

Purpose of the Anti-Money Laundering Act of 2020

Section 6202 - The purposes of this division [of the National Defense Authorization Act] are — (1) to improve coordination and information sharing among the agencies tasked with administering anti-money laundering and countering the financing of terrorism requirements, the agencies that examine financial institutions for compliance with those requirements, Federal law enforcement agencies, national security agencies, the intelligence community, and financial institutions; (2) to modernize anti-money laundering and 25 countering the financing of terrorism laws to adapt the government and private sector response to new and emerging threats; (3) to encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism; (4) to reinforce that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk-based; (5) to establish uniform beneficial ownership information reporting requirements to (A) improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures; (B) discourage the use of shell corporations as a tool to disguise and move illicit funds; (C) assist national security, intelligence, and law enforcement agencies with the pursuit of crimes; and (D) protect the national security of the United States; and (6) to establish a secure, nonpublic database at FinCEN for beneficial ownership information.

Conference Agreement – “One overarching improvement now included in the conference agreement is to broaden the mission of the BSA to specifically safeguard national security as well as the more traditional investigatory pursuits of law enforcement ... Currently, there is no clear statutory mandate for BSA stakeholders – law enforcement, financial regulators, and financial institutions – to provide routine, standardized feedback to one another for the purpose of improving the effectiveness of BSA AML programs.” This bill changes that. There is a “clear mandate for innovation.” There are two new BSAAG Subcommittees. This Bill requires the consideration of the benefits and burdens of reporting, whether “highly useful” to law enforcement and national security efforts. Dealers in antiquities now have BSA/AML program requirements. Multiple studies are ordered: on trafficking networks, trade-based money laundering, and Chinese and Russian money laundering.

Purpose of the Bank Secrecy Act - 31 USC s. 5311

Declaration of Purpose - It is the purpose of this subchapter (except section 5315) to –

- (1) require certain reports or records **that are highly useful in - (A) criminal, tax, or regulatory investigations, risk assessments, or proceedings; or (B) intelligence or counterintelligence activities, including analysis, to protect against international terrorism;**
- (2) **prevent the laundering of money and the financing of terrorism through the establishment by financial institutions of reasonably designed risk based programs to combat money laundering and the financing of terrorism;**
- (3) **facilitate the tracking of money that has been sourced through criminal activity or is intended to promote criminal or terrorist activity;**
- (4) **assess the money laundering, terrorism finance, tax evasion, and fraud risks to financial institutions, products, or services to - (A) protect the financial system of the United States from criminal abuse; and (B) safeguard the national security of the United States; and**
- (5) **establish appropriate frameworks for information sharing among financial institutions, their agents and service providers, their regulatory authorities, associations of financial institutions, the Department of the Treasury, and law enforcement authorities to identify, stop, and apprehend money launderers and those who finance terrorists.**

AML/CFT Program Requirements - 31 USC s. 5318(h)

(h)(1) – Financial institutions must “establish AML and countering the financing of terrorism programs in order to guard against money laundering and the financing of terrorism”. The minimum standards, or “four pillars”, did not change.

(h)(2) – Power of the Secretary to prescribe rules for the program standards are dramatically expanded:

(B) - Factors that the Secretary shall take into account when prescribing minimum standards and regulators shall take into account in supervising and examining: (i) financial institutions are spending private funds for public and private benefit; (ii) key policy goals of the US are extending financial services to the underbanked and facilitating global remittances while preventing criminals from abusing the system; (iii) effective AML and CFT programs safeguard national security and generate public benefit; (iv) AML and CFT programs should be (I) “reasonably designed to assure and monitor compliance with the requirements of this subchapter and regulations promulgated under this subchapter; and (II) risk-based, including that more attention and resources of financial institutions should be directed toward higher-risk customers and activities, consistent with the risk profile of a financial institution, rather than toward lower-risk customers and activities.”

(h)(4) – Priorities: (A) within 180 days the Government shall establish AML and CFT priorities; (B) those priorities will be renewed every 4 years; (C) these priorities will be aligned with national security priorities; (D) FinCEN will promulgate regulations within 180 days of (A); (E) financial institutions shall incorporate those priorities into their AML/CFT programs and will be supervised and examined thereon.

Expanded Whistleblower Awards and Protections – section 6314

31 USC s. 5323 dramatically altered and expanded.

Modernizing the AML/CFT System – Title LXII sections 6201 – 6216, Title LXV sections 6502-6508

s. 6201 – The Attorney General shall report annually on the use of BSA reports, including whether the reports contain actionable information that leads to further proceedings by law enforcement, intelligence community, or national security; and extent to which arrests, indictments, convictions result. Sections 6204, 6205 call for a review of the contents, forms, and thresholds of CTRs and SARs. Section 6209 adds 31 USC 5318(o) – a review of whether and how Model Validation applies to AML/CFT. And then put standards into a regulation and incorporate in the FFIEC BSA/AML Examination Manual. Section 6213 codifies the October 2018 interagency statement on sharing BSA resources (in 31 USC s. 5318(p)). Section 6214 encourages information sharing and Public/Private Partnerships. Section 6215 requires GAO to do a de-risking analysis. Section 6216 requires a review of regulations and guidance.

Title LXV calls for multiple GAO and Treasury studies: on beneficial ownership information reporting requirements, on feedback loops, on CTRs, on trafficking networks, on trade-based money laundering (TBML).

