located at 31 CFR 1025.210(b)(1) ([https://www.ecfr.gov/current/title-31/section-1025.210#p-1025.210\(b\)\(1\)](https://www.ecfr.gov/current/title-31/section-1025.210#p-1025.210(b)(1))) (insurance companies); 31 CFR 1027.210(b) ([https://www.ecfr.gov/current/title-31/section-1027.210#p-1027.210\(b\)](https://www.ecfr.gov/current/title-31/section-1027.210#p-1027.210(b))) (dealers in precious metals, precious stones, or jewels); 31 CFR 1028.210(b) ([https://www.ecfr.gov/current/title-31/section-1028.210#p-1028.210\(b\)](https://www.ecfr.gov/current/title-31/section-1028.210#p-1028.210(b))) (operators of credit card systems); 31 CFR 1029.210(b)(1) ([https://www.ecfr.gov/current/title-31/section-1029.210#p-1029.210\(b\)\(1\)](https://www.ecfr.gov/current/title-31/section-1029.210#p-1029.210(b)(1))) (loan or finance companies); and 31 CFR 1030.210(b)(1) ([https://www.ecfr.gov/current/title-31/section-1030.210#p-1030.210\(b\)\(1\)](https://www.ecfr.gov/current/title-31/section-1030.210#p-1030.210(b)(1))) (housing government sponsored enterprises). Note there is significant variation in the specific language in the regulations.

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83. See applicable program rules located at 31 CFR 1025.210 (<https://www.ecfr.gov/current/title-31/section-1025.210>) (insurance companies); 1029.210 (loan or finance companies).

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84. See applicable program rules located at 31 CFR 1021.210 (<https://www.ecfr.gov/current/title-31/section-1021.210>) (casinos and card clubs); 1022.210 (MSBs); 1025.210 (insurance companies); 1027.210 (dealers in precious metals, precious stones, or jewels); 1028.210 (operators of credit card system); 1029.210 (loan or finance companies); and 1030.210 (housing government sponsored enterprises).

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85. The current program rules without explicit risk assessment requirements are located at 31 CFR 1020.210 (<https://www.ecfr.gov/current/title-31/section-1020.210>) (banks); 1021.210 (casinos and card clubs); 1022.210 (MSBs); 1023.210 (broker-dealers); 1024.210 (mutual funds); and 1026.210 (futures commission merchants and introducing brokers in commodities).

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86. 31 U.S.C. 5318(h)(2)(B)(iv)(II) (<https://www.govinfo.gov/link/uscode/31/5318>).

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87. In sections 2.1 and 2.2 of FATF Guidance for a Risk-Based Supervision (Mar. 2021), available at <http://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-supervision.html> (<http://www.fatf-gafi.org/publications/fatfrecommendations/documents/guidance-rba-supervision.html>), FATF described some approaches for financial institutions to consider in assessing their ML/TF risks. One common approach involves assessing inherent risks, mitigation efforts, and residual risks. According to FATF, inherent risks refer to “ML/TF risks intrinsic to a [financial institution's] business activities before any AML/CFT controls are applied”; mitigation efforts refer to “measures in place within [a financial institution] to mitigate ML/TF risks”; and residual risks refer to “ML/TF risks that remain after AML/CFT systems and controls are applied to address inherent risks.”

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88. 31 U.S.C. 5318(h)(4)(E) (<https://www.govinfo.gov/link/uscode/31/5318>).

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89. The program rule for dealers in precious metals, precious stones, or jewels (31 CFR 1027.210 (<https://www.ecfr.gov/current/title-31/section-1027.210>)) will retain the current risk assessment factors that are tailored to the practices at these financial institutions.

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90. While intermediaries in the financial institution context generally are not tied to customer relationships, in other contexts, FinCEN has also referred to an “intermediary” as: “a customer that maintains an account for the primary benefit of others, such as the intermediary's own underlying clients. For example, certain correspondent banking relationships may involve intermediation whereby the respondent bank of a correspondent bank acts on behalf of its own clients. Intermediation is also very common in the securities and derivatives industries. For example, a broker-dealer may establish omnibus accounts for a financial intermediary (such as an investment adviser) that, in turn, establishes sub-accounts for the intermediary's clients, whose information may or may not be disclosed to the broker-dealer.” Customer Due Diligence Requirements for Financial Institutions, 79 FR 45151 (/citation/79-FR-45151), 45160 (/citation/79-FR-45160) (proposed Aug. 4, 2014).

