
Anti-Money Laundering Act of 2020

ICBA Summary

I. BACKGROUND

On December 8, 2020, the House passed the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (the “NDAA” or “Act” or “Law”). The bill authorizes appropriations and sets forth policies for Department of Defense (“DOD”) programs and activities, including military personnel strengths. The Act passed the Senate on December 11, 2020 but was vetoed by the President on December 23, 2020. The House of Representatives voted to override the veto on December 28, 2020. The bill was enacted on January 1, 2021 after the Senate’s vote to override the veto.

The ACT includes significant reforms to the Bank Secrecy Act (“BSA”) and anti-money laundering (“AML”) and countering the financing of terrorism (“CFT”) laws introduced through the Corporate Transparency Act (“CTA”) and the Anti-Money Laundering Act of 2020 (“AMLA”). The passage of the NDAA represents the most comprehensive BSA/AML reforms since the USA PATRIOT Act of 2001.

II. SCOPE

The CTA and AMLA broaden the mission of the BSA by:

- Requiring entities to submit beneficial ownership information directly to FinCEN;
- Requiring FinCEN to evaluate ways to streamline suspicious activity reporting (“SAR”) and currency transaction reporting (“CTR”) requirements and thresholds;
- Establishing a safe harbor for “keep open” requests;
- Increasing penalties and creating new violations;
- Making significant changes to the BSA/AML regime;
- Codifying AML and CFT program standards;
- Requiring examiners’ training;
- Creating an information exchange and FinCEN liaisons;
- Codifying FinCEN’s authority over virtual currency businesses;
- Instructing Treasury to review BSA regulations and guidance;
- Improving interagency coordination and consultation;
- Updating the whistleblower program; and
- Requiring new GAO studies.

III. SUMMARY

FinCEN Beneficial Ownership Requirements

New Reporting Requirements

The NDAA establishes new filing requirements by mandating corporations, limited liability companies, or other similar entities to report beneficial ownership information to FinCEN within two years after regulations are finalized.¹ New companies will be required to report beneficial ownership information to

¹ See NDAA §6403

FinCEN when they are registered and within one year of any subsequent change in beneficial ownership.

Upon submitting the information, FinCEN will issue a “FinCEN identifier” to the company. The Act allows the company to submit the FinCEN identifier, in lieu of providing the required beneficial ownership information to financial institutions (“FIs”). FinCEN may disclose beneficial ownership information to an FI that makes a request, provided the FI obtains consent from the company first.

The following businesses are exempt from providing beneficial ownership information to FinCEN:

- Certain public companies reporting under Section 12 and 15(d) of the Exchange Act;
- Banks, credit unions, bank holding companies, money transmitters, broker dealers, stock exchanges, and registered investment companies; and,
- Any business that (i) employs more than 20 employees on a full-time basis in the United States; (ii) filed income tax returns in the United States demonstrating more than \$5 million in gross receipts or sales; and (iii) has an operating presence at a physical office within the United States.

Treasury Customer Due Diligence (“CDD”) Rule Review:

The Act directs Treasury to revise the CDD rule to reduce unnecessary or duplicative requirements that are burdensome for banks within 1 year after the Corporate Transparency Act’s regulations are issued.

Treasury will consider risk-based principles for requiring reports; banks reliance on the information reported to FinCEN to obtain and update beneficial ownership information; and strategies to improve accuracy, completeness, and timeliness.

Modernizing the AML/CFT System

CTR and SAR Review

The Act requires Treasury to formally review and streamline CTR and SAR reporting to reduce unnecessarily burdensome requirements.² Treasury is required to review whether:

- thresholds should be adjusted;
- the CTR threshold should be tied to inflation;
- to streamline the process for filing continuing SARs;
- thresholds should apply to different categories of activities; and
- to increase or expand upon current CTR exemptions.

The Act also requires:

- FinCEN to share threat patterns and trend information, with financial institutions and federal regulators, to provide information about the preparation, use, and value of SARs.
- The Government Accountability Office to study the effects of raising the CTR threshold and issuing a report by 12/31/2025.
- The Department of Justice to report on the usefulness of SARs and CTRs and how often they lead to “further procedures” by law enforcement agencies.

