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AML Act of 2020 Update –

*featuring the CTA and
National Priorities*

March 2023

Agenda

- **Let's Recap - What is the AML Act of 2020?**
- **Corporate Transparency Act (CTA)**
- **National Priorities**
- **Other Recent Updates & What Could Be Next**
 - FinCEN Budget Increase
 - AML Whistleblower Improvement Act
 - NPRMs



Disclaimer

The information provided herein is educational in nature and is based on authorities that are subject to change. This information presented today is not intended to be used as consulting advice.

AML Act of 2020



- Passed on January 1, 2021, the FY2021 National Defense Authorization Act (NDAA) includes some of the largest revisions to the Bank Secrecy Act (BSA) and other Anti-Money Laundering (AML) regulations since 2001.
- Comprised of 4,500 pages of which approximately 200 pages are specifically related to AML/BSA and Countering the Financing of Terrorism (CFT).
- There are five key sections relating to BSA/AML regulations, which may impact an organization's compliance efforts.

The five sections of the AML Act of 2020 include:

- 1) Strengthening Treasury Financial Intelligence AML, and CFT Programs;
- 2) Modernizing the AML and CFT System;
- 3) Improving AML and CFT Communications, Oversight and Processes;
- 4) Establishing Beneficial Ownership (“BO”) Information Reporting Requirements; and
- 5) Miscellaneous.

A stack of papers is shown on the right side of the slide, with a blurred background and a warm orange gradient on the left. The text "Corporate Transparency Act" is overlaid on the left side in a large, white, sans-serif font.

Corporate Transparency Act



What is the Corporate Transparency Act (CTA)

- The CTA establishes uniform beneficial ownership reporting requirements for corporations, limited liability companies, and other similar entities formed or registered to do business in the United States.
- The CTA authorizes FinCEN to collect that information and share it with authorized government authorities and financial institutions, subject to effective safeguards and controls.
- CTA effective date is January 1, 2024

CTA – Regulation Location

- William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA) is the genesis.
 - The NDAA is divided up into "divisions", or topics. The Anti-Money Laundering Act of 2020 is the short title of Division "F", found in Sections 6001 – 6511 of the NDAA.
 - Division "F" is further divided into five "titles", or sub-topics.
 1. Title LXI – Strengthening Treasury Financial Intelligence, Anti-Money Laundering, and Countering the Financing of Terrorism Programs.
 2. Title LXII – Modernizing the Anti-Money Laundering and Countering the Financing of Terrorism System
 3. Title LXIII – Improving Anti-Money Laundering and Countering the Financing of Terrorism Communication, Oversight, and Processes.
 4. **Title LXIV – Establishing Beneficial Ownership Information Reporting Requirements.**
 5. Title LXV – Miscellaneous.
 - The Corporate Transparency Act is the short title of Title LXIV, found in Sections 6401 – 6403 of the NDAA.
 - The CTA will also be codified at 31 CFR 1010.380.
 - The CTA also adds a new section to the BSA (31 USC 5336).



Changing Beneficial Ownership Reporting Through the CTA

- Two notices from FinCEN so far on the implementation of the CTA:
 - September 29, 2022 – Final rule issuance
 - December 16, 2022 – Notice of Proposed Rulemaking regarding access to BOI and related safeguards
 - A third notice is expected, possibly to discuss the data receptacle (BOSS).

CTA Revising the 2016 CDD Rule

- The CTA requires that FinCEN revise portions of the 2016 CDD Rule within one year of the effective date of the CTA.
 - The 2016 CDD Rule is codified in 31 CFR 1010.230.
 - The general requirement for financial institutions to identify and verify the beneficial owners of legal entity customers under 31 CFR 1010.230(a) will remain.
 - The specific beneficial ownership identification and verification requirements under 31 CFR 1010.230(b) - (j) must be rescinded by FinCEN to make way for the CTA codified elsewhere.
- The CTA puts the beneficial ownership reporting responsibility on the reporting company itself rather than having the financial institution gather data during account opening.

Mapping the CDD Rule to the Corporate Transparency Act for Reporting Companies



1

Who Reports

CDD – Natural person opening account on behalf of legal entity.

CTA – Reporting company “agent”.

2

What is Reported

CDD – Control prong individual and ownership prong individual(s).

CTA – Control prong individual (further defined), ownership prong individual(s), and agent certification.

3

Where is it Reported

CDD – On Certification of Beneficial Ownership (COBO) form.

CTA – Electronically within the Beneficial Ownership Secure System (BOSS) owned and operated by FinCEN.

4

When is it reported

CDD – At account opening.

CTA – Within 30 calendar days of either the company's registration or public notice of the company's creation by the Secretary of State or similar office.

How the Corporate Transparency Act Impacts Financial Institutions (FI)



Responsibilities Change

The CTA will relieve FI's from the burden of collecting and retaining BOI. Now collection and retention responsibility will reside with FinCEN, as the owner of BOSS, and the reporting company. However, FI's will still have the responsibility of determining applicable legal entity customers have completed a BOSS entry under the remaining portion of the CDD Rule codified at 31 CFR 1010.230(a).

