



On August 28, 2024, the Financial Crimes Enforcement Network (FinCEN) published a Final Rule that requires certain investment advisers (IAs) to apply anti-money laundering and countering the financing of terrorism (AML/CFT) requirements pursuant to the Bank Secrecy Act (BSA), including implementing risk-based AML/CFT programs, reporting suspicious activity to FinCEN, and fulfilling BSA recordkeeping requirements, among other requirements.¹ The Final Rule follows a proposed rule published in February 2024, and prior proposed rules published by FinCEN in 2003 and 2015. The Final Rule considers comments provided by the industry in response to the proposed rule. Impacted IAs have until January 1, 2026, to comply with the Final Rule. Notably, the Final Rule does not include Customer Identification Program (CIP) or beneficial owner identification requirements, as these requirements will be addressed through separate rule making processes.

5 insights you should know

Scope: The Final Rule expands the definition of “financial institution” under the BSA and defines “covered IAs” as (1) investment advisers registered or required to register with the SEC (RIAs) and (2) investment advisers that report to the SEC as exempt reporting advisers (ERAs) pursuant to the Investment Advisers Act of 1940. IAs advising a mutual fund may exclude the mutual fund from the IAs AML/CFT Program. The rule does not apply to several categories of IAs, which are detailed further on the next page.²

Risk-based AML/CFT program: The IAs will be required to develop and implement a risk-based, written AML/CFT program that is appropriately tailored to the risk profile of their business. The AML/CFT Program must be approved by the IA’s board of directors.

Suspicious activity reporting: The Final Rule requires IAs to file suspicious activity reports (SARs) for suspicious transactions that involve or aggregate at least \$5,000 in funds or other assets. Additionally, voluntary reporting of other suspicious transactions is encouraged.

Other AML/CFT program requirements: Other AML/CFT program requirements include: (1) conducting CDD to understand the nature and purpose of the customer relationship and develop a customer risk profile; (2) mandatory information sharing with FinCEN and law enforcement agencies; (3) voluntary information sharing between financial institutions; (4) special due diligence for foreign financial institution correspondent accounts and private banking accounts established or maintained for non-US persons; (5) special measures pursuant to Section 311 of the USA PATRIOT Act; (6) filing of Currency Transaction Reports (CTRs); and (7) compliance with BSA recordkeeping requirements, including funds transfer recordkeeping requirements and the Travel Rule for funds transfers equal to or over \$3,000.

Changes from the proposed rule: The Final Rule adopts a narrower definition of covered IAs required to implement an AML/CFT program (see Scope above). Additionally, the Final Rule does not require an IA to verify that a mutual fund that it advises has implemented an AML/CFT program. Also, the Final Rule does not require that the IA’s AML/CFT program be administered by persons in the United States.

5 considerations to evaluate

1

Conduct a gap assessment of existing AML/CFT program or controls: IAs should evaluate their existing AML/CFT controls and capabilities, if any, against the Final Rule to identify gaps and opportunities for enhancement. An AML/CFT program should, at a minimum, establish policies, procedures, and internal controls; provide for independent compliance testing; designate a person(s) responsible for overseeing the program; provide ongoing training; and provide for ongoing customer due diligence (CDD).

2

Update policies, procedures, and systems to meet requirements: IAs should consider updating their existing controls, policies, and procedures—as applicable—in order to address and comply with the requirements of the Final Rule. Importantly, IAs should address any gaps noted before the January 1, 2026 implementation date of the Final Rule.

3

Develop suspicious transaction monitoring and reporting capabilities: IAs should implement monitoring capabilities to review transactions for potential illicit activity. IAs should develop clear policies and procedures for identifying, investigating and reporting suspicious or unusual activity including referrals, alert and case review procedures, documentation, timely and accurate SAR filings, and maintaining SAR confidentiality. Additionally, IAs should develop internal reporting for senior management and the board of directors, in order that they are aware of the firm’s SAR filings and any new or emerging SAR trends.

4

Ensure robust third-party due diligence: IAs who elect to use a third-party administrator for their AML/CFT program retain full responsibility and liability for program compliance and should implement a thorough due diligence program to oversee the third party’s compliance capabilities, including documented procedures to address vulnerabilities, and undertake reasonable steps to assess whether the provider carries out such procedures effectively. Per the Final Rule, the IA would still be required to allow access to FinCEN and the SEC (to which FinCEN has delegated examination authority) to information and records relating to the AML/CFT program.

5

Prepare to direct more resources toward AML/CFT compliance: IAs should prepare to direct additional resources to build out their AML/CFT program, including employee training, independent testing, ongoing CDD, and suspicious activity reporting. To accomplish this, the IA may be required to hire specialized risk and compliance staff and update internal systems to account for new required information.

Endnotes

¹ Financial Crimes Enforcement Network (FinCEN), “[FinCEN Issues Final Rules to Safeguard Residential Real Estate, Investment Adviser Sectors from Illicit Finance](#),” press release, August 28, 2024.

² IAs advising a mutual fund may exclude the mutual fund from the IAs AML/CFT Program. The Final Rule does not apply to IAs that register with the SEC solely because they are mid-sized advisers, multi-state advisers, or pension consultants. The Final Rule also doesn’t apply to IAs who are not required to report any assets under management (AUM) to the SEC, state-registered advisers, foreign private advisers, or family offices. Final Rule does not apply to IAs that register with the SEC solely because they are mid-sized advisers, multi-state advisers, or pension consultants. The Final Rule also doesn’t apply to IAs who are not required to report any assets under management (AUM) to the SEC, state-registered advisers, foreign private advisers, or family offices. For foreign-located IAs, the requirements are only applicable to (1) activities taking place in the US and (2) advisory services to US persons or foreign-located private funds with US investors.

Connect with us

Clint Stinger

Principal
Deloitte Transaction and Business Analytics LLP
cstinger@deloitte.com

Janice Durisin

Managing Director
Deloitte Transaction and Business Analytics LLP
jdurisin@deloitte.com

Deloitte Center for Regulatory Strategy, US

Irena Gecas-McCarthy

FSI Director, Deloitte Center for Regulatory Strategy, US
Principal
Deloitte & Touche LLP
igecasmccarthy@deloitte.com

Craig Friedman

Managing Director
Deloitte & Touche LLP
cfriedman@deloitte.com

This publication contains general information only and Deloitte is not, by means of this publication, rendering accounting, business, financial, investment, legal, tax, or other professional advice or services. This publication is not a substitute for such professional advice or services, nor should it be used as a basis for any decision or action that may affect your business. Before making any decision or taking any action that may affect your business, you should consult a qualified professional advisor. Deloitte shall not be responsible for any loss sustained by any person who relies on this publication.

As used in this publication, “Deloitte” means Deloitte & Touche LLP, and Deloitte Transactions and Business Analytics LLP. These entities are separate subsidiaries of Deloitte LLP. Please see www.deloitte.com/us/about for a detailed description of our legal structure. Certain services may not be available to attest clients under the rules and regulations of public accounting.