



AML Act of 2020



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Background

January 1, 2021,

- Congress passed National Defense Authorization Act for Fiscal Year 2021
- Anti-Money Laundering Act of 2020 (AML Act or AMLA) will become law and will amend the BSA for the first time since 2001



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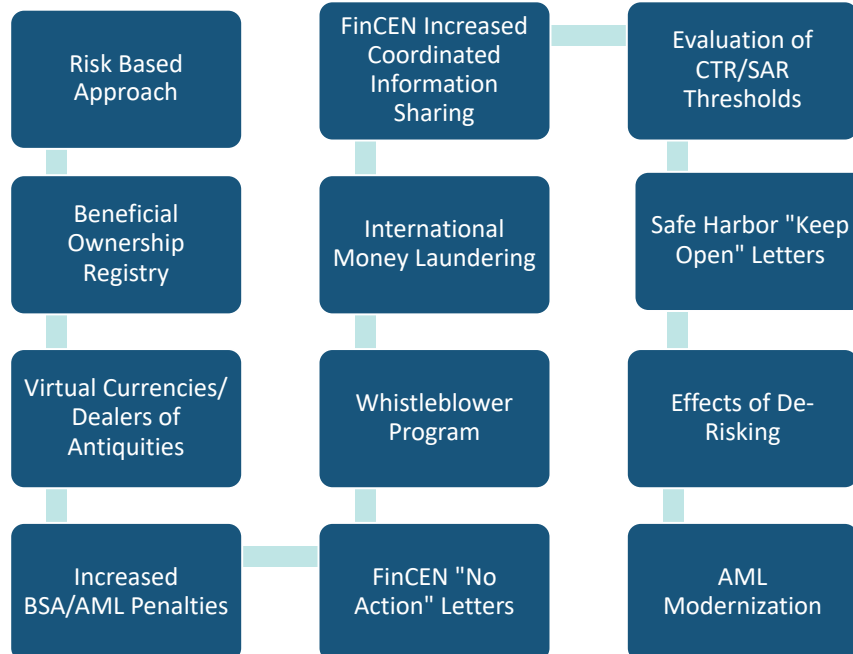
AML Act 2020

- What are your responsibilities
- What do you need to know



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Key Highlights



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Risk Based Compliance and National Priorities



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Risk-Based Compliance

Reiterates reasonably designed risk-based programs that:

- **“Direct its resources to its higher-risk customers and activities, consistent with the risk profile of a financial institution.”**



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Risk Based Approach

- Established National Priorities
- AML/CFT Program Standards
- Factors in Requiring Suspicious Activity Reports



National AML/CFT Priorities

- Public priorities for AML and CFT policy within 180 days after the law's enactment.
- Priorities must be "consistent with national strategy for CFT and related forms of illicit finance."



National AML/CFT Priorities

- “Threat pattern and trend information to provide meaningful information about the preparation, use and value of reports” at least twice a year
- Provide financial institutions and regulators with “typologies, including data that can be adapted in algorithms, relating to emerging money laundering and terrorist financing threat patterns and trends”



National AML/CFT Priorities

- Required to review and incorporate priorities into AML programs
- Measure “on which a financial institution is supervised and examined

Repeat, “shall be included as a measure on which a financial institution is supervised and examined for compliance with those obligations.”



June 30: FinCEN issues National Priorities

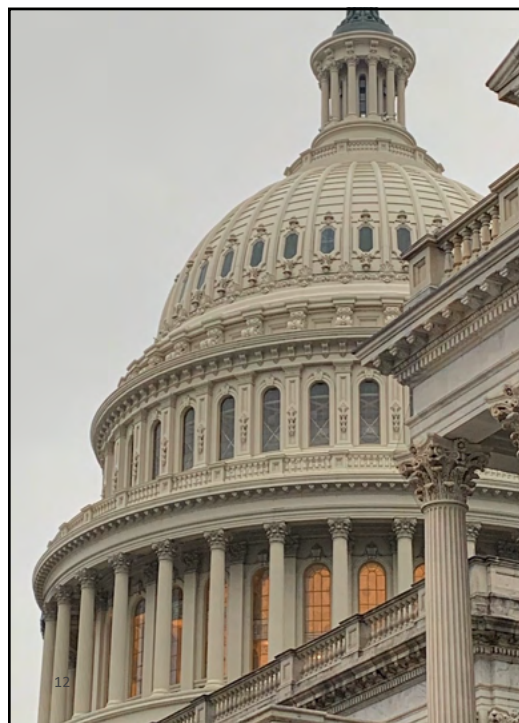
- Corruption
 - Cybercrime, including Relevant Cybersecurity and Virtual Currency Considerations
 - Terrorist Financing
 - International Terrorism
 - Domestic Terrorism
 - Fraud
- Transnational Criminal Organization Activity
 - Drug Trafficking Organization Activity
 - Human Trafficking and Human Smuggling
 - Proliferation Financing



