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The Financial Crimes Enforcement Network (FinCEN): Anti-Money Laundering Act of 2020 Implementation and Beyond

September 27, 2022

Congressional Research Service

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R47255



R47255

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The Financial Crimes Enforcement Network (FinCEN): Anti-Money Laundering Act of 2020 Implementation and Beyond

On January 1, 2021, Congress passed the Anti-Money Laundering Act of 2020 (AMLA) as Division F of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for FY2021 (P.L. 116-283). AMLA amends and builds upon the existing anti-money laundering (AML) statutory framework, originally established under the Bank Secrecy Act in 1970 (BSA; P.L. 91-508). AMLA also contains the Corporate Transparency Act (CTA; Title LXIV of Division F of the FY2021 NDAA), which for the first time imposes a federal requirement for identifying beneficial owners of certain legal entities. If fully implemented by the executive branch, AMLA may represent one of the most comprehensive efforts in recent decades to modernize the U.S. government’s regulatory architecture for AML, combat the financing of terrorism (CFT), and detect other financial crime activity.

Among its most significant objectives, AMLA contains provisions to

- establish new federal-level beneficial ownership disclosure and transparency requirements;
- expand the BSA’s purpose and mandate a review of the AML/CFT regulatory framework;
- promote public-private partnership and engagement opportunities on AML/CFT matters;
- introduce new staffing options and programs to enhance AML/CFT expertise;
- promote international cooperation on financial crime matters, while protecting financial intelligence from misuse;
- strengthen enforcement tools to deter money laundering and other forms of financial crime;
- invigorate BSA whistleblower provisions; and
- expand the BSA’s regulatory scope to include businesses that provide services involving “value that substitutes for currency.”

The Financial Crimes Enforcement Network (FinCEN) is the primary federal agency responsible for implementing many of AMLA’s provisions. A bureau of the U.S. Department of the Treasury, FinCEN plays a leading role in protecting the U.S. financial system from illicit financial threats through its mission to collect and maintain a repository of financial intelligence from financial institutions and then analyze and disseminate this information to law enforcement agencies in support of investigations pursuing perpetrators of criminal activity. As one of the primary regulators and administrators of the BSA, FinCEN also has a leading role to play in AMLA’s implementation. AMLA has tasked the Secretary of the Treasury, often in practice acting through the Director of FinCEN, to promulgate multiple federal rulemakings to strengthen and improve the AML/CFT regulatory regime, issue multiple reports, and take other programmatic and personnel actions.

Some Members of Congress and other policy observers and stakeholders are closely monitoring FinCEN’s progress in implementing AMLA, including the CTA. AMLA specifies deadlines for many of its implementation tasks—some of which, including the CTA’s directive for FinCEN to establish a federal database for identifying the beneficial owners of certain corporate entities, are substantively and politically challenging to achieve. In April 2022 testimony to the House Financial Services Committee, FinCEN’s Acting Director emphasized the strategic importance of AMLA’s provisions while also acknowledging that the agency had fallen behind in meeting AMLA’s implementation deadlines, due in part to a lack of resources. Addressing deficiencies in the U.S. AML regime, particularly with respect to beneficial ownership transparency, is a strategic objective of the Biden Administration’s December 2021 *U.S. Strategy on Countering Corruption*.

According to FinCEN’s April 2022 testimony, among the AMLA provisions that have not been implemented are the requirements to establish and staff an Office of Domestic Liaison, hire at least six foreign financial intelligence unit (FIU) liaisons, and appoint BSA innovation officers. Implementation of other AMLA provisions—including those related to beneficial ownership information collection, modernization of the AML/CFT regulatory framework that prioritizes innovation, an updated BSA whistleblower program, the development of updated BSA training for all federal bank examiners in the United States, and the establishment of more effective BSA data feedback loops between FinCEN, financial institutions, and law enforcement—remain works in progress, pending the issuance of new regulations, personnel and financial resources, and time to establish new programs.

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Introduction

On January 1, 2021, Congress passed the Anti-Money Laundering Act of 2020 (AMLA), which encompassed the most sweeping reforms to U.S. anti-money laundering (AML) policy in recent decades. Contained within the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for FY2021 (Division F, P.L. 116-283), AMLA spans 59 provisions, including a distinct title known as the Corporate Transparency Act (CTA; Title LXIV).¹ These provisions aim to significantly update and expand aspects of the existing policy framework for anti-money laundering and combating the financing of terrorism (AML/CFT), originally established under the Bank Secrecy Act (BSA) in 1970.²

The primary federal agency responsible for implementing the majority of AMLA's provisions is the Financial Crimes Enforcement Network (FinCEN). A bureau of the Department of the Treasury, FinCEN is also known as the U.S. government's financial intelligence unit (FIU).³ FinCEN has described AMLA implementation as a "top priority" and has fulfilled several AMLA reporting requirements and initiated the rulemaking process for several AMLA requirements, including beneficial ownership disclosure requirements pursuant to the CTA.⁴ According to FinCEN, AMLA, including the CTA, require approximately 40 rulemakings or other congressional mandates, such as periodic reporting on implementation efforts, assessments, and findings.⁵

Some Members of Congress and other policy observers and stakeholders are closely monitoring FinCEN's progress in implementing AMLA, including the CTA. To this end, AMLA requires the FinCEN Director to testify before Congress on an annual basis for five years, beginning in 2022, on AMLA implementation (§6403). In the first of such testimonies on April 28, 2022, FinCEN acknowledged to the House Financial Services Committee that it had fallen behind in meeting AMLA's implementation deadlines due in part to a lack of resources.⁶ At the hearing, some Members of Congress also raised substantive concerns regarding FinCEN's rulemaking proposals for CTA implementation, while others have expressed support.⁷

¹ Apart from the Anti-Money Laundering Act of 2020 (AMLA), the FY2021 NDAA contained additional provisions on financial services matters in Title XCVII of Division H (§§9701-9724), which included subtitles on the Kleptocracy Asset Recovery Rewards Act (Subtitle A) and the Combating Russian Money Laundering Act (Subtitle B).

² The Currency and Foreign Transactions Reporting Act of 1970, commonly referred to as the Bank Secrecy Act (BSA), is the foundational statutory basis for the U.S. regime for anti-money laundering. Several acts have amended the BSA, including the Money Laundering Control Act of 1986 (Title I, Subtitle H of P.L. 99-570), the Annunzio-Wylie Anti-Money Laundering Act (Title XV of P.L. 102-550), the Money Laundering Suppression Act of 1994 (Title IV of P.L. 103-325), the Money Laundering and Financial Crimes Strategy Act of 1998 (P.L. 104-310), the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001 (Title III of P.L. 107-56), and the Anti-Money Laundering Act of 2020 (Division F of P.L. 116-283). Collectively, the BSA is codified at 12 U.S.C. §§1829b, 1951-1960 and 31 U.S.C. §§5311-5314, 5316-5336. Implementing regulations are located at 31 C.F.R. ch. X.

³ U.S. Department of the Treasury, *Bureaus*, <https://home.treasury.gov/about/bureaus>.

⁴ Financial Crimes Enforcement Network (FinCEN), *Message from the FinCEN Director: 180-Day Update on AML Act Implementation*, June 30, 2021. See also FinCEN, "The Anti-Money Laundering Act of 2020," <https://www.FinCEN.gov/anti-money-laundering-act-2020>.

⁵ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 4.

⁶ CQ transcripts, *House Financial Services Committee Holds Hearing on Financial Crimes Enforcement Network*, April 28, 2022.

