

# Client Alert

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## Agencies Issue Further Guidance Regarding Emerging Approaches to BSA/AML Compliance

By Barbara R. Mendelson, Marc-Alain Galeazzi, and Meghan E. Dwyer

On December 3, 2018, the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, Financial Crimes Enforcement Network (“FinCEN”), National Credit Union Administration, and Office of the Comptroller of the Currency (OCC) (collectively, the “Agencies”) issued a [joint statement](#) (“Joint Statement”) regarding “innovative approaches” to Bank Secrecy Act/anti-money laundering (BSA/AML) compliance. This is the second joint statement issued this year by the Agencies addressing approaches to BSA/AML compliance. We discussed the Agencies’ previous statement, issued on October 3, 2018, in a prior [Client Alert](#). This new Joint Statement discusses the ways in which banks may, in certain circumstances, be able to increase efficiency and reduce burden by sharing BSA/AML resources.

Both the December 3, 2018 and October 3, 2018 Statements are the product of a working group formed earlier this year by the Agencies to enhance the effectiveness and efficiency of the BSA (“Working Group”). Read together, the Joint Statements indicate the Agencies’ growing willingness to consider innovative compliance solutions. These developments coincide with continued Congressional interest in modernizing the Bank Secrecy Act through legislative reform, as demonstrated by a recent Senate Banking Committee hearing on the topic, discussed below.

In the Joint Statement, the Agencies indicate that they welcome innovations such as the use of internal financial intelligence units, artificial intelligence, and digital identity technology, and that these innovations have the potential to strengthen compliance and maximize utilization of compliance resources. Banks<sup>1</sup> are encouraged to consider, evaluate, and responsibly implement innovative solutions to BSA/AML compliance. Consistent with this message, at a November 29, 2018 Senate Banking Committee [hearing](#) titled *Combating Money Laundering and Other Forms of Illicit Finance: Regulator and Law Enforcement Perspectives on Reform*, OCC Senior Deputy Comptroller for Compliance and Community Affairs Grovetta N. Gardineer discussed the significant potential for technologies, such as artificial intelligence and machine learning, to enhance detection of suspicious activity and lower compliance costs. Gardineer went so far as to say that innovation is “increasingly necessary” to counter evolving threats and methods to exploit vulnerabilities.

The Joint Statement clarifies certain supervisory issues regarding industry innovation. For example, in light of the importance of pilot programs to test and evaluate new BSA/AML compliance approaches, “pilot programs in and of themselves should not subject banks to supervisory criticism,” even if such programs are ultimately unsuccessful. Pilot programs that expose weaknesses in an existing BSA/AML program “will not necessarily result in supervisory action with respect to that program.” Furthermore, the implementation of innovative approaches to BSA/AML compliance will not result in additional regulatory expectations. Of course, institutions

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<sup>1</sup> Under the Bank Secrecy Act, the term “bank” is defined in 31 CFR 1010.100(d) and includes each agent, agency, branch, or office within the United States of banks, savings associations, credit unions, and foreign banks.

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supervised by both federal and state regulators will need to remain cognizant of their state supervisor's expectations, which may differ.

The Agencies caution banks that they must continue to meet their BSA/AML compliance obligations during the development of new technologies or approaches, and that bank management must "prudently evaluate" whether and when innovative approaches are sufficiently developed to replace or supplement existing BSA/AML processes. Bank management should keep the bank's regulators informed of these evaluations.

The Joint Statement concludes by discussing several ongoing initiatives by the Agencies to monitor and foster innovation:

- FinCEN is launching a project to further a better understanding of BSA/AML-related innovation, with outreach planned to banks, technology providers, and other firms.
- Each of the federal banking agencies have or will establish projects or offices to support responsible innovation and new technologies in the financial system. These offices will serve as points of contact for communication with banks regarding these matters.<sup>2</sup>
- The Agencies are currently exploring additional methods to encourage innovation through FinCEN's Bank Secrecy Act Advisory Group.
- FinCEN will consider requests for exceptive relief under 31 C.F.R. 1010.970 to facilitate the testing and use of innovative approaches, provided that banks maintain the overall effectiveness of their BSA/AML compliance programs.

These developments appear to be part of a broader effort by the Agencies to enhance the efficiency and effectiveness of the BSA. In his recent [testimony](#) before the Senate Banking Committee this past November, FinCEN Director Kenneth A. Blanco stated that FinCEN is "taking a hard look at the BSA and the broader AML/CFT regime." Blanco explained that FinCEN is focusing on three issues: (1) evaluating the value of reported information; (2) promoting responsible innovation and creative solutions to combat money laundering and terrorist financing, both among financial institutions and within the government; and (3) facilitating effective public-private information sharing.

At that same hearing, Gardineer indicated that a revised version of the Federal Financial Institutions Examination Council (FFIEC) BSA/AML Examination Manual is in development. She noted that the revisions will "further define the FFIEC members' application of their risk-based approach to supervision," and that this information "will support resource management efforts so banks can better meet their BSA compliance obligations." In highlighting the efforts of the Working Group, Gardineer also testified that one focus of the group will be to clarify that the Agencies do not have a zero-tolerance approach to BSA/AML enforcement or supervision, but rather employ a risk-based approach to the examination process.

Both the House Financial Services Committee and Senate Banking Committee have held multiple hearings in recent years on the topic of BSA modernization. This past June, Representatives Steve Pearce (R-N.M.) and

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<sup>2</sup> Although not expressly mentioned in the Joint Statement, the OCC launched its Office of Innovation in 2016 to implement its [Responsible Innovation Framework](#). Among other activities, the office holds periodic office hours with industry, promotes interagency collaboration, monitors trends in the financial services industry, and conducts training activities for OCC staff.

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Blaine Luetkemeyer (R-Mo.) introduced H.R. 6068, the Counter Terrorism and Illicit Finance Act. Among other changes, the bill would have increased the thresholds for reporting currency transactions from \$10,000 to \$30,000 and for suspicious activities from \$5,000 to \$10,000. H.R. 6068 was referred to the House Financial Services Committee; however, a markup of the bill has been postponed. As attempts at legislative reform edge forward, it seems clear the Agencies are motivated to reevaluate their administration and enforcement of the BSA, without regard to such reform.

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