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Interagency Statement on the Issuance of the Anti-Money Laundering/ Countering the Financing of Terrorism National Priorities

- How to incorporate Priorities into compliance programs:
 - Assess potential risks associated with products and services you offer, customers served, and geographic areas you operate

Statement confirmed:

- Examiners will not examine for the incorporation until effective date of final revised regulations

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Increased Coordination and Information Sharing



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Creation of New Office of Domestic Liaison within FinCEN

- Promote coordination and consistency of supervisory guidance from FinCEN, federal functional regulators, state bank supervisors, and state credit union supervisors regarding the BSA
- Feedback from BSA officers about issues encountered with implementation of BSA
- Feedback from BSA officers and examiners at federal functional regulators about specific BSA examinations of their institutions



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FinCEN's Prominent Role In Increased Coordination And Information Sharing

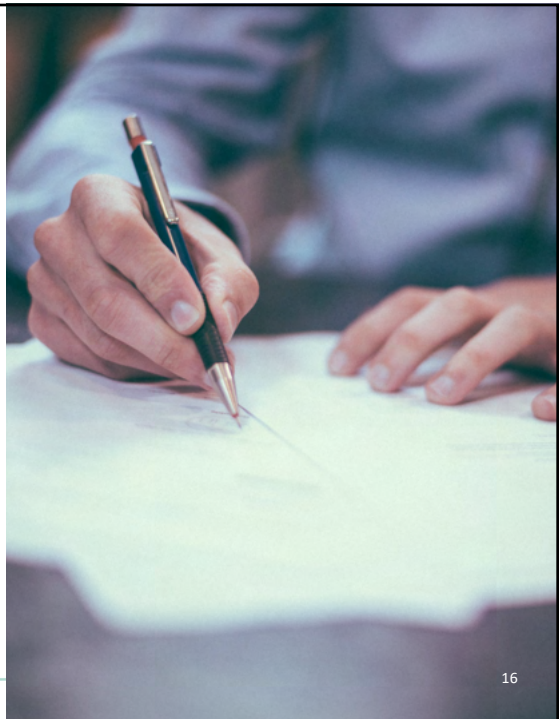
- Coordination Duty of FinCEN Director
- Examiner Training
- Codification of Resource-Sharing Guidance
- No-Action Letter Assessment



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FinCEN "No Action" Letters

FinCEN to submit a report to Congress within 6 months analyzing if implementation of no-action letters by FinCEN could enhance BSA compliance by financial institutions



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Strengthening the Feedback Loop on BSA Reports

- DOJ to submit annual report on use of data from financial institutions, to enhance feedback and communications
- Provide more detail for Treasury's semiannual report to the industry on suspicious activities



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Corporate Transparency Act



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Corporate Transparency Act

- Requires new and existing businesses to report beneficial ownership to FinCEN
- Expand information available to Gov't about the natural persons that own corporate entities
- Discourage use of shell companies by money launderers and other illicit actors
- Information will be maintained by FinCEN in a non-public national beneficial Ownership registry



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Requirements Apply to Shell Companies and Smaller Entities


**Who is
Required to
Register, and
Who is
Excluded?**

- Capture information about shell companies rather than impose additional burdens on clearly legitimate, larger, and more established entities
- Includes a corporation, LLC, or similar established in, or registered to do business in the US
- Definition excludes entities that:
 - Employ more than 20 full-time employees
 - Have more than \$5M in sales or gross receipts
 - Have a presence at a physical office in U.S.



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To Whom Will the Beneficial Ownership Registry Data be Available?

- Government agencies
- Law enforcement
- Some Foreign agencies
- Financial institutions, with consent of the Customer

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How Does the Beneficial Ownership Registry Affect Existing CDD Rule?