⁷ *Ibid.*

After providing a brief overview on FinCEN and the underlying policy rationales that contributed to AMLA’s enactment, this report focuses on identifying AMLA’s key provisions—and the status of AMLA-related rulemaking and reporting requirements to be implemented by the Treasury Department, chiefly FinCEN. The report concludes with a discussion of selected issues for congressional oversight and further legislative action, including challenges associated with meeting AMLA-specified deadlines (several implementation deadlines are past due), funding (AMLA authorized but did not appropriate funding for its implementation), and the establishment of the beneficial ownership database required by the CTA.

Several bills in the 117th Congress seek further changes to the BSA and the U.S. government’s AML/CFT policy framework, including the House-passed National Defense Authorization Act for Fiscal Year 2023 (H.R. 7900; FY2023 NDAA), which includes multiple provisions on financial services matters (Title LIV, §§5401-5475). See section on “Selected Issues for Congress” for further discussion.

Background

FinCEN has described AMLA as a “landmark piece of legislation” that provides FinCEN a “leading role” in strengthening the U.S. AML/CFT architecture.⁸ This section provides an overview of FinCEN and provides context for several primary policy rationales that contributed to AMLA’s enactment—a desire for BSA “modernization” and FinCEN “transformation” as well as domestic and international pressure to address perceived AML/CFT gaps in corporate transparency.

FinCEN: An Overview

FinCEN plays a key role in the Secretary of the Treasury’s overall stewardship of U.S. economic and financial systems and related policy, particularly with respect to AML/CFT policy. FinCEN’s mission is “to safeguard the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”⁹ For FY2022, FinCEN’s budget totaled approximately \$172.7 million.¹⁰

FinCEN was established in 1990 to exercise AML regulatory functions under the BSA. Its responsibilities include developing regulations and related policies that require banks and other financial institutions to safeguard the U.S. financial system from illicit activity. In addition to its responsibilities for BSA oversight and rulemakings, FinCEN engages with the private sector, federal regulators, law enforcement, and the international community on AML/CFT matters. As the U.S. FIU, FinCEN also engages with counterparts around the world through the Egmont

⁸ FinCEN, *Prepared Remarks of FinCEN Deputy Director AnnaLou Tirol, Delivered Virtually at AML Intelligence’s Women in FinCrime Event*, March 3, 2022.

⁹ FinCEN, *Mission*, <https://www.fincen.gov/about/mission>.

¹⁰ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 3, <https://home.treasury.gov/system/files/266/13.-FinCEN-FY-2023-CJ.pdf>. FinCEN’s FY2022 budget total includes appropriated resources (approximately \$127.0 million) and other available resources, including reimbursable resources, recoveries from prior years, unobligated balances from prior years, and resources transfers in and out via the Treasury Executive Office for Asset Forfeiture (approximately \$45.7 million).

Group to share information and expertise in support of U.S. and foreign financial crime investigations.¹¹

As part of its mission, FinCEN collects and maintains a central repository of financial intelligence (e.g., financial transaction data, including suspicious activity reports and currency transaction reports) from financial institutions. In FY2022, FinCEN received approximately 23.5 million BSA-mandated financial transaction reports, including approximately 3.6 million suspicious activity reports (SARs).¹² For FY2023, FinCEN projects that it will receive approximately 24 million BSA report filings, including approximately 3.7 million SARs.¹³ FinCEN analyzes and disseminates such information to law enforcement agencies in support of investigations pursuing perpetrators of white collar crime; drug trafficking and other transnational criminal activity; and terrorism and other matters of national security concern.¹⁴ The “follow the money” approach to federal criminal investigations, built in part on the basis of financial intelligence collected by FinCEN and accessed by various law enforcement agencies, has reportedly contributed to a substantial number of money laundering-related convictions.¹⁵

The FinCEN Director reports to the Under Secretary of the Treasury for Terrorism and Financial Intelligence (TFI) and the Secretary-appointed position is not subject to Senate confirmation.¹⁶ As of mid-September 2022, Secretary Janet Yellen had not appointed a FinCEN Director. The current FinCEN Acting Director is Himamauli “Him” Das, whose appointment was announced on August 3, 2021.¹⁷

BSA “Modernization” and FinCEN “Transformation”

AMLA is the culmination of multiple statutory proposals introduced in the 116th Congress intended to comprehensively strengthen and modernize FinCEN’s AML/CFT capabilities.¹⁸ As

¹¹ Egmont Group, *About the Egmont Group*, <https://egmontgroup.org/about/>.

¹² U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 13.

¹³ Ibid.

¹⁴ Although FinCEN has the authority to issue civil money penalties, it does not have criminal investigative or arrest authorities. Instead, FinCEN uses its data analysis capabilities to support investigations and prosecutions of financial crimes, and refers possible cases to law enforcement authorities when warranted. It also submits requests for information to financial institutions from law enforcement agencies conducting criminal investigations. One example of FinCEN’s analytical function is its Financial Institution Advisory Program, through which FinCEN issues public and nonpublic advisories on illicit finance threats. Section 6206 of the AMLA expands upon this analytical function to require FinCEN to issue periodic financial threat analyses.

¹⁵ During the 2010-2014 timeframe, the Financial Action Task Force (FATF) reported that the United States averaged approximately 1,200 money laundering-related convictions each year. See Financial Action Task Force, *United States: Mutual Evaluation Report, Anti-Money Laundering and Counter-Terrorist Financing Measures*, December 2016, pp. 64-65.

¹⁶ U.S. Department of the Treasury, *Terrorism and Financial Intelligence*, <https://home.treasury.gov/about/offices/terrorism-and-financial-intelligence>.

¹⁷ FinCEN, *FinCEN Announces New Acting Director*, August 3, 2021.

¹⁸ As described in the joint explanatory statement published in the conference report accompanying the FY2021 NDAA, the enacted AMLA provisions drew from several bills in the 116th Congress, including H.R. 2513, the Corporate Transparency Act of 2019, which passed the House and was included in the House-passed version of the FY2021 NDAA (Division F, H.R. 6395); H.R. 2514, the Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019 (the COUNTER Act of 2019), which passed the House and was included in the House-passed version of the FY2021 NDAA (Division G, H.R. 6395); H.R. 7592, the Stopping Trafficking, Illicit Flows, Laundering, and Exploitation Act of 2020 (the STIFLE Act of 2020), which passed the House and was included in the House-passed version of the FY2021 NDAA (Division L, H.R. 6395); S. 2563, the

noted in the joint explanatory statement published in the conference report accompanying the FY2021 NDAA (H.Rept. 116-617),

The conferees note that the current Anti-Money Laundering/Countering the Financing of Terrorism (AML/CFT) regulatory framework is an amalgamation of statutes and regulations that are grounded in the Bank Secrecy Act (BSA) (21 U.S.C. 5311 et seq.), which the Congress enacted in 1970. This decades-old regime, which has not seen comprehensive reform and modernization since its inception, is generally built on individual reporting mechanisms (i.e., currency transaction reports (CTRs) and suspicious activity reports (SARs)) and contemplates aging, decades-old technology, rather than the current, sophisticated AML compliance systems now managed by most financial institutions. The provisions ... [in AMLA] comprehensively update the BSA for the first time in decades and provide for the establishment of a coherent set of risk-based priorities.¹⁹

In line with the mandates enacted by AMLA, FinCEN is integral to what Acting Director Him Das describes as “transformation of the [AML/CFT] regulatory regime *writ large*.”²⁰

Until recently, the overarching legal foundation of our regime was an artifact of the moment it was most recently updated—in the wake of 9/11—and like most 21-year-old things, it has not entirely kept up with the times. Just as earlier incarnations of the Bank Secrecy Act were laser-focused on countering drug-related financial flows, the updates in the USA PATRIOT Act really emphasized disrupting the money flows of groups like al Qaida. It never anticipated the challenges of the 2020s: digital assets, strategic corruption, an explosion of kleptocrats hiding their wealth in American shell companies, or artificial intelligence [AI] that could help us recognize these crimes and others.

