

## **FinCEN and SEC propose Customer Identification Program requirements for investment advisers**

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**United States**

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**Earlier this month, the Financial Crimes Enforcement Network (FinCEN) continued its efforts to require registered investment advisers (RIAs) and exempt reporting advisers (ERAs) to take steps to prevent the laundering of proceeds derived from illicit activities through the US financial system. On May 13, 2024, FinCEN and the Securities and Exchange Commission (SEC) jointly proposed a new rule (the May NPRM) that, if finalized, would require RIAs and ERAs (collectively, investment advisers) to implement a written customer identification program (CIP). The May NPRM follows a related rule proposed by FinCEN in February 2024 (the February NPRM), which could subject investments advisers to Anti-Money Laundering and Countering the Financing of Terrorism (AML/CFT) requirements by designating them as “financial institutions” under the Bank Secrecy Act (BSA).**

While many investment advisers may have already implemented AML compliance programs, the BSA currently does not require investment advisers to adopt these measures unless they otherwise fall within the purview of the BSA (by, e.g., also acting as a broker-dealer). The US Department of the Treasury (Treasury) has previously proposed rules that would have required certain investment advisers to implement AML/CFT programs. The most recent NPRM was published in 2015, and, if it had been finalized, would have included RIAs within the definition of “financial institution” under the BSA, but would not have included ERAs. However, the 2015 proposed rule was never finalized, and it has since been withdrawn. The February and May NPRMs represent Treasury’s latest attempt to close this gap in the federal AML framework, which Treasury [believes](#) has served as “an entry point into the US market for illicit proceeds.”

The February NPRM proposes requiring investment advisers to comply with BSA requirements that already apply to multitude financial institutions. Investment advisers would be required to (i) implement risk-based AML/CFT programs; (ii) file certain reports, such as Suspicious Activity Reports; (iii) maintain records related to certain transactions; and (iv) comply with other BSA requirements that apply to other financial institutions. The proposed rule contemplates that, as with broker-dealers, FinCEN would delegate examination authority for investment advisers to the SEC. Notably, FinCEN expressly noted that it was not proposing a CIP requirement as part of the February NPRM and forecasted future rulemaking with the SEC.

The May NPRM picks up where the February NPRM left off and proposes requiring investment advisers to implement a written CIP sufficient to form a reasonable belief that they know the true identity of each customer. The May NPRM would require investment advisers to implement reasonable, risk-based procedures for verifying the identity of each customer, to the extent reasonable and practicable, within a reasonable amount of time before or after the customer’s account is opened. investment advisers would be required to collect the customer’s name, birth date or date of formation (in the case of a legal entity), address, and identification number. The May NPRM, if finalized as proposed, also would require investment advisers to establish procedures for maintaining records of the information used to verify the customer’s identity.

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Although many investment advisers have already implemented AML compliance policies and procedures, they should consider assessing their current program in light of the proposed rules to determine whether their policies and procedures would satisfy the proposed requirements. Investment advisers that have not implemented an AML program should consider conducting a risk assessment and may want to start developing policies and procedures now.

In addition, while the comment period for the February NPRM closed on April 15, investment advisers may want to consider submitting comments in response to the May NPRM. FinCEN and the SEC have invited comments on all aspects of the proposed regulation, but have specifically solicited comments on, among other topics, the definition of “account”, the definition of “customer”, and a possible requirement to re-verify a customer’s identity after a certain period of time. The May NPRM was published in the Federal Register on May 21, and FinCEN and the SEC will accept comments [until July 22, 2024](#).



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