- CDD Rule continues to apply, and financial institutions will be able to use the registry to facilitate compliance with CDD Rule
- CDD Rule will be revised to conform with provisions of the AMLA
- Treasury prohibited from repealing requirement that financial institutions identify and verify beneficial owners

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When Must Entities Report Beneficial Ownership?

- **Existing entities:** Existing companies must report within two years of effective date of the registry
- **Newly formed entities:** New companies formed after the regulations become effective must report at the time of formation
- Beneficial ownership changes must be reported within one year of change

Beneficial Ownership Registry Logistics

- Reporting company will submit, a report to FinCEN that includes specific identification information for each “beneficial owner”
- FinCEN will issue a unique FinCEN identifier number

When Do Beneficial Ownership Reporting Requirements Take Effect?

- Treasury required to publicize regulations by one year after enactment of the AMLA
- Beneficial ownership reporting requirements take effect on the effective date of those regulations

Potential Criminal and Civil Penalties for Reporting Companies

- Reporting companies and recipients of Beneficial Ownership Information can be subject to civil and criminal penalties for:
 - failing to report and falsely reporting beneficial ownership
 - unauthorized disclosure or misuse of beneficial ownership information
- Safe harbor provision allows correction of beneficial ownership information provided within 90 days of the original submission



Penalties for Reporting Companies

Penalties for Willfully Failing to Report or Reporting False or Fraudulent Information


- \$500/day civil penalty for everyday the violation continues
- Imprisonment of up to two years, and a fine of up to \$10,000


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Financial Institutions

- FinCEN may disclose beneficial ownership information to a financial institution with company's consent to facilitate financial institution's compliance with CDD requirements
- Financial institutions will have to develop processes to effectively evaluate information from this beneficial ownership database



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Potential Penalties for Financial Institutions

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- \$500/day civil penalty everyday violation continues
- Imprisonment of up to five years, and mandatory fine of up to \$250K; or
- If unauthorized disclosure or use of beneficial ownership information occurs in the course of other illegal activity involving more than \$100K in a 12-month period, imprisonment of up to 10 years and a mandatory fine of up to \$500K



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Beneficial Ownership Registry Implications

Will need to develop procedures to effectively utilize the registry information while maintaining adequate internal processes regarding beneficial ownership information

Scope of entities excluded from reporting obligation will not be clear until FinCEN issues implementing regulations. Nonetheless, entity structures, contracts, and documents may need to be revised now.

Loan documents may need to be revised to require entities to periodically confirm that they are in compliance with FinCEN's beneficial owner disclosure requirements



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FinCEN ANPR April 1, 2021

Advance Notice of Proposed Rulemaking

- Solicit public comment on questions related to the implementation of the Corporate Transparency Act (CTA)
- First in a series of regulatory actions that FinCEN will undertake to implement the CTA
- Deadline for comments was May 5, 2021

Virtual Currencies and Dealers of Antiquities



Virtual Currencies/ Dealers of Antiquities now are Financial Institutions

Codifies existing regulatory guidance that the BSA covers virtual currencies (effective immediately)

Expands the scope of the BSA to include antiquities dealers, advisors, and consultants (effective within approximately one year)

AML A Tackles the Antiquities Market

- Expands BSA's reach to cover antiquities dealers, advisors, and consultants
- Address billions of illicit dollars moved through "underground" art and antiques markets
- Definition: "a person engaged in the trade of antiquities, including an advisor, consultant, or any other person who engages as a business in the solicitation or the sale of antiquities"



Virtual Currencies

- “Value that substitutes for currency,” including those pertaining to “financial agency,” “financial institution,” “money transmitting business,” and “money transmitting service”
- Virtual currency businesses that qualify as money transmitters must register with FinCEN, effectively codifying existing FinCEN guidance
- Expand definition of a “monetary instrument” to encompass “value that substitutes for currency”



Considerations

Revisit policies and procedures

- How will you identify these accounts at account opening?
- How will you identify existing accounts?
- What additional EDD will you implement?