And although there has been important work through regulation, rulemaking, and guidance to keep pace with evolving risks, our legal foundation was in many respects built, as the aphorism goes, “to fight the last war.” Or at least that was the case until 2021, when Congress passed the Anti-Money Laundering Act of 2020, or the AML Act.

The AML Act ... touched off a new, post-post-9/11 era for anti-money laundering, giving FinCEN the authority to, quote, “streamline, modernize, and update the AML/CFT regime of the United States,” and that, indeed, is what we are doing.

... FinCEN is helping transform our nation’s AML/CFT regime from post-9/11 to post-pandemic; from al Qaida to AI and digital assets...

Corporate Transparency, Beneficial Ownership Disclosure, and Illicit Financial Flows

Historically, a key money laundering vulnerability of the international financial system has been the ability for individuals to create certain legal entities, including in the United States, without having to consistently disclose and update beneficial ownership information (i.e., identifying information of the natural persons who own or control legal entities). Moreover, where beneficial

Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings Act (ILLICIT CASH Act); S. 1889, the True Incorporation Transparency for Law Enforcement Act (the TITLE Act); S. 1883, the Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2019; and S. 1978, the Corporate Transparency Act of 2019. See *Joint Explanatory Statement of the Committee of Conference*, beginning on p. 1517 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021, Conference Report to Accompany H.R. 6395, H.Rept. 116-617, December 3, 2020, pp. 2136-2137.

¹⁹ *Ibid.*, p. 2137.

²⁰ FinCEN, *Prepared Remarks of FinCEN Acting Director Him Das, Delivered Virtually at the American Bankers Association/American Bar Association Financial Crimes Enforcement Conference*, January 13, 2022.

disclosure requirements have existed, they have differed across jurisdictions, including with respect to the role of the government in collecting such information and whether such information is publicly accessible.

In 2005, for example, the U.S. Money Laundering Threat Assessment identified misuse of shell companies and trusts as a key vulnerability to the U.S. financial system:

Legal entities such as shell companies and trusts are used globally for legitimate business purposes, but because of their ability to hide ownership and mask financial details they have become popular tools for money launderers.

The use of these legal structure for money laundering is well-established. The United Nations noted in a 1998 report that “the principal forms of abuse of secrecy have shifted from individual bank accounts to corporate bank accounts and then to trust and other corporate forms that can be purchased readily without even the modest initial and ongoing due diligence that is exercised in the banking sector.”

The competition among certain states to attract legal entities to their jurisdictions has created a “race to the bottom,” and a real money laundering threat.²¹

Treasury’s February 2022 National Money Laundering Risk Assessment confirms that such lack of timely access to beneficial ownership information (which reportedly risks delays in federal law enforcement investigations) remained a key U.S. AML/CFT regulatory regime weakness:

The deliberate misuse of legal entities and arrangements, including limited liability companies and other corporate vehicles, trusts, partnerships, and the use of nominees, continue to be significant tools for facilitating money laundering and other illicit financial activity in the U.S. financial system.²²

This AML/CFT vulnerability has placed the United States under domestic and international pressure, including from the Financial Action Task Force (FATF)—a key intergovernmental AML/CFT standard-setting body, of which the United States was a founding member, to tighten its AML/CFT regime with respect to beneficial ownership disclosure requirements.²³ Building on its 2006 criticism of the U.S. government’s AML/CFT regime, FATF’s 2016 review of the U.S. government’s AML/CFT regime reiterated that the “[I]ack of timely access to adequate, accurate and current beneficial ownership (BO) information remains one of the fundamental gaps in the U.S. context.”²⁴

Since at least the 110th Congress, legislation has been introduced to address long-standing concerns raised by the U.S. government, including federal law enforcement, domestic observers, and international evaluators, about the lack of beneficial ownership transparency among certain U.S.-established legal entities.²⁵ AMLA built on these efforts to enact the foundational mandate for federal beneficial ownership disclosure and information collection in the United States. Implementing AMLA, including the establishment of a federal process for collecting beneficial

²¹ U.S. Department of the Treasury, U.S. Department of Justice, U.S. Department of Homeland Security, Board of Governors of the Federal Reserve System, U.S. Postal Service, “Chapter 8: Shell Companies and Trusts,” *Money Laundering Threat Assessment*, pp. 47-48.

²² U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, February 2022, p. 1.

²³ See also U.S. rankings in the Basel Institute on Governance, *Basel AML Index 2021*, September 2021, and the Tax Justice Network, *Financial Secrecy Index 2022*, <https://fsi.taxjustice.net/>.

²⁴ FATF, *United States: Mutual Evaluation Report, Anti-Money Laundering and Counter-Terrorist Financing Measures*, December 2016, p. 4.

²⁵ See, for example, the Incorporation Transparency and Law Enforcement Assistance Act (S. 2956), introduced by Senator Carl Levin in the 110th Congress on May 1, 2008.

ownership information pursuant to the CTA, also supports the Biden Administration’s December 2021 *U.S. Strategy on Countering Corruption*, which identifies “curbing illicit finance” as one of five pillars of the U.S. government’s anti-corruption approach.²⁶

AMLA: Key Provisions

Division F of the FY2021 NDAA (P.L. 116-283) is the Anti-Money Laundering Act of 2020 (AMLA). AMLA is composed of five distinct titles:

- Title LXI—Strengthening Treasury Financial Intelligence, Anti-Money Laundering, and Countering the Financing of Terrorism Programs
- Title LXII—Modernizing the Anti-Money Laundering and Countering the Financing of Terrorism System
- Title LXIII—Improving Anti-Money Laundering and Countering the Financing of Terrorism Communication, Oversight, and Processes
- Title LXIV—Establishing Beneficial Ownership Information Reporting Requirements (the Corporate Transparency Act or CTA)
- Title LXV—Miscellaneous

If or when fully implemented, AMLA has the potential to significantly modernize the existing AML/CFT regulatory framework originally established more than 50 years ago.

Key AMLA provisions include the following:

- **Establishing beneficial ownership disclosure and transparency.** Within AMLA is the Corporate Transparency Act (CTA; Title LXIV of Division F of the FY2021 NDAA; §§6401-6403), which for the first time imposes a federal requirement for identifying beneficial owners of certain legal entities (i.e., the natural persons who own or control, directly or indirectly, such entities).
- **Expanding the BSA’s purpose and mandating a review of the AML/CFT regulatory framework.** AMLA codified an expansion the BSA’s stated purpose to include preventing illicit financial activity from harming the U.S. financial system and national security (§6101).²⁷ Correspondingly, AMLA mandates potentially significant rulemaking changes to core aspects of the existing AML/CFT regulatory framework, including revising or eliminating “outdated” or “redundant” regulations and enhancing opportunities for financial institutions to enhance their compliance programs through technological innovation (§6216).
- **Promoting public-private partnership and engagement opportunities.** AMLA codifies opportunities for public-private information sharing, including through a

²⁶ Biden Administration, *United States Strategy on Countering Corruption*, December 2021.

²⁷ See, for example, Section 6101(a) of the AMLA, which repealed the prior Section 5311 of Title 31 of the *U.S. Code* and replaced it with a new declaration of purpose for the BSA that included, in addition to requiring the filing of certain “highly useful” reports and maintenance of certain “highly useful” records, four additional purposes: (1) to prevent money laundering and terrorist financing “through the establishment by financial institutions of reasonably designed risk-based [AML/CFT] programs”; (2) to “facilitate the tracking” of criminally derived money or money “intended to promote criminal or terrorist activity”; (3) to conduct money laundering, terrorism finance, tax evasion, and fraud risk assessments to protect the U.S. financial system from criminal abuse and safeguard U.S. national security”; and (4) to “establish appropriate frameworks for information sharing among financial institutions, their agents and service providers, their regulatory authorities, associations of financial institutions, the Department of the Treasury, and law enforcement authorities.”

