

# Joint statement on BSA/AML innovation provides clarity and flexibility

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On December 3, 2018, the federal bank regulatory agencies, the National Credit Union Administration and the Financial Crimes Enforcement Network (FinCEN) (collectively, the Agencies), took another step toward fostering new approaches to identifying, monitoring and reporting money laundering, terrorist financing and other illicit financial activity by issuing a Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing.<sup>1</sup>

Specifically, the Agencies state that the Joint Statement was issued “to encourage banks<sup>2</sup> to consider, evaluate, and, where appropriate, responsibly implement innovative approaches to meet their Bank Secrecy Act/anti-money laundering (BSA/AML) compliance obligations, in order to further strengthen the financial system against illicit financial activity.”

The Joint Statement represents the Agencies’ willingness to engage with banks, as well as the private sector and other interested persons generally, to develop fintech solutions and other innovative approaches of using existing tools or adopting new technologies to enhance the effectiveness and efficiency of banks’ BSA/AML compliance programs.

## AGENCIES HIGHLIGHT NOTABLE INNOVATIONS BEING IMPLEMENTED BY BANKS

The Agencies recognize that innovation has the potential to augment or enhance aspects of a banks’ BSA/AML compliance programs regarding, but not limited to, risk identification, transaction monitoring and suspicious activity reporting.

In the Joint Statement, the Agencies applaud the efforts of some banks in developing innovative internal financial intelligence units devoted to identifying complex and strategic illicit finance threats and vulnerabilities and using artificial intelligence and digital identity technologies to enhance their existing BSA/AML compliance programs.

The Agencies welcome these types of innovative approaches, which “can maximize the utilization of banks’ BSA/AML compliance resources.”

## INNOVATION THAT WILL NOT BE CRITICIZED

Perhaps the most important message from the Joint Statement is the discussion of the types of BSA/AML innovation that will *not* be subject to regulatory criticism. The Agencies state:

- Pilot programs in and of themselves should not subject banks to supervisory criticism even if the pilot programs ultimately prove unsuccessful;
- Pilot programs that expose gaps in a bank’s current BSA/AML compliance program will not necessarily result in supervisory action with respect to that program;

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Under existing FinCEN regulations, FinCEN may make exceptions to or grant exemptions from certain BSA/AML regulatory requirements to facilitate the testing and potential use of new technologies and other innovations.

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- When banks test or implement artificial intelligence-based transaction monitoring systems and identify suspicious activity that would not otherwise have been identified under existing processes, the Agencies will not automatically assume that the banks’ existing processes are deficient; and
- The implementation of innovative approaches in banks’ BSA/AML compliance programs will not result in additional regulatory expectations.

These statements are supportive of innovation and should provide some comfort to banks that are considering whether to explore implementing new technology into their existing BSA/AML compliance. However, banks should not mistake these statements for a lessening of banks’ current obligations and expectations.

Indeed, the Joint Statement provides that “banks must continue to meet their BSA/AML compliance obligations, as well as ensure the ongoing safety and soundness of the bank, when developing pilot programs and other innovative approaches.”

In order to do so, banks will need to consider a number of key issues. As one example, a bank should test new programs and processes in parallel with its existing controls until the bank and its regulators gain assurance that transitioning to the new platform would not jeopardize the bank's compliance with its BSA/AML obligations.

As another example, the bank should thoughtfully develop a policy governing the testing of each new system that explicitly addresses how information generated through such new system will be incorporated into existing program components, if at all.

### APPLY FOR FLEXIBILITY

Banks interested in testing particularly novel or impactful technologies may wish to consider applying to FinCEN for exceptive relief, which the Joint Statement identifies as an additional method the Agencies are exploring to encourage innovation.

Under existing FinCEN regulations,<sup>3</sup> FinCEN may make exceptions to or grant exemptions from certain BSA/AML regulatory requirements to facilitate the testing and

potential use of new technologies and other innovations. Exceptive relief could provide a bank with needed flexibility to introduce groundbreaking technology into its BSA/AML compliance program that may not otherwise be authorized under or compatible with existing regulations.

### NOTES

<sup>1</sup> Available at <https://bit.ly/2BTDu62>. On October 3, 2018, the same working group issued a Joint Statement on Sharing Bank Secrecy Act Resources: <https://bit.ly/2W2DaKs>.

<sup>2</sup> The Joint Statement clarifies that, 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, industrial banks, edge corporations, and foreign banks.

<sup>3</sup> 31 CFR § 1010.970.

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