

FinCEN Director's Remarks Highlight AML Regulatory Reform Efforts

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Director Blanco Emphasizes BSA Resource Sharing, Technological Innovation, and Collaboration Between Public and Private Sectors

The Financial Crimes Enforcement Network (FinCEN) released prepared [remarks delivered by FinCEN director, Kenneth A. Blanco](#), at the Securities Industry and Financial Markets Association (SIFMA) Anti-Money Laundering (AML) & Financial Crimes Conference on February 4, 2019. Director Blanco's speech highlights various regulatory reform efforts, including the approval of collaborative sharing of Bank Secrecy Act (BSA) resources and an interagency initiative to promote innovation in the technologies and methodologies used to combat money laundering and terrorist financing. The Director also emphasized the importance of collaboration among the public and private sectors. These remarks do not occur in a vacuum; rather, they represent just part of what has been an ongoing conversation in the AML/BSA realm. Potential resource sharing, [technological innovation](#) and [information sharing](#) have been repeated topics in this blog.

Regulatory Reform at FinCEN

Director Blanco began by recognizing that for FinCEN "to remain strong and effective" it must "keep pace with the evolving forms of illicit finance threats and related crimes, and close any regulatory gaps" that increase exposure to money laundering and other financial crimes. To that end, FinCEN intends to "upgrade and modernize" its system "where needed" to ensure that it is one that "appropriately leverages innovative approaches undertaken by financial institutions," has "the highest quality information available" to combat money laundering and other illicit financial crimes. Therefore, FinCEN is taking a close look at the BSA and the agency's AML/Combating the Financing of Terrorism (CFT) regime. Perhaps partly in order to head off [outside calls for reform](#), Director Blanco described internal reform efforts at FinCEN as including:

- Reviewing ways in which financial institutions can take innovative and proactive approaches to identify, detect, and report financial crime and meet BSA/AML regulatory obligations;
- Reviewing the risk-based approach to the examination process;
- Reviewing the agencies' approach to BSA/AML supervision and enforcement;
- Identifying better ways to communicate priorities and feedback to financial institutions, regulators, and law enforcement; and

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- Identifying concrete ways to understand and quantify the value and use of financial institution reporting by undertaking a data-driven analysis of BSA reporting.

Collaborative BSA Resource Sharing Among Financial Institutions

It is no secret that banks shoulder a wide array of BSA obligations, which require significant resources and infrastructure to satisfy. Director Blanco commented that FinCEN recognizes that “banks, particularly smaller institutions often face greater resource challenges.” He pointed to a recent interagency statement as providing guidance to banks regarding appropriate collaboration and sharing of BSA resources to share cost while enhancing monitoring and security systems.

In October 2018, FinCEN joined an [Interagency Statement on Sharing BSA Resources](#) that outlined instances possible [collaborative arrangements among banks](#) to share resources to manage their BSA and AML obligations more efficiently and effectively. A collaborative arrangement involves “two or more banks with the objective of participating in a common activity or pooling of resources to achieve a common goal.” This includes “arrangements to pool human, technology or other resources to reduce costs, increase operational efficiencies, and leverage specialized expertise.” The statement provided examples of BSA/AML activities that may be benefit from resources sharing, including:

- **Internal Controls** – Banks are required to maintain a system of internal controls to assure continued compliance with the BSA. Collaborative agreements could increase cost efficiency in maintaining such controls by using shared resources in 1) reviewing, updating, and drafting BSA/AML policies and procedures; 2) reviewing and developing risk-based customer identification and account monitoring processes; and 3) tailoring monitoring systems and reports for the risks posed;
- **Independent Testing** – Banks are required to provide for independent testing of their compliance programs. Personnel at one bank could be utilized to meet the independent test compliance obligations of partner bank. This is would beneficial for a bank where the personnel perform multiple functions and establishing an independent test may be difficult;
- **Mandatory Personnel Training** – Banks are required to have appropriate personnel trained in BSA regulatory requirements and internal BSA/AML policies, procedures, and processes. In some communities it may be difficult to acquire personnel with the required expertise or it may be cost prohibitive to obtain a qualified outside BSA/AML training. Sharing qualified instructor to conduct the BSA/AML training allows banks alleviate these costs. Director Blanco encouraged other industries to share with FinCEN how a similar statement might be useful outside the banking industry.