- “FinCEN Exchange” (§6103), a new Subcommittee on Innovation and Technology under the Bank Secrecy Act Advisory Group (§6207), a Financial Crimes Tech Symposium (§6211), and other mechanisms (e.g., §6214 on “encouraging information sharing and public-private partnerships” and §6306 on “cooperation with law enforcement”).
- **Introducing new staffing options and programs.** AMLA directs the establishment of an interagency AML/CFT personnel rotation program (§6104), authorizes special hiring authorities for the appointment of certain officials (§6105), codifies a Treasury financial attaché program (§6106), and requires FinCEN to maintain a cadre of analytical experts who can collaborate with other federal agencies (§6304). AMLA also creates new staff positions for domestic FinCEN liaisons (§6107), foreign financial intelligence unit liaisons (§6108), BSA innovation officers (§6208), and BSA information security officers (§6303).
 - **Promoting international cooperation on financial crime matters, while protecting financial intelligence from misuse.** AMLA directs the Department of the Treasury to increase technical assistance (§6111) and international coordination (§6112) with foreign countries to promote compliance with international AML/CFT standards and best practices, as well as stronger AML legal frameworks and enforcement. AMLA also authorizes a pilot program in which financial institutions subject to U.S. jurisdiction may share SAR information with their foreign branches, subsidiaries, and affiliates (§6212).
 - **Strengthening enforcement tools to deter money laundering and other forms of financial crime.** AMLA formalizes a mandate to collect data on how BSA reports contribute to actionable investigative leads and prosecution success (§6201). Among other provisions, AMLA also authorizes the application of additional civil penalties for repeat BSA violators (§6309), bars certain BSA violators from serving on boards of U.S. financial institutions (§6310), and adds a new prohibition on the concealment of the source of assets in monetary transactions (§6313). AMLA also authorizes the Secretary of the Treasury and the Attorney General to subpoena records from any foreign bank that maintains a U.S. correspondent account (§6308).
 - **Invigorating BSA whistleblower provisions.** Modeled in part on the Securities and Exchange Commission’s whistleblower program enacted as part of the Dodd-Frank Act in 2010, AMLA significantly revised BSA whistleblower provisions to increase the potential reward amount for whistleblower disclosures, expand who can qualify as a whistleblower, and provide whistleblowers protections against retaliation (§6314).
 - **Expanding the BSA’s regulatory scope to include businesses that provide services involving “value that substitutes for currency.”** AMLA clarifies that financial agencies and financial institutions (including currency exchanges and money transmitting businesses) covered by the BSA include businesses that provide services related to “value that substitutes for currency” (§6102(d)). Examples of value that may substitute for currency could include some digital assets and virtual currencies. AMLA also redefines “monetary instruments” to include “value that substitutes for any monetary instrument” otherwise already defined in current law.

AMLA Implementation: Rulemakings

A primary aspect of early AMLA implementation has centered on AML/CFT rulemakings, including those required to implement the CTA. This section provides an overview of significant AMLA provisions for which rulemakings may be required for full implementation—and includes information on the status of such rulemakings. While some rulemakings are in progress, others appear delayed. Additionally, FinCEN remains in the process of finalizing several other significant AML-related regulations that predate or are otherwise not specified in AMLA.²⁸

The CTA and Beneficial Ownership Disclosure

In one of its most significant rulemaking changes, AMLA established a federal requirement for identifying the beneficial owners of corporate entities. Section 6403 of the CTA, among other provisions, amended the BSA to add a new Section 5336, “Beneficial Ownership Information Reporting Requirements,” to Subchapter II of Chapter 53 of Title 31 of the *United States Code*.²⁹

Pursuant to the CTA, those forming certain new legal entities and those owning certain existing entities will be required to provide their full legal name, date of birth, current residential or business street address, and a copy of an acceptable identification document for *natural persons* who own or control such entities, subject to the definitions. In the CTA, the term *beneficial owner* is defined, in part, to mean a person who directly or indirectly owns 25% or more of a legal entity or “exercises substantial control” over it.³⁰

The CTA designated FinCEN as the central repository for collecting information on the beneficial owners of certain legal entities.³¹ Covered entities must update beneficial ownership information as it changes. The Secretary of the Treasury is required to evaluate within two years of enactment

²⁸ Such proposals seek to address AML/CFT concerns regarding topics such as real estate transaction reports and records, the “meaning of ‘money’ as used in the rules implementing the BSA”—including with respect to convertible virtual currency (e.g., cryptocurrency) and digital assets with legal tender status, and changes to the definition of brokers and dealers in securities to include funding portals for crowd funding. See FinCEN, *Anti-Money Laundering Program Requirements for “Persons Involved in Real Estate Closings and Settlements*, advance notice of proposed rulemaking (ANPRM), published in the *Federal Register*, vol. 68, no. 69, April 10, 2003, pp. 17569-17571; FinCEN, *Anti-Money Laundering Regulations for Real Estate Transactions*, ANPRM, published in the *Federal Register*, vol. 86, no. 233, December 8, 2021, pp. 69589-69602; FinCEN, *Anti-Money Laundering Regulations for Real Estate Transactions*, ANPRM, published in the *Federal Register*, vol. 87, no. 26, February 8, 2022, pp. 7068-7069; Board of Governors of the Federal Reserve System and FinCEN, *Threshold for the Requirement to Collect, Retain, and Transmit Information on Funds Transfers and Transmittals of Funds that Begin or End Outside the United States, and Clarification of the Requirement to Collect, Retain, and Transmit Information on Transactions Involving Convertible Virtual Currencies and Digital Assets with Legal Tender Status*, joint notice of proposed rulemaking, published in the *Federal Register*, vol. 85, no. 208, October 27, 2020, pp. 68005-68019; FinCEN, *Requirements for Certain Transactions Involving Convertible Virtual Currency or Digital Assets*, notice of proposed rulemaking (NPRM), published in the *Federal Register*, vol. 85, no. 247, December 23, 2020, pp. 83840-83862; FinCEN, *Amendments to the Definition of Broker or Dealer in Securities*, NPRM, published in the *Federal Register*, vol. 81, no. 64, April 4, 2016, pp. 19086-19094; and U.S. Department of the Treasury, *Semiannual Agenda and Regulatory Plan*, published in the *Federal Register*, vol. 87, no. 151, August 8, 2022, pp. 48324-48328.

²⁹ The CTA is located in Title LXIV of Division F of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (P.L. 116-283).

³⁰ See Section 6403 of the CTA.

³¹ *Covered beneficial owners* are defined in the Corporate Transparency Act, in part, to mean persons who directly or indirectly own 25% or more of a legal entity or exercise “substantial control” over it.

whether there is a need to shorten the deadline for entities to update changes in beneficial ownership information (currently set at one year after such information changes).³²

Pursuant to AMLA, FinCEN must store such information in its nonpublic database for at least five years and allow various U.S. government entities and financial institutions to access the information, subject to certain terms. Under the act, penalties for unauthorized disclosure of this information to the public are significant.³³

Regulations to implement the CTA were required within one year of enactment and are now overdue. Following an earlier advance notice of proposed rulemaking (ANPRM) in April 2021, FinCEN released a notice of proposed rulemaking (NPRM) in December 2021 to implement the beneficial ownership reporting requirements under AMLA.³⁴ FinCEN's December 7, 2021, proposed rule identified two types of reporting companies—domestic and foreign—and FinCEN noted that it expected these to include business trusts, corporations, limited liability companies, and most other limited partnerships.³⁵ Entities established before the effective date of the final rule would have one year to provide ownership information to FinCEN. Those formed after the effective date would have 14 days to provide this information.³⁶

FinCEN received 458 comments in response to its ANPRM and NPRM.³⁷ The December 2021 NPRM is reportedly the first of three proposed rules that FinCEN intends to issue with respect to the implementation of the CTA.³⁸ A second subsequent proposed rule (not yet issued) would detail how FinCEN's database could be accessed and by whom. A third proposed rule (not yet issued) would seek to update existing customer due diligence requirements for financial institutions, including with respect to beneficial ownership information disclosure.