FI's Process Change

1. Onboarding and periodic reviews will have process changes.
2. Training decks should be updated to reflect new processes.
3. FIs must have a reporting company's consent to request BOI from BOSS.

FI's To-Do List

1. FIs must develop and implement administrative, technical, and physical safeguards reasonably designed to protect BOI as a precondition for accessing BOI.
2. Enroll associates completing BOI verification in the FinCEN developed online training. FinCEN expects FI BOSS system users to complete as a condition of creating and maintaining system accounts for access.
3. Establish and maintain an auditable system of standardized records for requests.

CTA – FI Preparing for Implementation

- Update your AML Program / Policy.
- Since the CTA will be changing BOI responsibilities for FIs, changes to new customer onboarding and periodic review policies and procedures.
- BOSS system users should be identified, and training should begin as soon as the FinCEN online BOSS training is made available to ensure your institution has access.
- Establish a policy and plan for obtaining consent from potential and existing clients to validate beneficial ownership information in BOSS to comply with the portion of the CDD Rule that will remain intact.
- Prepare a plan for those reporting companies that are out of compliance, where no BOSS entry can be located (new and existing clients).
- Determine what you will do with legacy CDD Rule data; will it be used to compare against data in BOSS?
- Establish administrative, technical, and physical safeguards of BOI, and restrict access to appropriate persons.
- Establish and maintain an auditable system of standardized records for requests.



National Priorities

See Crowe's [***FinCrime in Context Knowledge Hub***](#) blog post about this topic here:

[**Prepare for compliance with the Anti-Money Laundering Act**](#)

National Priorities Background

The AML Act required FinCEN to issue a list of national priorities ("Priorities") for addressing AML and CFT. On June 30, 2021 FinCEN issued the eight (8) Priorities, in no particular order.

- The Priorities do not amend BSA requirements, but the federal banking agencies plan to revise BSA regulations.
- FinCEN will issue regulations at a later date that will specify how FIs should incorporate these Priorities into their risk-based AML programs
- Banks and NBFIs are not required to incorporate the AML/CFT Priorities into their risk-based AML programs until the effective date of the final regulations.
- Banks and NBFIs can be forward-looking and may wish to start considering how they will incorporate the AML/CFT Priorities into their risk-based AML programs.



What are the Priorities?

- Corruption
- Cybercrime
- Terrorist Financing
- Fraud
- Transnational Criminal Organization Activity
- Drug Trafficking Organization Activity
- Human Trafficking and Human Smuggling
- Proliferation Financing

Corruption

Corruption is typically defined as “abuse of entrusted power for private gain”.

Items to think about now:

- How does corruption specifically affect your organization?
- Do you have an anti-bribery or anti-corruption policy?
- [Does employee training cover the topic of corruption?](#)
- Does your company have a PEP policy, procedure, approval process, and exit strategy that aligns with your risk tolerance?
- Do you have the appropriate governance processes in place for policies and procedures?

Cybercrime

Cybercrime threats against the US financial system, and other covered institutions is a strong concern of the US Treasury.

Items to think about now:

- Do you have strong network and infrastructure controls?
- Are your employees, contractors, and vendors trained in phishing techniques, and other social engineering schemes?
- Have you properly assessed the risk and threats related to cyberattacks?
- Is sensitive data properly secured?
- Do you maintain proper documentation of access control, onboarding and offboarding for system access, and periodic testing to confirm controls are working as intended?

Terrorist Financing

Terrorism is evolving and is a relevant threat to the security of the USA. Cutting off financing to terrorist organizations can help derail vital operations, like recruitment, training, etc.

Items to think about now:

- Are the OFAC and sanctions screening models validated and tuned according to your risk-based approach and related OFAC / sanctions risk?
- Do you conduct ongoing testing to verify third-party OFAC and sanctions screening list updates?
- Have OFAC and sanctions red flags been incorporated into employee training programs?
- Is your company properly filing thorough and timely SARs where applicable and notifying law enforcement when immediate notice is required?

Fraud

Fraud, including bank fraud, provides the largest amount of illicit proceeds within the USA.

Items to think about now:

- Are applicable employees aware of the different types of fraud and most common scams and schemes?
- Are your monitoring systems properly validated and tuned to identify common red flags for fraud?
- Have these red flags been incorporated into employee training programs?
- Are you properly filing thorough and timely SARs where applicable and notifying law enforcement when immediate notice is required?

Transnational Criminal Organization (TCO) Activity

Transnational organized crime refers to organized crime that takes place in two or more countries.

Items to think about now:

- Are applicable employees aware of these types of organizations? Do they understand the risks and red flag indicators?
- Have these risks and red flags been incorporated into employee training programs?
- Is your CIP in line with regulatory expectations?
- Is your KYC program asking the right questions and collecting the right information to truly understand your customers' expected activity?
- Are you regularly refreshing your customers' profiles to confirm accurate information is on file?