Innovation and Technology

The law creates a Subcommittee on Innovation and Technology within the BSA Advisory Group (“BSAAG”) to encourage and support technical innovation in AML/CFT.³ FinCEN and federal regulators will be required to create a position for a BSA Innovation Officer. The officer will conduct outreach and

² See NDAA §6204-6206

³ See NDAA §6207-09

provide guidance related to responsible innovation and new technologies by FIs, law enforcement, service providers, vendors, and technology companies to assist in compliance with the BSA.

The Act directs Treasury to analyze the impact of financial technology on financial crimes compliance, coordinate with cyber security working groups and experts, and issue a report to Congress with findings and legislative and administrative recommendations within one year of enactment. Treasury is further instructed to issue rules and standards for FIs to test their AML compliance technology designed to facilitate compliance.

Finally, the law requires FinCEN to brief Congress on the use of emerging technologies and provide policy recommendations to facilitate and improve the communication and coordination between the private sector, FinCEN, the agencies, and others not later than 90 days after enactment.

Treasury Review of Regulations and Guidance

The Act instructs the Treasury to review BSA regulations and related guidance to ensure it provides for appropriate safeguards and requires reports that are highly useful; identify those that are outdated, redundant, or do not promote a risk-based AML/CFT compliance regime for FIs; and make appropriate changes to improve efficiency, as appropriate. Treasury is to solicit public comment as part of the review and issue a report with findings and administrative or legislative recommendations not later than one year after enactment.⁴

Improved Interagency Coordination and Consultation

The Act enables Treasury to invite a state bank supervisor to participate in consultation and coordination with Federal depository institution regulators relating to the development or modification of any rule or regulation.⁵

Strengthening Treasury Financial Intelligence, AML, and CFT Programs

Establishment of national exam and supervision priorities

The Act requires Treasury to establish national priorities for AML and CFT no later than 180 days after enactment and provide an update at least every 4 years. FIs should incorporate these priorities into their risk-based AML/CFT program, as appropriate, as it will be a measure by which they will be supervised and examined for BSA compliance.⁶

AML and CFT Program Standards⁷

The Act codifies the risk-based approach adopted by FinCEN and the federal functional regulators⁸ for financial institutions' AML programs. The Treasury and Federal functional regulators must take the following into account when prescribing minimum standards for supervising and examining for compliance:

- AML Programs should be (a) reasonably designed to assure and monitor compliance with the BSA; and (b) risk-based, including ensuring that more attention and resources of financial institutions are directed toward higher-risk customers and activities, consistent with the financial institution's risk profile, rather than lower risk customers and activities.

⁴ See NDAA §6216):

⁵ See NDAA §6301

⁶ See NDAA §6101

⁷ Ibid

⁸ Federal Bank Regulatory Agencies and FinCEN Improve Transparency of Risk-Focused BSA/AML Supervision, July 22, 2019

- The duty to establish, maintain and enforce an AML/CFT program must remain the responsibility of, and be performed by, persons in the United States, which could impact institutions that conduct certain elements of U.S. financial crimes compliance abroad.
- Effective AML and CFT programs safeguard national security and generate significant public benefit.
- Financial institutions are spending private compliance funds for public and private benefit.

Training for Examiners

Federal BSA examiners will be required to attend annual trainings on (i) risk profiles and warning signs revealed during examinations; (ii) financial crime patterns and trends; (iii) the high-level context for why AML and CFT is necessary; and (iv) de-risking.⁹

Creation of FinCEN Exchange

In 2017, the FinCEN Exchange was created to facilitate information sharing among law enforcement, financial institutions, and financial regulators to communicate the usefulness and investigative value of data provided by financial institutions as well as trends, emerging patterns, and threats. The NDAA formalizes the program and requires Treasury to submit a report to Congress once every two years for the next five years analyzing efforts undertaken by the Exchange and recommending legislative, administrative, or other recommendations to strengthen the efforts.¹⁰