The timeline and status of next steps in the rulemaking process remains unclear. According to the Treasury Department's Semiannual Agenda and Regulatory Plan, published in the *Federal Register* on August 8, 2022, FinCEN is reviewing the comments it has received in response to its proposed rulemakings and “considering the timing and sequence of the regulatory actions it will take to fulfill the requirements of Section 5336 in light of the issues of regulatory interaction that the comments raise.”³⁹

³² 31 U.S.C. §5336(b)(1)(E) as added by Section 6403 of AMLA. Pursuant to Section 6403, the Secretary's review is to be conducted in consultation with the Attorney General and the Secretary of Homeland Security.

³³ Ibid. Unauthorized disclosure or use of the beneficial ownership data may result in a civil penalty of up to \$500 for each day that the violation continues or has not been remedied and a criminal fine of up to \$250,000 and/or imprisonment for up to five years. If the violation occurs while violating another U.S. law or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, violators could be fined up to \$500,000 and/or imprisoned up to 10 years.

³⁴ FinCEN, *Beneficial Ownership Information Reporting Requirements*, ANPRM, published in the *Federal Register*, vol. 86, no. 63, April 5, 2021, pp. 17557-17565.

³⁵ FinCEN, *Beneficial Ownership Information Reporting Requirements*, NPRM, published in the *Federal Register*, vol. 86, no. 233, December 8, 2021, pp. 69920-69974. See also FinCEN, *Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM)*, December 7, 2021.

³⁶ FinCEN, *Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM)*, December 7, 2021.

³⁷ FinCEN, *Beneficial Ownership Information Reporting Requirements*, Regulation Identifier Number 1506-AB49, <https://www.regulations.gov/docket/FINCEN-2021-0005>. The number of comments refers to the total number of comments posted to this docket.

³⁸ FinCEN, *Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking (NPRM)*, December 7, 2021.

³⁹ U.S. Department of the Treasury, *Semiannual Agenda and Regulatory Plan*, published in the *Federal Register*, vol.

One issue raised in comments to FinCEN’s December 2021 NPRM related to how FinCEN had defined “substantial control” over a covered corporate entity (referred to as a “reporting entity” in the NPRM), for the purposes of determining whether someone is a beneficial owner of that entity;⁴⁰ and how broadly it defined “ownership interest.”⁴¹ In a February 2022, letter to Secretary of the Treasury Janet Yellen and FinCEN Acting Director Das, House Financial Services Committee Chair Maxine Waters, Senate Banking Committee Chair Sherrod Brown, and House Oversight and Reform Committee Chair Carolyn Maloney commended FinCEN for using a definition of “substantial control” the authors characterized as broad and flexible enough to encompass functional control over a reporting entity using novel means of control. The authors also flagged the importance in the NPRM of including a definition of “ownership interest” that encompassed not only equity ownership, but also other informal means to structure ownership that may serve to conceal such ownership, such as unwritten understandings or relationships between individuals. A July 2018, report by the Financial Action Task Force (FATF) on the *Concealment of Beneficial Ownership* flagged the use of informal nominees, or “straw men” as nominee shareholders or directors, as a key means of hiding the identities of beneficial owners by criminals.⁴² On the other hand, a March 2022 letter to Treasury and FinCEN from Ranking House Financial Services Committee Member Patrick McHenry and Ranking House Committee on Small Business Member Blaine Luetkemeyer stated that the definition of “substantial control” used in the NPRM was overly broad.⁴³

Status of Other AMLA Rulemaking Requirements

As described below, FinCEN is developing several AMLA rules, including rules on AML/CFT priorities, AML regulations for dealers in antiquities, a pilot program to share SARs, and a process for issuing “no-action” letters. The AMLA contains several other prospective AML/CFT-related rulemaking provisions that are in process as well.

Rulemaking on AML/CFT Priorities

Section 6101(b) of the AMLA amends 31 U.S.C. §5318 to require the Secretary of the Treasury to “establish and make public priorities” for AML/CFT policy.⁴⁴ Pursuant to this requirement, FinCEN issued an initial list of eight AML/CFT priorities on June 30, 2021 (Treasury is required to update its priorities at least once every four years).⁴⁵ Section 6101(b) of the AMLA further

87, no. 151, August 8, 2022, pp. 48324-48328.

⁴⁰ As previously noted, under the NPRM, beneficial owners of legal entities covered by the rule are required to report their names and identifying information to FinCEN.

⁴¹ See Letter from Representatives Maxine Waters, Chair of the House Committee on Financial Services, Sherrod Brown, Chair of the Senate Committee on Banking, Housing and Urban Affairs, and Representative Carolyn Maloney, Chair of the House Committee on Oversight and Reform, to Secretary of the Treasury Janet Yellen and Acting FinCEN Director Him Das, February 7, 2022.

⁴² FATF and the Egmont Group of Financial Intelligence Units, *Concealment of Beneficial Ownership*, July 2018, p. 6.

⁴³ Letter from Representatives Patrick McHenry, Ranking Member of the House Committee on Financial Services, and Blaine Luetkemeyer, Ranking Member of the House Committee on Small Business, to Secretary of the Treasury Janet Yellen and Acting FinCEN Director Him Das, March 2, 2022, p. 2.

⁴⁴ See 31 U.S.C. §5318(h)(4). Pursuant to this provision, the priorities are to be developed in consultation with the Attorney General, federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), relevant state financial regulators, and relevant national security agencies.

⁴⁵ FinCEN, *Anti-Money Laundering and Countering the Financing of Terrorism National Priorities*, June 30, 2021. The initial eight priorities are (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity;

requires the Secretary of the Treasury, acting through the FinCEN Director, to, “as appropriate, promulgate regulations” to implement its public AML/CFT policy priorities.⁴⁶ Such rulemaking was due within 180 days of the issuance of the first AML/CFT policy priorities on June 30, 2021. According to the Treasury Department’s Semiannual Agenda and Regulatory Plan, published in the *Federal Register* on August 8, 2022, FinCEN intends to issue an NPRM to implement the provisions in Section 6101 of the AMLA.⁴⁷

AML Regulations for Dealers in Antiquities

Section 6110 of the AMLA requires the Secretary of the Treasury to issue proposed rules within 360 days of enactment that subject “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” to BSA requirements. According to FinCEN, trade in antiquities may facilitate illicit value transfers and be used as a money laundering method by a wide range of terrorist organizations, transnational criminal networks, and other malign actors.⁴⁸ On March 9, 2021, FinCEN issued a notice to inform financial institutions about anticipated regulatory activity related to antiquities trade.⁴⁹ On September 24, 2021, FinCEN published an ANPRM in the *Federal Register*, launching the regulatory process for applying BSA requirements to persons engaged in the trade in antiquities.⁵⁰ FinCEN received 37 comments on its ANPRM.⁵¹ According to the Department of the Treasury’s Semiannual Agenda and Regulatory Plan, published in the *Federal Register* on August 8, 2022, FinCEN intends to issue an NPRM by early 2023.⁵²

Pilot SAR Sharing Program

Unauthorized disclosure of the contents or existence of a SAR—including with foreign branches, subsidiaries, and affiliates of U.S. financial institutions—may result in civil penalties and criminal sanctions. Section 6212 of the AMLA requires the Secretary of the Treasury, in coordination with the FinCEN Director, to issue rules establishing a pilot program to permit

(6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) weapons proliferation financing.