New Crimes



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New Crimes: Senior Foreign Political Figures

It's a crime to knowingly conceal, falsify, or misrepresent a material fact concerning the ownership or control of assets in a monetary transaction if:

- Person or entity who owns or controls the assets is a senior political figure, or any immediate family member or close associate of a senior foreign political figure; and
- Aggregate value of assets involved in one or more transactions is \$1 million or more



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New Crimes: Primary Money Laundering Concerns

It's a crime to knowingly conceal, falsify, or misrepresent a material fact concerning source of funds in a monetary transaction if:

- Transaction involves a financial institution or jurisdiction identified as a primary money laundering concern; and
- Transaction violates certain correspondent banking prohibitions or conditions requiring "special measures" under Section 311 of the USA PATRIOT Act



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Increased Penalties



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Repeat Violators of AML Laws

- Additional civil penalties for persons who violate the BSA after having done so previously
- For each additional violation, effective immediately, repeat offenders now are subject to additional penalties of 3 times the profit gained, or loss avoided as a result of the violation, or 2 times the maximum allowable penalty for the violation, whichever is greater
- Underlying previous violation must have occurred after AMLA became effective on 1/1/21



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Bar on Board Service

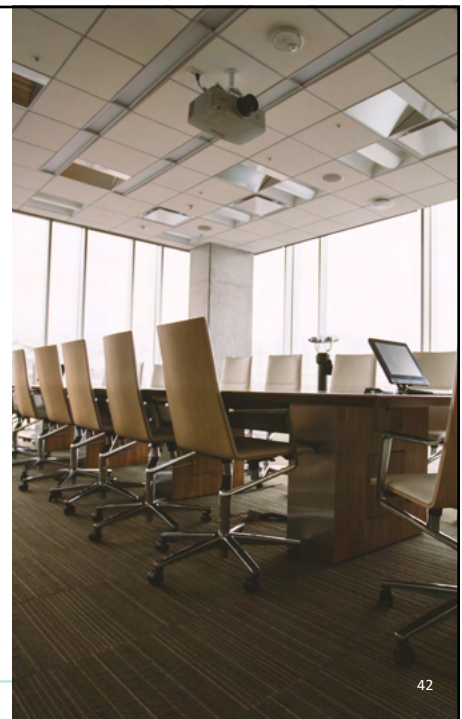
Individuals who commit “egregious” violations of the BSA will be barred from serving on the board of directors of a U.S. financial institution for 10-years

“Egregious” violation defined as:

- A criminal violation that results in conviction and for which maximum term of imprisonment is one year,
- Or a civil violation that is willful and violation facilitated money laundering or financing of terrorism



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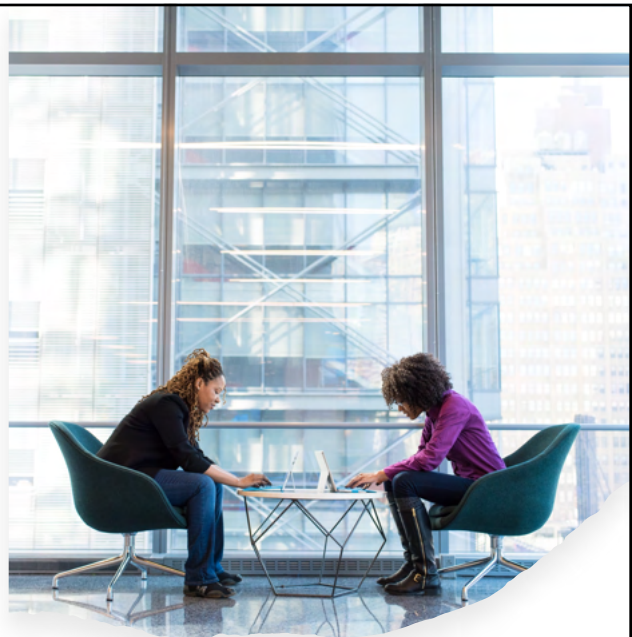
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Repayment of Bonus

- Person convicted of violating the BSA may be fined an amount equal to the profit gained from the violation and,
- For employees of financial institutions, be required to repay any bonus they received during year in which violation occurred or succeeding one



SAR Sharing and Other International Sharing of Information





FinCEN's Pilot Program Will Expand Sharing of SAR Information

Pilot program will temporarily expand guidance that currently permits SAR sharing only with a foreign "head office" or "controlling company" of a bank

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Prohibits Off-shoring Compliance

Financial institutions will be prohibited from establishing or maintaining any operation located outside the U.S. for the primary purpose of BSA compliance as a result of these provisions



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International Money Laundering

