

Bank Secrecy Act and Beneficial Ownership Update

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Issue Update

Treasury's Financial Crimes Enforcement Network (FinCEN) continues active work on Anti-Money Laundering Act (AMLA) implementation, Congress' first major reform to Bank Secrecy Act (BSA) laws in decades. Congress' intent for the AMLA was to reinforce a risk-based approach to BSA compliance, reduce burden on banks, and eliminate or update outdated rules. FinCEN recently issued proposed revisions to banks' BSA program rule obligations and has requested information about the burden outdated rules currently place on banks. More work is needed to realize the intent of the AMLA, reinforce a true risk-based approach, and minimize check-the-box compliance burden on banks. The AMLA also includes the Corporate Transparency Act (CTA), which requires small businesses to report their beneficial ownership information directly to FinCEN, intended to ensure that the United States is not a haven for dirty money. The CTA extends FinCEN's jurisdiction to over 33 million small businesses, who must report beneficial ownership information directly to FinCEN. To complete implementation of the CTA, FinCEN anticipates issuing a revised customer due diligence (CDD) rule for banks in October.

Why it Matters

Complying with outdated reporting requirements (such as currency transaction reports or CTRs) and repeatedly requiring banks to collect and verify duplicative information are not de minimis burdens—and they divert banks' critical resources from focusing on illicit transactions. FinCEN must accurately understand the burden outdated rules impose. A true risk-based approach means banks must be allowed to divert compliance resources away from lower-risk customers and activities to focus on higher-risk customers and activities. FinCEN must revise its rules (e.g., the BSA program rule, CDD rule, and reporting rules) to reduce duplicative, inefficient, and burdensome requirements on banks. The expectations for banks must be clear and reasonable, with sufficient time in order to prepare to implement the new rules.

The CTA was intended to fight the use of shell companies to commit crimes, while also reducing burden on banks. More education is necessary, as FinCEN must make the public aware of this new reporting requirement, especially since non-compliance can result in significant civil and criminal penalties. Banks cannot be expected to serve as de facto regulators of their customers.

Recommended Action Items

- Reinforce ABA messaging regarding the burden outdated BSA rules place on banks. Provide examples of the impact of outdated rules on bank operations, and how they make it difficult to allocate resources on the basis of risk (e.g., current CIP and CDD rules triggered by new account openings). Explain that CTR reporting thresholds (unchanged since 1945) require banks to allocate significant compliance resources to report on law-abiding customers, and away from suspicious activity.
- Ask for more feedback regarding evolving threats, as well as the value of BSA reporting.
- Emphasize FinCEN needs to continue and amplify efforts to publicize and educate the public regarding beneficial ownership reporting rule requirements, as many small businesses remain in the dark. Share the CTA-related challenges banks and customers are facing (e.g. Amish customers who need paper filing options). Explain that banks cannot police their customers.