Drug Trafficking Organization (DTO) Activity

DTOs are a type of TCO that specialize in the drug market. Proceeds from illegal drugs are many times laundered through the USA, and the drugs affect American citizens directly.

Items to think about now:

- Is your organization aware of red flag indicators for drug trafficking activity, funnel accounts and TBML?
- Are your monitoring systems properly validated and tuned to identify common red flags for drug trafficking activity, funnel accounts, and TBML?
- Have these red flags been incorporated into employee training programs?
- Do your due diligence programs consider private banking accounts held for non-US persons, and correspondent accounts maintained for foreign financial institutions?
- Is your CIP in line with regulatory expectations?
- Is your organization incorporating SAR terms for drug activity?

Human Trafficking and Human Smuggling

Human trafficking exploits people against their will for gain, and human smuggling is the illegal transportation of individuals into foreign jurisdiction, typically for a fee.

Items to think about now:

- Does your organization understand the differences between human smuggling and human trafficking?
- Are your monitoring systems properly validated and tuned to identify common red flags for human trafficking and human smuggling?
- Have these red flags been incorporated into employee training programs?
- Is your organization incorporating SAR terms for human smuggling / human trafficking activity?
- Are questions regarding human trafficking and human smuggling incorporated as part of your due diligence process for applicable high-risk customer types that might also have an AML program (ex. MSBs, TPPPs etc.)?

Proliferation Financing

These networks of individuals and entities seek to exploit the US financial system to move funds that will be used:

- (1) to acquire weapons of mass destruction or delivery systems or their components; or
- (2) in the furtherance of state-sponsored weapons programs, including the evasion of United Nations or US sanctions.

Items to think about now:

- Are you in compliance with required sanctions programs?
- [Are your sanctions screening models regularly validated?](#)
- [Is your sanctions compliance program routinely audited by qualified third-party?](#)
- Do you bank or offer services to maritime, energy, or metals customers? Have you evaluated the due diligence in place to mitigate risk associated with these customers?
- Do you have the appropriate controls in place for maritime industry clients?
- Do your clients have appropriate sanctions programs in place?
- Do you have a robust due diligence program to detect if your customers are operating near or in areas determined to be high-risk?

What can you do now to get prepared?

... **Just START!**

1. **Stay Informed**: Be aware of the potential changes coming.
2. **Tell Those that Need to Know**: Keep the Board and Senior Management informed.
3. **Assess the Risk**: Risk assessments continue to be a key first step for any action and control created.
4. **Resources and References**: Rely on credible sources and read the references!
5. **Team Mentality**: Consult with your business lines.



Recent Updates & What Could Be Next

Other Recent Updates

- **FinCEN Budget Increase**
 - December 2022 – Congress omnibus spending bill included \$190.2 million for FinCEN.
 - 18% increase in FinCEN's budget from FY22.
 - Gives FinCEN resources necessary to expedite lagging AML rulemakings.
 - FinCEN can hire additional staff, modernize bureau's technology, finalize rules for CTA, etc.
- **AML Whistleblower Improvement Act**
 - December 29, 2022 – Biden signed into law.
 - Builds on AML Act by expanding whistleblower protections and strengthens incentives for reporting:
 - 1) Establishes minimum financial reward for whistleblowers;
 - 2) Creates a fund; and
 - 3) Allows citizens of any country in the world to report violations and recover monetary rewards.

Notices of Proposed Rule-Making (NPRMs)

- **No-Action Letters (AML Act 6305):**
 - FinCEN conducted assessment of No-Action Letter process, finding in part that FinCEN should conduct a rulemaking to create one.
 - ANPRM published in June 2022 seeking public comment, closed August 2022.
- **SAR Sharing Pilot Program (AML Act 6212):**
 - FinCEN published NPRM in January 2022 seeking public comment about establishing a limited-duration pilot program for sharing SARs, closed March 2022.
 - Pilot program would permit an FI with SAR reporting obligation to share SARs / information related to SARs with FI's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks.
- **Trade in Antiquities (AML Act 6110)**
 - Amends BSA to include a “person engaged in trade of antiquities” in the definition of “financial institution”.
 - FinCEN published ANPRM in September 2021 seeking public comment, closed October 2021.



Wrap Up

Take a look at Crowe's [FinCrime in Context Knowledge Hub](#) for Financial Crime Webinars, Insights and more! Click the link below.

[FinCrime in Context Knowledge Hub](#)



Thank You

Caitlin Strelloff, CAMS

Crowe LLP

Office: (216) 623-7515

caitlin.strelloff@crowe.com



Thomas Massey, M.A., CAMS

Crowe LLP

Office: (404) 442-1633

thomas.massey@crowe.com



Amber Korowicki, MPIA, CAMS, CCPB

Crowe LLP

Office: (216) 623-7548

amber.korowicki@crowe.com