⁴⁶ The rulemaking requirement is codified at 31 U.S.C. §5318(h)(4)(d). Pursuant to this provision, the rulemaking is to be conducted in consultation with the federal functional regulators and relevant state financial regulators.

⁴⁷ U.S. Department of the Treasury, *Semiannual Agenda and Regulatory Plan*, published in the *Federal Register*, vol. 87, no. 151, August 8, 2022, pp. 48324-48328.

⁴⁸ FinCEN, *FinCEN Launches Regulatory Process for New Antiquities Regulations*, September 23, 2021. Section 6110 of the AMLA also required the Secretary of the Treasury, in coordination with the Director of the Federal Bureau of Investigation, the Attorney General, and the Secretary of Homeland Security, to conduct “a study of the facilitation of money laundering and the financing of terrorism through the trade in works of art.” The study was due to the Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Financial Services within 360 days of enactment. According to FinCEN, the study has been completed and submitted to Congress. FinCEN response to CRS inquiry, September 6, 2022.

⁴⁹ FinCEN, *FinCEN Informs Financial Institutions of Efforts Related to Trade in Antiquities and Art*, FIN-2021-NTC2, March 9, 2021.

⁵⁰ FinCEN, *Anti-Money Laundering Regulations for Dealers in Antiquities*, ANPRM, published in the *Federal Register*, vol. 86, no. 183, September 24, 2021, pp. 53021-53024. See also FinCEN, *FinCEN Launches Regulatory Process for New Antiquities Regulations*, press release, September 23, 2021.

⁵¹ FinCEN, *Anti-Money Laundering Regulations for Dealers in Antiquities*, Regulation Identifier Number 1506-AB50, <https://www.regulations.gov/docket/FINCEN-2021-0006>. The number of comments refers to the total number of comments posted to this docket.

⁵² U.S. Department of the Treasury, *Semiannual Agenda and Regulatory Plan*, published in the *Federal Register*, vol. 87, no. 151, August 8, 2022, pp. 48324-48328.

financial institutions subject to BSA reporting requirements to share SARs and related information otherwise subject to SAR confidentiality limitations with their foreign branches, subsidiaries, and affiliates.

Unless the Secretary authorizes a case-specific exception and notifies the Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Financial Services that such an exception is in the national security interest of the United States, participating financial institutions may not share SAR information with foreign branches, subsidiaries, or affiliates located in China or Russia. Moreover, they may not share SAR information with foreign branches, subsidiaries, or affiliates located in jurisdictions identified as a state sponsor of terrorism, subject to U.S. sanctions, or that “the Secretary has determined cannot reasonably protect the security and confidentiality of such information.”

The pilot program would terminate three years after enactment, but it may be extended up to two additional years if the Secretary reports to the Senate Committee on Banking, Housing, and Urban Affairs and House Committee on Financial Services that authorizing such an extension is in the national interest of the United States, among other requirements. On January 25, 2022, FinCEN published an NPRM in the *Federal Register* for such a time-limited pilot program.⁵³ FinCEN received 17 comments on its NPRM.⁵⁴ According to the Department of the Treasury’s Semiannual Agenda and Regulatory Plan, published in the *Federal Register* on August 8, 2022, FinCEN intends to issue a final rule by the end of 2022.⁵⁵

No-Action Letter Process

Section 6305 of the AMLA requires the FinCEN Director to conduct an assessment on whether FinCEN should establish a process for issuing BSA “no-action” letters.⁵⁶ As described in Section 6305 of the AMLA, the issuance of “no-action” letters could involve FinCEN responding to inquiries concerning the applicability of BSA and related AML/CFT provisions to specific conduct, along with requests for an official statement as to whether FinCEN or any relevant federal functional regulator intends to take an enforcement action with respect to such conduct. In turn, Section 6305 of the AMLA requires the Secretary of the Treasury to submit a report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services, within 180 days of enactment, with FinCEN’s findings and determinations, as well as to propose rulemakings, as appropriate, to implement such findings and determinations.⁵⁷ On June 28, 2021, FinCEN issued the required report, indicating that “FinCEN assesses that it should establish a no-action letter process through rulemaking, provided sufficient resources are

⁵³ FinCEN, *Pilot Program on Sharing of Suspicious Activity Reports and Related Information with Foreign Branches, Subsidiaries, and Affiliates*, NPRM, published in the *Federal Register*, vol. 87, no. 16, January 25, 2022, pp. 3719-3729. See also FinCEN, *FinCEN Issues Proposed Rule for Suspicious Activity Report Sharing Pilot Program to Combat Illicit Finance Risks*, press release, January 24, 2022.

⁵⁴ FinCEN, *Pilot Program on Sharing of Suspicious Activity Reports and Related Information with Foreign Branches, Subsidiaries, and Affiliates, Regulation Identifier Number 1506-AB51*, <https://www.regulations.gov/docket/FINCEN-2022-0002>. The number of comments refers to the total number of comments posted to this docket.

⁵⁵ U.S. Department of the Treasury, *Semiannual Agenda and Regulatory Plan*, published in the *Federal Register*, vol. 87, no. 151, August 8, 2022, pp. 48324-48328.

⁵⁶ Pursuant to Section 6305(a), FinCEN’s assessment is to be conducted in consultation with the Attorney General, federal functional regulators, state bank supervisors, state credit union supervisors, and other federal agencies, as appropriate.

⁵⁷ Pursuant to Section 6305(b), the Secretary’s report is to be submitted in coordination with the Director of the Federal Bureau of Investigation, Attorney General, Secretary of Homeland Security, and federal functional regulators.

made available.”⁵⁸ On June 6, 2022, FinCEN published an ANPRM in the *Federal Register*.⁵⁹ FinCEN received 25 comments on its ANPRM.⁶⁰

Other Prospective Rulemakings

Other AMLA provisions may involve rulemakings for which indications of progress are not publicly available as of the date of this report’s publication. Such provisions include the following:

- Section 6103 of the AMLA establishes a “FinCEN Exchange” to facilitate voluntary public-private information sharing partnership between law enforcement agencies, national security agencies, financial institutions, and FinCEN. The provision also requires FinCEN to, “as appropriate, promulgate regulations that establish procedures for the protection of information shared and exchanged between FinCEN and the private sector” through the FinCEN Exchange.⁶¹ AMLA does not provide a deadline for the issuance of such regulations.
- Section 6204 of the AMLA requires the Secretary of the Treasury to conduct a formal review of the financial institution reporting requirements relating to currency transactions reports (CTRs) and SARs—and potential prospects for “streamlining requirements” for such reports.⁶² Section 6204(c) of the AMLA requires the Secretary of the Treasury to submit a report to Congress within one year of enactment with the Secretary’s findings and determinations, as well as proposed rulemakings.⁶³
- Section 6205 of the AMLA requires the Secretary of the Treasury to review and determine whether the dollar thresholds, including aggregate thresholds, for CTRs and SARs should be adjusted.⁶⁴ Section 6205(c) of the AMLA requires the Secretary of the Treasury to publish a report with the Secretary’s findings as well as proposed rulemakings within one year of enactment.⁶⁵ Once every five years

⁵⁸ FinCEN, *A Report to Congress: Assessment of No-Action Letters in Accordance with Section 6305 of the Anti-Money Laundering Act of 2020*, June 28, 2021, p. 14.

⁵⁹ FinCEN, *No-Action Letter Process*, ANPRM, published in the *Federal Register*, vol. 87, no. 108, June 6, 2022, pp. 34224-34228. See also FinCEN, *FinCEN Issues Advance Notice of Proposed Rulemaking for No-Action Letter Process*, press release, June 3, 2022.