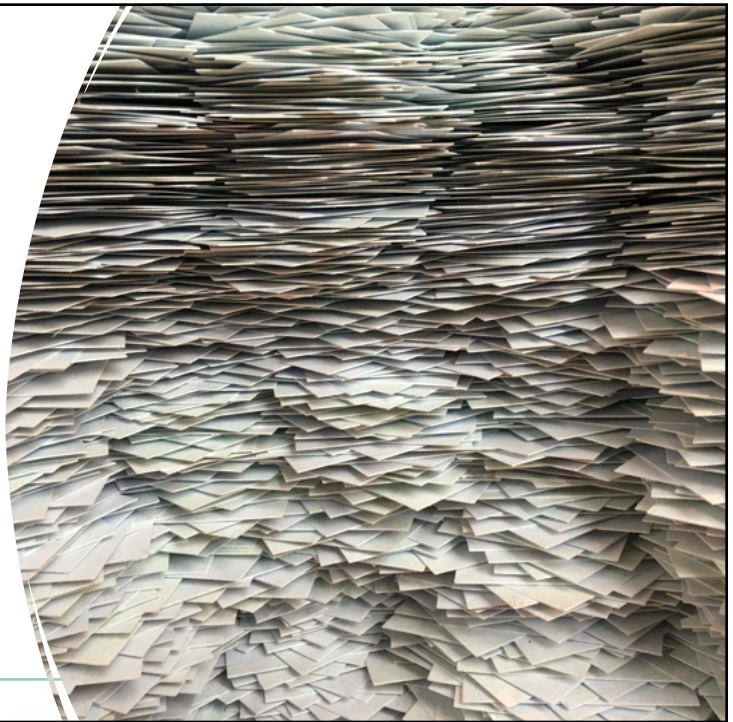


Subpoena Power over Foreign Banks

- Expands statutory authority of DOJ to subpoena documents from foreign financial institutions that maintain correspondent accounts in the United States
- Effective immediately



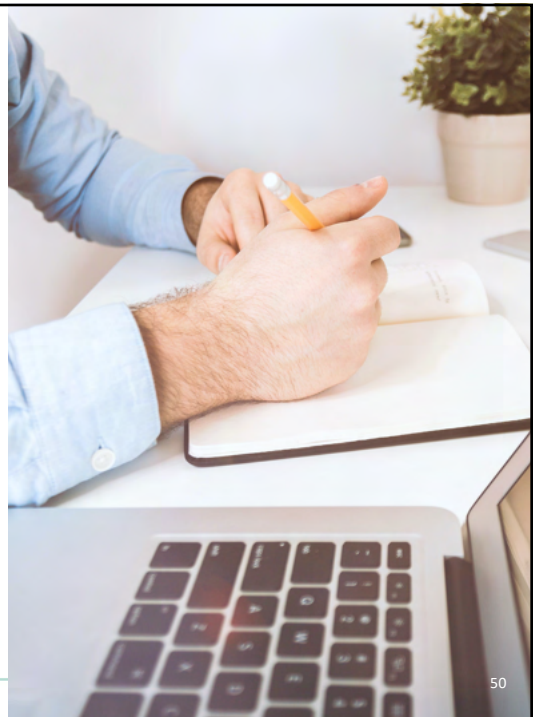
Evaluation of CTR/SAR Thresholds



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Address Criticisms

- When imposing requirements to report suspicious transactions
- Treasury shall establish streamlined, (including automated), processes to permit the filing of noncomplex categories of reports



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Evaluation of CTR/SAR Thresholds

- Treasury to conduct a formal review of reporting requirements relating to CTRs and SARs
- To propose changes to reduce unnecessarily burdensome regulatory requirements and
- To ensure the continued **usefulness** of such reports against statutory requirements

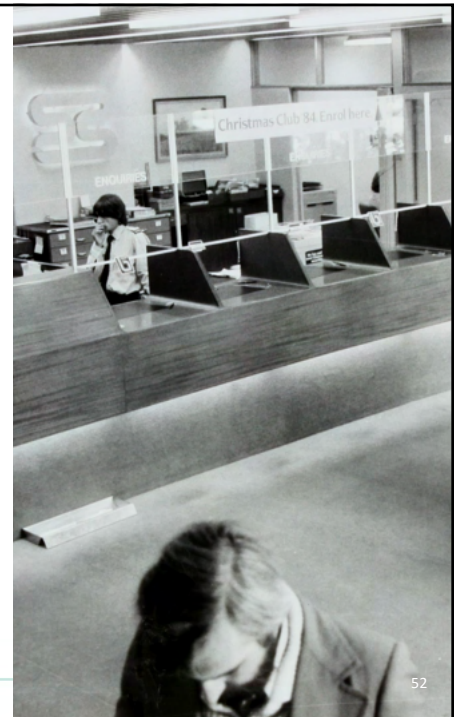


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Evaluation of CTR/SAR Thresholds