The statement cautioned that such collaborative arrangements require careful consideration of “the bank’s risk profile, adequate documentation, consideration of legal restrictions, the establishment of appropriate oversight mechanisms.” Further, the statement emphasized a collaborative arrangement does not alleviate the individual bank’s compliance obligations. Each bank is responsible for ensuring compliance with BSA requirements as well as other existing legal and regulatory requirements.

Initiative to Promote Innovation in Combating Money-Laundering and Terrorist Financing

Director Blanco further highlighted FinCEN’s initiative to “promote responsible innovation and creative solutions” to combat financial crimes. The director recognized that “financial institutions

have been improving their ability to identify customers and monitor transactions by experimenting with new technologies.” FinCEN encourages service-related “innovation that advances the underlying purposes of the BSA to enhance financial transparency and to deter, detect, and disrupt financial and related crime; protecting our national security and keeping us safe.”

According to the Director, a new FinCEN initiative – announced in a joint statement late last year – will seek to “foster a better understanding of the opportunities and challenges in BSA/AML-related innovation” and “explore leveraging innovations occurring in the financial sector.”

Specifically, the [Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing](#) recognizes that some banks are becoming “increasingly sophisticated” in identifying suspicious activity, including by “building or enhancing innovative internal financial intelligence units” and “experimenting with artificial intelligence and digital identity technologies.” Pilot programs are important to test and validate innovative approaches. Agencies may provide feedback on the pilot programs, but those programs will not subject the bank to supervisory criticism even if program proves unsuccessful. Importantly, pilot programs that “expose gaps” in the bank’s existing compliance program “will not necessarily result in supervisory action with respect to that program.” As an example, an artificial intelligence-based transaction monitoring system may identify a transaction that would not have been identified by the traditional approach. The statement advises the agencies would not “automatically assume the bank’s existing program was deficient” based on such differing results.

According to the statement, the agencies are exploring different means to encourage innovation through FinCEN’s [Bank Secrecy and Advisory Group](#). To the extent necessary and appropriate, FinCEN has expressed its willingness to consider requests for exceptions to certain regulatory requirements pursuant to 31 C.F.R. § 1010.970 in order to facilitate testing and potential new technologies.

Director Blanco highlighted FinCEN’s commitment to engage in outreach activities that include “dedicated times for financial institutions, technology providers, and other firms involved in financial services innovations to discuss the implications of their products and services, and their future applications or next steps.”

Emphasis on Public-Private Collaboration to Promote AML Efforts

Director Blanco emphasized the “critical” importance of collaboration and communication between the public and private sectors because “financial institutions are often the first to detect and block” financial crimes. Strengthening “public-private partnerships that reveal and mitigate vulnerabilities” is one of Director Blanco’s “top priorities.”

The [FinCEN Exchange](#) is an example the director provided of a public-private partnership that allows financial institutions, FinCEN, and law enforcement to facilitate information sharing. The director summarized the benefits of this program, stating “[p]roviding financial institutions with broader typologies associated with specific illicit activity can help them identify and report illicit activity which, in turn, provides FinCEN and law enforcement with critical information to disrupt money laundering and other financial and related crimes and bad acts.”

Additionally, the Director noted FinCEN is working Treasury’s Office of Critical Infrastructure Protection to help identify and share [cyber security red flags](#) and emergent threat indicators with AML compliance personnel as well as cyber security personnel within financial institutions.

Big Picture

Overall, Director Blanco's remarks reflect FinCEN's focus on trying to ensure that financial crime reporting and enforcement keeps pace with the rapid technological changes in the way financial transactions are conducted. To accomplish this goal the agency at least appears to be focused on promoting the efficient sharing of resources and information and encouraging innovation in the technologies and approaches used to combat money laundering and other financial crimes. Hopefully, FinCEN will back these words up with specific concrete actions, so as to provide material incentives and predictability to financial institutions inclined to take new steps to improve the effectiveness of current AML/BSA landscape.

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