⁶⁰ FinCEN, *No-Action Letter Process, Regulation Identifier Number 1506-AB55*, <https://www.regulations.gov/docket/FINCEN-2022-0007>. The number of comments refers to the total number of comments posted to this docket.

⁶¹ The regulations requirement is codified at 31 U.S.C. §310(d)(5)(A).

⁶² Pursuant to Section 6204(a), the Secretary is to conduct the review in consultation with the Attorney General, federal law enforcement agencies, Secretary of Homeland Security, federal functional regulators, state bank supervisors, state credit union supervisors, and other relevant stakeholders.

⁶³ Pursuant to Section 6204(c), the Secretary is to submit the required report in consultation with the Attorney General, federal law enforcement agencies, Director of National Intelligence, Secretary of Homeland Security, and federal functional regulators. On December 15, 2021, FinCEN published a request for information (RFI) that sought “comment on ways to streamline, modernize, and update” the U.S. AML/CFT regime. Comments received from this RFI may inform Treasury’s approach to implementing this provision.

⁶⁴ Pursuant to Section 6205(a), the Secretary’s review and determinations are to be conducted in consultation with the Attorney General, Director of National Intelligence, Secretary of Homeland Security, federal functional regulators, state bank supervisors, state credit union supervisors, and other relevant stakeholders.

⁶⁵ Pursuant to Section 6205(c), the Secretary’s report is to be published in consultation with the Attorney General, Director of National Intelligence, Secretary of Homeland Security, federal functional regulators, state bank supervisors,

during the 10-year period after AMLA’s enactment, the Secretary is also required to reevaluate the previous findings and “propose rulemakings, as appropriate, in response to the evaluation required.”

- Section 6209 of the AMLA requires the Secretary of the Treasury to “issue a rule to specify ... the standards by which financial institutions are to test the technology and related technology internal processes” for facilitating AML/CFT compliance (e.g., machine learning or other enhanced data analytics processes). AMLA does not provide a deadline for the issuance of such “testing methods rulemaking.”⁶⁶
- Section 6314(a) of the AMLA amends 31 U.S.C. §5323 to update AML/CFT-related whistleblower incentives and protections. The amended *U.S. Code* provision also authorizes the Secretary of the Treasury, in consultation with the Attorney General, to “issue such rules and regulations as may be necessary or appropriate to implement the [updated whistleblower] provisions.”⁶⁷ AMLA does not provide a deadline for the issuance of potential rules and regulations.

AMLA Implementation: Reporting Requirements

The following section describes AMLA reporting requirements, some of which have been completed while others remain ongoing or pending.

CTA Reporting Requirements

Pursuant to the CTA, assessment reports on the functioning of the beneficial ownership registry are due one year after the effective date of implementing regulations and annually thereafter for two years.⁶⁸ Moreover, exempt entities are subject to “continuous review” for involvement in “significant abuse relating to money laundering, the financing of terrorism, proliferation finance, serious tax fraud, or any other financial crime.”⁶⁹ The CTA additionally requires the Secretary of the Treasury to prepare reports on FinCEN’s disclosure of beneficial ownership information to nonfederal law enforcement agencies,⁷⁰ and remediation actions to take in the event of a cybersecurity breach of the beneficial ownership database.⁷¹ It also requires the Inspector General of the Department of the Treasury to submit to Congress periodic reports on external user

state credit union supervisors, and other relevant stakeholders.

⁶⁶ The rulemaking requirement is codified at 31 U.S.C. §5318(o)(1).

⁶⁷ The rulemaking authority is codified at 31 U.S.C. §5323(i). On January 31, 2022, the Regulatory Information Service Center published in the *Federal Register* a list of FinCEN’s regulatory priorities for FY2022, which included a statement of FinCEN’s intention to issue an NPRM relating to Section 6314 of the AMLA. See Regulatory Information Service Center, *Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions—Fall 2021*, published in the *Federal Register*, vol. 87, no. 20, January 31, 2022, p. 5142.

⁶⁸ 31 U.S.C. §5336(b)(6) as added by Section 6403 of AMLA.

⁶⁹ 31 U.S.C. §5336(i) as added by Section 6403 of AMLA.

⁷⁰ 31 U.S.C. §5336(c)(9) as added by Section 6403 of AMLA. The reports are to be submitted to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services beginning not later than one year after the effective date of implementing regulations and annually thereafter for five years.

⁷¹ 31 U.S.C. §5336(h)(5)(C) as added by Section 6403 of AMLA.

comments or complaints related to the beneficial ownership information notification and collection process.⁷²

Threat Pattern and Trend Information⁷³

Section 6206 of the AMLA amends 31 U.S.C. §5318(g) to require the FinCEN Director to “publish threat pattern and trend information,” including typologies related to “emerging money laundering and terrorist financing threat patterns and trends.” Such reports, required by AMLA to be published at least semiannually, are intended to “provide meaningful information about the preparation, use, and value of” BSA reporting by financial institutions. To date, FinCEN has issued two such analytic reports, including *Illicit Finance Threat Involving Wildlife Trafficking and Related Trends in Bank Secrecy Act Data* (December 20, 2021) and *Ransomware Trends in Bank Secrecy Act Data between January 2021 and June 2021* (October 15, 2021).⁷⁴

Review of Regulations and Guidance

Section 6216 of the AMLA requires the Secretary of the Treasury to conduct a formal review of AML/CFT regulations to ensure that “appropriate safeguards” are in place “to protect the financial system from threats,” including the continued requirement of certain reports and records that remain “highly useful in countering financial crime.”⁷⁵ The review is also to identify regulations and guidance that “may be outdated, redundant, or otherwise do not promote a risk-based” AML/CFT regime for financial institutions, including any regulations and guidance that do not conform to international AML/CFT standards.

The review, containing all findings and determinations, including administrative or legislative recommendations, was due to Congress within one year of AMLA’s enactment. Beginning the process of implementing this provision, FinCEN published a request for information (RFI) on December 15, 2021, that sought “comment on ways to streamline, modernize, and update” the U.S. AML/CFT regime in order to “protect U.S. national security in a cost-effective and efficient manner.”⁷⁶ FinCEN received 140 comments on its RFI.⁷⁷

⁷² 31 U.S.C. §5336(h)(4)(B) as added by Section 6403 of AMLA.

⁷³ Since the enactment of AMLA, FinCEN has published other reports on anti-money laundering/countering the financing of terrorism (AML/CFT) concerns related to threat patterns and trend information that are not specified in AMLA. Such publications include several advisories on certain illicit finance threats, including fraud and financial crimes related to the COVID-19 pandemic (FIN-2021-A001 and FIN-2021-A002), ransomware and ransom payments (FIN-2021-A004), kleptocracy and foreign public corruption (FIN-2022-A001), and elder financial exploitation (FIN-2022-A002).

⁷⁴ On the issue of ransomware, FinCEN also published an advisory. See FinCEN, *Advisory on Ransomware and the Use of the Financial System to Facilitate Ransom Payments*, FIN-2021-A004, November 8, 2021.

⁷⁵ Pursuant to Section 6216(a), the Secretary’s review is to be conducted in consultation with the federal functional regulators, Financial Institutions Examination Council, Attorney General, federal law enforcement agencies, Director of National Intelligence, Secretary of Homeland Security, and Commissioner of Internal Revenue.

⁷⁶ FinCEN, *Review of Bank Secrecy Act Regulations and Guidance*, request for information and comment (RFI), published in the *Federal Register*, vol. 86, no. 238, December 15, 2021, pp. 71201-71207. See also FinCEN, *FinCEN Seeks Comments on Modernization of U.S. AML/CFT Regulatory Regime*, press release, December 14, 2021.

