

FinCEN and Banking Regulators Issue Joint Statement on Innovation in BSA/AML Compliance

By [John Banes](#), [John B. Reynolds](#), [Jeanine P. McGuinness](#), [Will Schisa](#) & [Britt Mosman](#) on December 10, 2018

POSTED IN [ANTI-MONEY LAUNDERING](#), [GUIDANCE & FAQs](#)

On December 3, 2018, a U.S. government working group aimed at improving the effectiveness and efficiency of the BSA/AML regime issued a second joint statement, which focuses on innovative industry approaches to BSA/AML compliance. This follows the working group's first joint statement last month, which focused on BSA/AML resource sharing (as discussed in our [prior blog post](#)). The Treasury Department's Financial Crimes Enforcement Network (FinCEN) and the federal banking regulators (the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration and the Office of the Comptroller of the Currency (the OCC), together with FinCEN, the Agencies) issued the [Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing](#) (the Joint Statement). The Joint Statement encourages banks and credit unions to explore innovative approaches to meeting their BSA/AML obligations and provides guidance on how the agencies will engage with pilot projects and experiments with new technologies.

Encouraging Industry Innovation

The Joint Statement recognizes that "private sector innovation, including new ways of using existing tools or adopting new technologies, can help banks identify and report money laundering, terrorist financing, and other illicit financial activity." In particular, the Agencies note that "[i]nnovation has the potential to augment aspects of banks' BSA/AML compliance programs, such as risk identification, transaction monitoring, and suspicious activity reporting." The Joint Statement expressly welcomes the role of innovation and new technologies, such as artificial intelligence and digital identity technology, in furthering efforts to protect against illicit financial activity.

The Joint Statement indicates the Agencies' willingness to engage with bank management and to clarify supervisory expectations, and encourages early engagement with the Agencies by banks pursuing innovative changes. The Joint Statement indicates that the Agencies will explore other methods to encourage innovation, and that FinCEN will consider, where necessary and appropriate, requests for exemptive relief to facilitate the testing and use of innovations and new technologies. According to the Joint Statement, each of the Agencies has established, or will establish, projects or offices to enhance their ability to respond to and support responsible innovation and new technology. As an example, the Joint Statement outlines FinCEN's launch of an initiative to engage with financial institutions, technology providers, and others involved in financial services technology to discuss and better understand innovative BSA/AML-related products and services.

Regulatory Engagement with Pilot Projects

The Joint Statement provides some guidance in relation to the impact of pilot projects and other experiments with new technologies and innovations on banks' compliance with their existing BSA/AML obligations. The Agencies indicate that banks will not be subject to supervisory criticism solely on the basis of pursuing a pilot project, even an unsuccessful one. The Agencies also indicate that they will not automatically assume a bank's existing BSA/AML compliance program is deficient, nor will they necessarily commence supervisory action, on the basis that a pilot program reveals gaps in the existing program. Likewise, the Agencies confirm that innovation in a bank's BSA/AML compliance program will not result in additional regulatory expectations. The Agencies' overall approach to engagement with pilot projects in the BSA/AML context thus exhibits clear parallels to the Government's recent interest in fintech regulatory sandboxes, such as in the Treasury Department's recent report on Nonbank Financials, Fintech, and Innovation, discussed in our [prior blog post](#).

While the Joint Statement should provide some comfort to banks that are considering pursuing innovations and pilot programs, the Agencies are not providing any safe harbors. The Joint Statement underscores that banks must continue to meet their BSA/AML obligations, notwithstanding any pilot programs or experiments with innovative approaches to compliance. In this regard, the adequacy of banks' existing BSA/AML compliance programs will be assessed independently of any such programs or experiments. Importantly, the Agencies counsel caution on the part of

bank management when determining whether innovations and new technologies are sufficiently developed to replace or augment existing BSA/AML compliance programs.

The Joint Statement clearly evinces the Agencies' receptiveness to innovation and technology, but it also makes clear that "[t]he Agencies will not penalize or criticize banks that maintain effective BSA/AML compliance programs commensurate with their risk profiles but choose not to pursue innovative approaches." Further, the Joint Statement affirms that the Agencies "will not advocate a particular method or technology for banks to comply with BSA/AML requirements."

Congressional Interest in BSA/AML Regulatory Reform

Like the Agencies, Congress has shown a continued interest in BSA/AML regulatory reform. On November 29, 2018, the Senate Committee on Banking, Housing, and Urban Affairs held its fourth [hearing](#) for the year on the current BSA/AML regime. The hearing included testimony from FinCEN Director Kenneth Blanco, Grovetta Gardineer, Senior Deputy Comptroller for Compliance and Community Affairs at the OCC, and Steven D'Antuono, Section Chief, Financial Crimes Section, Federal Bureau of Investigation.

Chairman Mike Crapo's [opening statement](#) claimed bipartisan support to reform the current BSA/AML regime "to more effectively target and prevent [illicit financial activity] while imposing the least burden on those in industry tasked with being the gatekeepers to the United States financial system." However, differences of opinion were on show throughout the hearing. Ranking Member Sherrod Brown expressed concerns in his [statement](#) that the increased suspicious activity report and currency transaction report thresholds in proposed Republican bills "would eliminate around 80% of the data available to federal law enforcement." Differences of opinion between the OCC and FinCEN were also apparent. In his oral testimony, Blanco expressed strong disagreement with the suggestion in the [statement](#) of Gardineer that FinCEN should be subject to a process designed to identify regulations that may be outdated, redundant or unnecessarily burdensome, like that applied to other federal agencies under the Economic Growth and Regulatory Paperwork Reduction Act (EGRPRA).

In his [written testimony](#), Blanco identified one of his highest priorities as "promot[ing] responsible innovation and creative solutions to combat money

laundering and terrorist financing.” Blanco identified one of his other top priorities as ensuring that the BSA/AML framework “remains strong and effective,” and observed that FinCEN wants “to upgrade and modernize our system where needed to make sure we have the right framework in place to meet the current and evolving challenges well into the future.”

Law Clerk Adam Fovent contributed to this post.