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91. See 31 CFR 1010.410 (<https://www.ecfr.gov/current/title-31/section-1010.410>) for funds transfer recordkeeping requirements concerning payment orders by banks. See 31 CFR 1010.410(f)(1)-(2) ([https://www.ecfr.gov/current/title-31/section-1010.410#p-1010.410\(f\)\(1\)](https://www.ecfr.gov/current/title-31/section-1010.410#p-1010.410(f)(1))) for certain funds transfer requirements applicable to a transmitter's financial institution and intermediary financial institution.

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92. See 31 CFR chapter X (<https://www.ecfr.gov/current/title-31/chapter-X>) for financial institutions subject to applicable BSA requirements.

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93. See FinCEN's 314(b), Financial Crimes Enforcement Network, U.S. Department of the Treasury, available at <https://www.fincen.gov/section-314b> (<https://www.fincen.gov/section-314b>).

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94. For example, certain types of financial institutions, such as operators of credit card systems, are not subject to the BSA requirement to file SARs. Should these financial institutions voluntarily file SARs, those reports should be reviewed as part of the risk assessment process.

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95. See *supra* note 17. As defined in the proposed rule, the AML/CFT Priorities refer to the most recent statement of AML/CFT National Priorities issued pursuant to 31 U.S.C. 5318(h)(4) (<https://www.govinfo.gov/link/uscode/31/5318>), which are required to be updated at least once every four years. Financial institutions would have to ensure that their risk assessment processes take into account changes to the AML/CFT Priorities as they become available.

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96. 31 U.S.C. 5318(h)(1)(A) (<https://www.govinfo.gov/link/uscode/31/5318>).

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97. See applicable program rules located at 31 CFR 1022.210(d)(1) ([https://www.ecfr.gov/current/title-31/section-1022.210#p-1022.210\(d\)\(1\)](https://www.ecfr.gov/current/title-31/section-1022.210#p-1022.210(d)(1))) (MSBs), 1023.210(b)(1) (broker-dealers), 1024.210(b)(1) (mutual funds), 1025.210(b)(1) (insurance companies), 1026.210(b)(1) (futures commission merchants and introducing brokers in commodities), 1027.210(b)(1) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(1) (operators of credit card systems), 1029.210(b)(1) (loan or finance companies), and 1030.210(b)(1) (housing government sponsored enterprises).

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98. Proposed 31 CFR 1028.210 (<https://www.ecfr.gov/current/title-31/section-1028.210>) would retain the existing elements of the internal policies, procedures, and controls that are specific to the operators of credit card systems.

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99. See *supra* note 16.

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100. 31 U.S.C. 5318(h)(1) (<https://www.govinfo.gov/link/uscode/31/5318>), as amended by AML Act, section 6101(b)(2)(A) (Establishment of national exam and supervision priorities), which now references “countering the financing of terrorism” in addition to “anti-money laundering” when describing the requirement to establish an AML program.

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101. See applicable program rules located at 31 CFR 1022.210(d)(2) ([https://www.ecfr.gov/current/title-31/section-1022.210#p-1022.210\(d\)\(2\)](https://www.ecfr.gov/current/title-31/section-1022.210#p-1022.210(d)(2))) (MSBs), 1025.210(b)(2) (insurance companies), 1027.210(b)(2) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(2) (operators of credit card systems), 1029.210(b)(2) (loan or finance companies), and 1030.210(b)(2) (housing government sponsored enterprises).

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102. See applicable program rules located at 31 CFR 1027.210(b)(2)(i) ([https://www.ecfr.gov/current/title-31/section-1027.210#p-1027.210\(b\)\(2\)\(i\)](https://www.ecfr.gov/current/title-31/section-1027.210#p-1027.210(b)(2)(i))) (dealers in precious metals, precious stones, or jewels), 1028.210(b)(2)(i) (operators of credit card systems), 1029.210(b)(2)(i) (loan or finance companies); and 1030.210(b)(2)(i) (housing government sponsored enterprises).