- Review of rules and guidance issued to implement CTR and SAR provisions
- Consideration of dollar thresholds (Dollar thresholds to be evaluated every 5 years for the next 10 years)
- Review of which fields should be designated as critical on the SAR form
- Should additional exemptions to CTR reporting be allowed to avoid reports that have little or no value to law enforcement

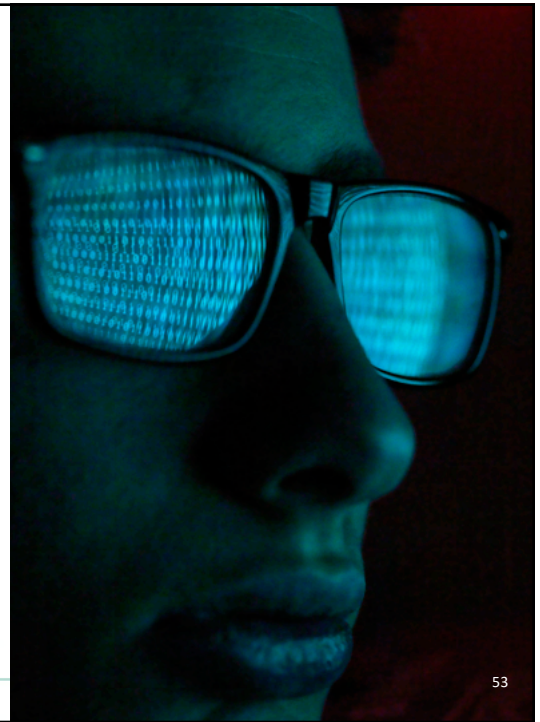


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Additional Assistance

- FinCEN to periodically disclose to financial institutions “in summary form information on suspicious activity reports filed that proved useful to criminal or civil law enforcement agencies
- FinCEN’s to issue threat pattern and trend information at least twice a year to provide meaningful information about the preparation, use, and value of reports filed under the BSA



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De-Risking



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Effects of De-Risking

- BSA/AML policies “must not unduly hinder or delay legitimate access to the financial system”
- OCC and FinCEN required to study and report on de-risking, and propose changes, to reduce any unnecessarily burdensome regulatory requirements



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De-Risking Implications

- A statement that enforcement efforts are not focused on de-risking may cause financial institutions to maintain some lines of higher-risk business
- Does not require FIs to maintain higher-risk business;
 - If cost of compliance outweighs profit from the business, FIs may continue de-risking certain business lines



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Keep Open Safe Harbor



Safe Harbor "Keep Open" Letters

- Safe harbor provision to hold FIs harmless if law enforcement asks to keep an account/ transaction open, and they do so within the limits of the request
- Does not apply to time period before request is made, and FIs must continue reporting suspicious activity



Whistleblower Program



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Whistleblower Program

- Whistleblower could receive reward up to 30% of government's recovery for providing original information that leads to sanctions of more than \$1 million
- Prior provisions, only allowed for incentive payment when original information led to recovery of \$50,000 or more, but the incentive reward was the lesser of up to 25% of the monies collected or \$150,000