Creation of FinCEN Domestic Liaisons

FinCEN will be required to establish the Office of Domestic Liaison (“Office”).¹¹ The Office will:

- Perform outreach to BSA officers at FIs regarding actions taken by FinCEN requiring attention by or affecting the FI;
- Receive feedback from FIs and regulators regarding BSA examinations;
- Promote coordination and consistency of supervisory guidance;
- Serve as a liaison between FIs and their regulators regarding information sharing involving the BSA; and
- Suggest legislative or administrative changes to improve coordination.

The Office will be required to report to Congress on objectives and activities 1 year after enactment and every two years thereafter for five years.

Registration of Money Service Transmitters and Virtual Currencies

The Act codifies current guidance from FinCEN pertaining to virtual currencies. Specifically, the Act expands definitions within the BSA to address values that substitute for currency. The Act also requires virtual currency businesses that qualify as money transmitters to register with FinCEN and establishes reporting and recordkeeping requirements for transactions involving certain types of virtual currencies.¹²

Additional Violations, Penalties, and Protections

“Keep-Open Account Safe Harbor

The Act adds a new safe harbor to protect a bank from liability for keeping a customer account open in response to a written request of a federal law enforcement agency so long as that agency provides

⁹ See NDAA §6307

¹⁰ See NDAA §6301

¹¹ See NDAA §6307

¹² See NDAA §6102. This section aligns with FinCEN’s recent notice of proposal regarding Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets, 85 Fed. Reg. 83840 (Dec. 23, 2020),

advance notice to FinCEN of the intent to submit such written request to the financial institution. The “keep-open” request must also include a termination date of that request.¹³

New Violations

The Act specifically prohibits a person from concealing, falsifying, or attempting to conceal a material fact regarding a monetary transaction of a senior foreign political figure or their immediate family member. The Act also makes it a crime to conceal, falsify, or attempt to misrepresent information pertaining to the source of funds in a monetary transaction that involves an entity found to be a primary money laundering concern. Both offenses are punishable by up to 10 years in prison and a fine of up to \$1 million.¹⁴

Increased Penalties

The Act enhances the penalty structure in a number of ways. In the case of repeat BSA violations, the Treasury may impose penalties up to two times the typical statutory penalty and up to three times the amount of profit gained on repeat offenders.¹⁵ In instances in which profits have been gained from BSA violations, the individual will be fined in an amount equal to the profit.¹⁶ It also calls for the repayment of bonus if an individual was a partner, director, officer, or employee of an FI at the time of the violation. Individuals that commit “egregious” violations (i.e., punishable by more than 1 year in prison, willful violations, and those involving terrorist financing) shall be barred from serving on the board of directors of a United States financial institution during the 10-year period that begins on the date on which the conviction.¹⁷

Updating the Whistleblower Program

The NDAA enhances the whistleblower protections in order to encourage the reporting of BSA violations. It allows anyone who voluntarily provides information that leads to enforcement which results in monetary sanctions exceeding \$1 million will receive 30% of the money collected.¹⁸ In addition, the whistleblower protections include a prohibition against retaliation by an employer.

GAO Studies/Reports

Pursuant to the NDAA, the following government issued studies and reports will be required:

- GAO analysis on financial services de-risking;¹⁹
- GAO and Treasury Studies on Beneficial Ownership Reporting Requirements;²⁰
- GAO study on feedback loops between the government and regulated entities and how to reduce unnecessary collection of information;²¹
- GAO CTR study and report;²² and
- GAO study and report on trafficking.²³

¹³ See NDAA §6306

¹⁴ See NDAA §6313

¹⁵ See NDAA §6309

¹⁶ See NDAA §6312

¹⁷ See NDAA §6310

¹⁸ See NDAA §6314

¹⁹ See NDAA §6215

²⁰ See NDAA §6502

²¹ See NDAA §6503

²² See NDAA §6504

²³ See NDAA §6505