

## Overview of BSA/AML Reform Under the AML Act of 2020



On January 1, 2021, Congress voted to override the president's veto of the National Defense Authorization Act for Fiscal Year 2021, enacting the Anti-Money Laundering Act of 2020 (AML Act) and the most significant overhaul of the Bank Secrecy Act (BSA) and related anti-money laundering laws since the USA PATRIOT Act of 2001. The AML Act substantially amended Title 31 and set a demanding regulatory agenda for the Treasury Department and the Financial Crimes Enforcement Network (FinCEN), which the government is busy implementing. Arnold & Porter's financial services team is tracking the legal developments and rulemaking resulting from the AML Act and providing our insights on the impact on the financial services industry. Click [HERE](#) to visit the firm's BSA/AML Reform Resource Center.

### Notable developments under the AML Act:

- **Beneficial Ownership Registry.** Treasury is required to issue regulations requiring corporate entities to report beneficial ownership information to FinCEN, which will be maintained by FinCEN for at least five years after the date on which the reporting company terminates and made available upon request to financial institutions (with consent of the reporting company) carrying out customer due diligence obligations, as well as law enforcement, regulators and certain other agencies.
- **Enhanced Whistleblower Program.** FinCEN, in consultation with the Department of Justice (DOJ), will develop regulations to bring the AML whistleblower provisions closer in line with the SEC whistleblower program. The new law provides that one or more whistleblowers who voluntarily provide original information leading to the successful enforcement of violations of the AML laws will receive not more than 30 percent of the monetary sanctions collected.
- **Information Sharing and SAR Confidentiality.** The AML Act provides various enhancements relating to information sharing under the BSA. For example FinCEN proposed rules that would establish a pilot program permitting financial institutions to share information relating to SARs with foreign branches, subsidiaries, and affiliates (except those located in China, Russia or certain other jurisdictions) for the purpose of combating illicit finance risks. The existing confidentiality provisions under the BSA were also amended to incorporate FinCEN's rules of construction prohibiting from disclosure any information that would reveal that a transaction has been reported.

- **Expanded Subpoena Authority for DOJ and Treasury.** The AML Act permits DOJ and Treasury to subpoena foreign-located bank records if the foreign bank maintains a US correspondent account and without regard to whether the correspondent account was used as part of the potential violation of US law. This new authority may be exercised in any investigation of a violation of federal criminal law, in civil asset forfeiture proceedings and in any investigation conducted under the BSA/AML laws and regulations. The expanded authority also provides for (i) civil penalties of up to double the amount of the suspected criminal proceeds sent through a correspondent account of a foreign bank if the foreign bank on which a subpoena is served discloses the existence or content of such subpoena to any account holder involved or any person named in the subpoena and (ii) civil penalties of up to \$50,000 per day for failure to comply with a subpoena. See our [Advisory](#) for a more detailed discussion.
- **Increased Penalties.** The revised statute provides various enhancements to the penalty provisions under Title 31. For example, new section 5322(e) provides that an individual or institution convicted of a violation of the BSA will be fined in an amount that is equal to the profit gained by such individual or institution by reason of such violation, and, if the person was a director or employee of the institution at the time of the violation, certain bonuses must be repaid to the institution. Repeat violators of AML laws and regulations may be subject to three times the profit gained or loss avoided by such person as a result of the violation or two times the maximum penalty with respect to the violation. Additionally, individuals are now statutorily prohibited from knowingly concealing, falsifying or misrepresenting a material fact concerning (i) the ownership or control of assets involved in large monetary transactions involving senior foreign political figures or (ii) the source of funds in certain monetary transactions involving an entity found to be a primary money laundering concern, and any person convicted of doing so, or conspiring to do so, is subject to up to 10 years in prison and up to \$1 million in fines. Finally, the NDAA also provides for a 10-year bar from serving on the board of directors of a US financial institution for any individual found to have committed an egregious violation of the BSA.
- **Expanded Duties and Powers of FinCEN.** The AML Act adds to the powers and duties of the director of FinCEN in order to address Treasury priorities, respond to industry concerns regarding the burden of BSA/AML obligations and keep up with innovation in the industry. Among other additions, the duties and powers of the director now include communicating with the industry and regulators regarding Treasury priorities, exchanging information on recordkeeping and reporting, and maintaining technology experts to identify and encourage the development of emerging technologies that can assist the government or financial institutions in countering money laundering and the financing of terrorism. The director also is now explicitly empowered to make rules to implement the public priorities as established through consultation with the Attorney General, federal and state regulators, and other agencies under new section 5318(h)(4)(A).

## Document Compare

A blackline comparison reflecting all of the substantive amendments to Title 31 is [available here](#).