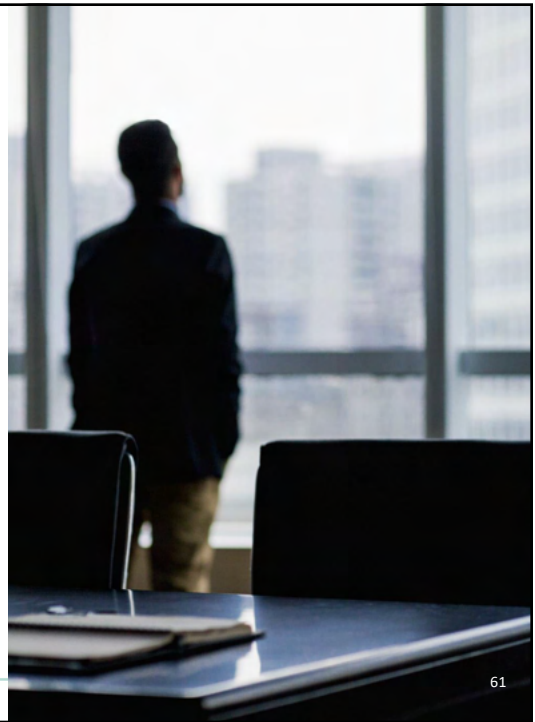


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How Would Whistleblower Be Eligible?

- Provide original information that leads to monetary sanctions greater than \$1 million
- Internal reporting counts. Can report to employer, Treasury, or Attorney General
- Anti-retaliation protections
- Incentives will likely motivate more whistleblowers to report

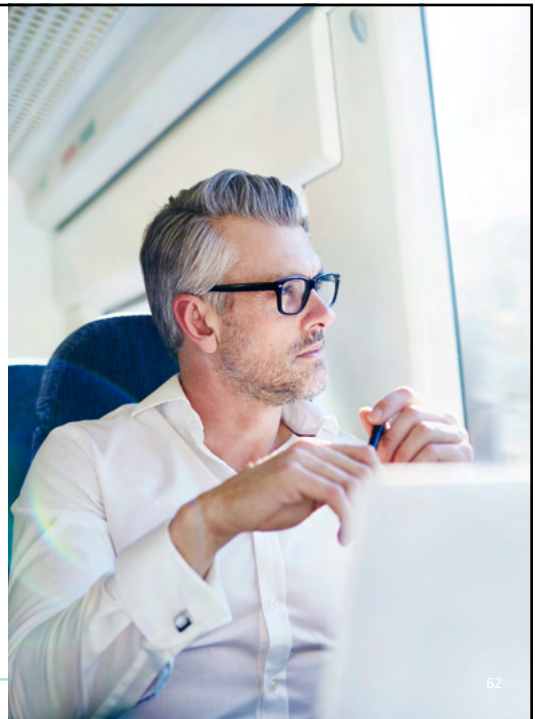


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Whistleblower Program Action Item

- Evaluate the effectiveness of existing whistleblower process
- Ensure process is working to document, appropriately investigate, and resolve AML-related complaints
- If you don't already have a whistleblower hotline and process, establish them



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AML Modernization



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Modernization and Evolving Threats

- Respond to new and emerging threats
- Treasury must conduct a review of BSA regulations to ensure:
 - Current requirements continue to be appropriate and beneficial and
 - Identify regulations that may be outdated or not behave with the risk-based AML compliance structure
- Solicit public comment and report its findings to Congress within one year of the AMLA's enactment



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Technological Innovation

- Encourage technological innovation and use of new technology to combat threats
- Subcommittee on Innovation and Technology will include representatives from financial institutions
- Innovation Officers, responsible for outreach and providing technical assistance and guidance related to implementation of new technologies



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Focus on Technology

- Focus on role of technology in BSA/AML compliance programs
- FinCEN must issue regulations establishing standards used when testing technology used for BSA compliance
- FinCEN also required to establish “streamlined, including automated, processes to, as appropriate, permit the filing of noncomplex categories” of SARs



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Technology Testing Rulemaking

- Rules for testing technology and internal processes used to comply with BSA, such as transaction monitoring systems
- Rules will allow for innovation, such as use of machine learning, with risk-based approaches to testing and risk management of innovative methods
- FFIEC will update manuals to reflect rules consistent with relevant FinCEN and federal regulator guidance

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Federal Agencies Seek Comments on Model Risk Management Guidance

April 2021

Agencies seek this information to enhance their understanding of bank practices in these areas and determine whether additional explanation or clarification may increase transparency, effectiveness, or efficiency



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Conclusion and Takeaways



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Takeaways

- Review provisions to ensure you are adequately prepared for changes
- AMLA will affect aspects of how you interact with your regulators, enforcement agencies, and other companies, and how to comply
- You may need to restructure policies, procedures, and controls to incorporate checks against the beneficial ownership registry
- Increased number of proposed rules related to AML is likely, as several sections of the AML Act require or permit public comment
- Stay apprised of proposed rules



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