

FinCEN Rulemaking Update Anti-Money Laundering/Countering the Financing of Terrorism Program and Suspicious Activity Report Filing Requirements for Registered Investment Advisers and Exempt Reporting Advisers Final Rulemaking

On August 28, 2024, the Financial Crimes Enforcement Network (**FinCEN**), a bureau of the U.S. Department of the Treasury (**Treasury**), issued a final rule to include both registered investment advisers (**RIAs**) and exempt reporting advisers (**ERAs**) in the definition of “financial institution” under the Bank Secrecy Act (**BSA**).

The rule will require RIAs and ERAs to:

- Implement a risk-based and reasonably designed anti-money laundering/countering the financing of terrorism (**AML/CFT**) program;
- Conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information;
- File certain reports, such as Suspicious Activity Reports (**SARs**) and Currency Transaction Reports (**CTRs**), with FinCEN;
- Keep certain records, such as those relating to the transmittal of funds (i.e., comply with the Recordkeeping and Travel Rules, which require financial institutions to create and retain records for extensions of credit and cross-border transfers of currency, monetary instruments, checks, investment securities, and credit in amounts exceeding \$3,000); and
- Fulfill certain other obligations applicable to financial institutions subject to the BSA and FinCEN’s implementing regulations, such as special information sharing provisions of sections 314(a) and 314(b) of the USA PATRIOT Act.

The rule aims to help address the illicit finance risks in the investment adviser sector in the United States, which Treasury documented in a February 2024 risk assessment. The risk assessment highlighted numerous cases in which sanctioned persons, corrupt officials, fraudsters, and other criminals have exploited the investment adviser industry to access the U.S. financial system and launder funds. Moreover, it found that foreign states, most notably the People’s Republic of China and the Russian Federation, have leveraged investment advisers and their advised funds through investment in early-stage companies to access certain technologies and services with national security implications.

The rule aims to help safeguard investments in the United States and help prevent criminals and other illicit actors from laundering money through the U.S. financial system. By addressing

these illicit finance risks, the rule is intended to help level the regulatory playing field through a consistent application of risk-based AML/CFT requirements. The rule looks to benefit investors by improving the U.S. financial system's transparency and integrity and reducing the likelihood that proceeds of crime and other illicit activities will be invested in U.S. markets. The rule is expected to provide highly useful information to law enforcement authorities and national security agencies. The rule also brings the United States into greater compliance with international AML/CFT standards and addresses a significant gap identified by the Financial Action Task Force in a 2016 Mutual Evaluation of the United States.

The compliance date for this rule is January 1, 2026.

In the coming months, Core will work with all clients to ensure that policies and procedures are properly updated, training of relevant employees has been conducted, and that firms are prepared to comply with the new rulemaking prior to the compliance date. Core is also available to assist in the review and screening of fund investors, beneficial owners, controllers, and portfolio companies, as applicable.

See Press Release – <https://www.fincen.gov/news/news-releases/fincen-issues-final-rules-safeguard-residential-real-estate-investment-adviser>