

Fintech: AML Compliance 101



In the United States, Fintech companies are subject to anti-money laundering (AML) oversight from a variety of federal and state regulators, including the Financial Crimes Enforcement Network (FinCEN), the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission (CFTC), state Attorneys General, and state financial regulators. Failure to comply with regulations may result in civil enforcement actions and investigation and prosecution by the Department of Justice and other federal and state law enforcement agencies.

WHAT AML REQUIREMENTS APPLY TO FINTECH COMPANIES?

- Fintech companies that are transferring or exchanging funds (including virtual currencies), selling securities, or involved in futures, options, or derivatives contracts are all subject to specific AML rules and regulations. These requirements are often referred to as Know Your Customer or "KYC" obligations, but they in fact encompass a broader range of activities than just customer identification.
- Fintech companies that offer money transmitting or other money services must register with FinCEN and may need to obtain licenses from state regulators.

The regulations generally require a written AML program, the designation of a responsible AML compliance officer, the creation and maintenance of certain records, reporting of suspicious transactions, and various other programmatic requirements, such as training and periodic reviews.

Licensing requirements on the state level vary, depending on whether just fiat currency, cryptocurrency, or both are involved, as well as the current state of regulations in that jurisdiction.

- While not specifically an AML requirement, developing a process to meet sanctions screening requirements overseen by the Office of Foreign Assets Control (OFAC) typically goes hand-in-hand with an AML program.

DO THESE REQUIREMENTS APPLY TO ME?

Any one of the following scenarios, among others, may require a Fintech company to develop an AML program. Many companies meet several of these conditions, making them a "money transmitter," "provider of prepaid access," "casino," or other form of money services business regulated in the United States.

Do you accept fiat in exchange for any form of cryptocurrency, exchange one type of cryptocurrency for another, or transfer fiat or cryptocurrency from one person or place to another?

- Some companies that transfer money as part of the purchase of a good or service may not be regulated under these rules, but a close fact-based review of the business model is required to be sure.

Are you processing payments or providing stored value (prepaid access)?

Are your products or services available within the United States, regardless of where your company is located?

Are you conducting an Initial Coin Offering involving the sale of coins or tokens?

Are you a newly-licensed sportsbook?

Do you provide a cryptocurrency trading platform or digital wallet services?

HOW DO I COMPLY?

Money Service Business Registration and Licensing

- Determine whether your activity constitutes regulated money transmitting or other money services on the federal or state level.
- Develop a strategy for submitting state licensing applications if necessary, which will include a state-by-state analysis of specific regulations and a proposal for staging applications.

FinCEN Compliance

- Submit FinCEN registration
- Ensure all required elements of your AML program are ready for examination

OFAC and Sanctions Screening

- Develop a written OFAC sanctions screening program
- Vet sanctions screening vendor

AML Compliance

- Develop an AML program scaled to fit an early start-up model, including a detailed review of your business model



Prepare a written risk assessment related to AML risks



Develop customer identification procedures and vet potential Know Your Customer vendors



Designate an AML officer



Develop corporate training materials

- Prepare a compliance roadmap for future build-out of your AML program

WHO CAN HELP?



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