FinCEN’s Duties, Powers, and Scope - 31 USC s. 310 and generally

310(b) duties and powers of the FinCEN director

- (A) Provide advice and make recommendations to the Under Secretary for Enforcement
- (B) Maintain a government-wide database of BSA reports
- (C) Analyze and disseminate intel from that database
- (D) Maintain a communications center for law enforcement
- (E) Furnish research, analytical, and informational services to the private and public sectors
- (F) Assist law enforcement and regulators in combatting informal value transfer systems
- (G) Support the tracking of foreign assets
- (H) Coordinate with foreign FIUs
- (I) Administer the requirements of the BSA
- (J) Promulgate regulations to implement the exam and supervision priorities of BSA/AML programs
- (K) Communicate regularly with the private sector, regulators, and law enforcement to explain the Government’s AML/CFT exam and supervision priorities;
- (L) Give and receive feedback to and from the private sector and State bank and credit union supervisors;
- (M) Maintain money laundering and terrorist financing experts to support federal civil and criminal investigations
- (N) Maintain emerging technology experts
- (O) Such other duties and powers as the Secretary may delegate

310(c) requirements relating to maintenance and use of data banks

310(d) – FinCEN Exchange (added by s. 6103)

310(e) – Special hiring authority for terrorism and intel (added by s. 6105)

310(f) – adds at least 6 FinCEN Domestic Liaisons (added by s. 6107)

310(g) – adds Chief of Domestic Liaison (added by s. 6107)

310(h) – adds at least 6 Foreign FIU Liaisons (added by s. 6108)

310(i) – FOIA protection of information shared with international FIUs (added by s. 6109)

310(j) – requires analytical experts for FinCEN’s “Analytical Hub” (added by s. 6304)

310(l) – Appropriation for FY2021 of \$136 million, adding \$10 million by s. 6509

FinCEN shall solicit feedback from a cross section of BSA Officers on their financial institution’s SARs and trends observed by FinCEN, and FinCEN will provide that information to the institution’s regulator (s. 6203(a)). FinCEN shall periodically disclose to each financial institution, in summary form, information on SARs filed that proved useful to law enforcement and to DOJ (s. 6203(b)). New position of BSA Information Officer reporting directly to Director of FinCEN (similar positions for the Federal functional regulators) (s. 6208).

BSA Updates

31 USC s. 5321 Civil Penalties – additional damages for repeat offenders; certain violators banned from serving as directors (new subsections 31 USC 5321(f) and (g) (added by sections 6309, 6310)

31 USC s. 5322 Criminal Penalties – return of profits and bonuses (added by s. 6312)

Reporting of Suspicious Transactions - 31 USC s. 5318(g)

(g)(1) – In general, Secretary to require SARs

(g)(2) – Cannot notify or disclose to any person involved in a reported suspicious transaction that the transaction has been reported **or otherwise reveal any information that would reveal that the transaction has been reported (added by s. 6212).**

(g)(3) – Liability for disclosure of SAR

(g)(4) – Single designee for SARs (FinCEN)

(g)(5) - Establish streamlined, including automated, processes to, as appropriate, permit the filing of noncomplex categories of SARs (added by s. 6202)

(g)(6) – FinCEN shall share threat pattern and trend information at least semiannually to provide meaningful information about the preparation, use, and value of BSA reports. It shall include typologies, including data that can be adapted in algorithms, if appropriate on emerging money laundering and terrorist financing threat patterns and trends (added by s. 6206)

(g)(7) – Rules of construction (added by s. 6206)

(g)(8) – Pilot program within one year to allow a US financial institution to share SAR-related information with its foreign branches and affiliates (added by s. 6212)

New Sections Have Been Added to the BSA (subchapter II of Title 31)

s. 5333 – Safe harbor for “Keep Open Directives” (added by s. 6306)

s. 5334 – Required annual training for Federal financial regulators’ examiners (added by s. 6307)

s. 5335 – Penalties for concealing PEPs’ source of funds (added by s. 6313)

s. 5336 – Beneficial Ownership Information Reporting requirements (added by s. 6403)

Beneficial Ownership Information Reporting Requirements

Title LXIV – sections 6401-6403 adds 31 USC s. 5336

Sense of Congress (s. 6402) – the beneficial ownership information “will be directly available only to authorized government authorities” and the database is intended to be “highly useful to national security, intelligence, and law enforcement agencies and Federal functional regulators”. There is no mention of benefiting financial institutions.

- Beneficial Owner is defined as an individual who directly or indirectly exercises substantial control or owns or controls not less than 25%.
- Reporting Company is defined as **not** including companies with more than 20 FTE, more than \$5 million in gross revenues, and with an operating presence in the United States.
- Existing companies have two years to report. New companies shall report at the time of formation. Changes in beneficial ownership must be reported within a year.
- Financial institutions can only query the database about a company with the consent of that company. The existing beneficial ownership rule of May 11, 2016 will be brought into conformance with this section within a year.

Two New BSAAG Subcommittees

Subcommittee on Innovation and Technology – added by s. 6207

Subcommittee on Information Security & Confidentiality – added by s. 6301

Division H – Other Matters, Title XCVII, Subtitles A, B

Subtitle A – Kleptocracy Asset Recovery Rewards Act

Subtitle B – Combating Russian Money Laundering Act