⁷⁷ FinCEN, *Review of Bank Secrecy Act Regulations and Guidance – Request for Information*, <https://www.regulations.gov/docket/FINCEN-2021-0008>. The number of comments refers to the total number of comments posted to this docket.

Other Treasury Department Reporting Requirements

In addition to the AMLA provisions discussed above, AMLA contains other reporting provisions requiring the Secretary of the Treasury or the FinCEN Director to submit various reports to Congress. Some of these reporting requirements have been delegated to FinCEN or other organizational units within Treasury, such as the Office of Terrorist Financing and Financial Crimes (TFFC). Moreover, some of these reports may not have been issued publicly and may have instead been specifically provided to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services.

- Section 6103 of the AMLA amends 31 U.S.C. §310 to require the Secretary of the Treasury to submit reports to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on efforts undertaken by the FinCEN Exchange. The first report was due within one year of AMLA’s enactment and once every two years thereafter for the next five years.⁷⁸
- Section 6105(c) of the AMLA requires the Secretary of the Treasury to submit reports to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on the use of special hiring authorities for FinCEN and Office of Terrorism and Financial Intelligence personnel. The first report was due within one year of AMLA’s enactment and once every two years thereafter for the next five years.⁷⁹
- Section 6107 of the AMLA amends 31 U.S.C. §310 to require the FinCEN Director to submit reports to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services on the next-year objectives of the AMLA-created Office of Domestic Liaison and past-year activities. The first report was due within one year of AMLA’s enactment and once every two years thereafter for the next five years.⁸⁰
- Section 6110(c) of the AMLA requires the Secretary of the Treasury to “perform a study on the facilitation of money laundering and the financing of terrorism through the trade in works of art.”⁸¹ The report was due to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services within 360 days of AMLA’s enactment.⁸²

⁷⁸ Information on the FinCEN Exchange is available at <https://www.fincen.gov/resources/financial-crime-enforcement-network-exchange>. According to FinCEN, the required first report has been completed and submitted to Congress. FinCEN response to CRS inquiry, September 6, 2022.

⁷⁹ Sections 6105(a) and 6105(b) of the AMLA amended 31 U.S.C. §310 and 31 U.S.C. §312, respectively, to authorize the Secretary of the Treasury to appoint to FinCEN and the Office of Terrorism and Financial Intelligence personnel “without regard to the provisions of section 3309 through 3318 of title 5, candidates directly to positions in the competitive service, as defined in section 2102 of that title” According to FinCEN, direct hiring authority was “operationalized” as of February 26, 2021. See FinCEN, *Message from the FinCEN Director: 180-Day Update on AML Act Implementation*, June 30, 2021. According to FinCEN, the required first report has been completed and submitted to Congress. FinCEN response to CRS inquiry, September 6, 2022.

⁸⁰ According to FinCEN, the required first report has been completed and submitted to Congress. FinCEN response to CRS inquiry, September 6, 2022.

⁸¹ Pursuant to Sections 6110(c) and 6110(d), the Secretary’s review and report are to be completed in coordination with the Director of the Federal Bureau of Investigation, Attorney General, and Secretary of Homeland Security.

⁸² According to FinCEN, the study has been completed and submitted to Congress. FinCEN response to CRS inquiry, September 6, 2022.

- Section 6111 of the AMLA requires the Secretary of the Treasury to submit reports to Congress on technical assistance, including assistance to promote compliance with international AML/CFT standards and best practices, provided by the Treasury Department’s Office of Technical Assistance. The first report was due within one year of AMLA’s enactment and once every two years thereafter for the next five years.⁸³
- Section 6210 of the AMLA requires the Secretary of the Treasury to submit a report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services that assesses “the impact of financial technology on financial crimes compliance, including with respect to money laundering, the financing of terrorism, proliferation finance, serious tax fraud, trafficking, sanctions evasion, and other illicit finance.”⁸⁴ The report was due within one year of AMLA’s enactment.
- Section 6215(b) of the AMLA requires the U.S. Government Accountability Office (GAO) to conduct an analysis of financial services “de-risking”—the concern that AML/CFT and sanctions-related compliance decisionmaking may have the unintended consequence of reducing financial services access to nonprofit and international development organizations carrying out humanitarian activities in high-risk jurisdictions. In turn, Section 6215(c) requires the Secretary of the Treasury to undertake a formal review and submit a report to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services that includes “a strategy to reduce de-risking and adverse consequences related to de-risking.”⁸⁵
- Section 6506 of the AMLA requires the Secretary of the Treasury to submit to Congress a report on trade-based money laundering (TBML) and proposed strategies to combat TBML. The report was due within one year of AMLA’s enactment.⁸⁶
- Section 6507 of the AMLA requires the Secretary of the Treasury to submit to Congress a report on Chinese money laundering and a strategy to counter such laundering activity. The report was due within one year of AMLA’s enactment.
- Section 6508 of the AMLA requires the Secretary of the Treasury to study and submit to the Senate Committee on Banking, Housing, and Urban Affairs and the House Committee on Financial Services a report on the efforts of authoritarian regimes to exploit the U.S. financial system and recommendations for legislative, regulatory, or U.S. financial institution action to address such exploitation.⁸⁷ The report is due within two years of AMLA’s enactment.

⁸³ According to FinCEN, the required first report has been completed and submitted to Congress. FinCEN response to CRS inquiry, September 20, 2022.

⁸⁴ Pursuant to Section 6210, the Secretary’s financial technology assessment is to be conducted in consultation with financial regulators, technology experts, national security experts, law enforcement, and any other group the Secretary determines is appropriate.

⁸⁵ Pursuant to Section 6215(c), the Secretary’s review and strategy are to be undertaken in consultation with the federal functional regulators, state bank supervisors, state credit union supervisors, and appropriate public- and private sector stakeholders.

⁸⁶ As authorized by AMLA, the Secretary of the Treasury may enter into a contract with a private third-party entity to carry out the study on trade-based money laundering.

⁸⁷ Pursuant to Section 6508, the Secretary’s study is to be conducted with the Attorney General, in consultation with the

GAO Reporting Requirements

AMLA directs GAO to conduct several reports, some of which have been completed, that examine the following topics:

- Financial services de-risking (§6215(b)).⁸⁸
- Findings and determinations of annual audits of the procedures and safeguards established as part of the Treasury Department’s beneficial ownership registry process (§6403).
- The effectiveness of incorporation practices implemented by AMLA to combat incorporation abuses and detect, prevent, or prosecute financial crimes (§6502(a)).
- Illicit finance risks posed by entities excepted from beneficial ownership reporting requirements (§6502(c)).
- Beneficial ownership disclosure regimes for other legal entities, such as partnerships and trusts, formed or registered at the state level and an evaluation of illicit finance concerns (§6502(d)).
- Best practices on public-private partnership feedback loops for financial intelligence information sharing (§6503).
- The effectiveness of the CTR regime, the importance of CTRs to law enforcement, and the effects of raising the CTR threshold (§6504).
- The nexus of illicit actors (transnational criminal organizations, terrorists, and others), contraband trafficking (people, drugs, weapons, cash, child sexual exploitation materials, and other illicit goods), and the methods and typologies associated with corresponding illicit financial activity—as well as policy options to address “trafficking, illicit flows, laundering, and exploitation” (§6505(b)).⁸⁹
- How various payment systems and methods, including virtual currencies and online marketplaces, are used to facilitate human trafficking and drug trafficking (§6505(c)).⁹⁰

Selected Issues for Congress

In conducting oversight and contemplating further legislative reforms to the U.S. AML framework, Congress may consider several key areas of AMLA implementation, including (1) challenges in meeting AMLA implementation deadlines, (2) FinCEN funding for AMLA implementation, (3) the status of beneficial ownership rulemaking and establishing a beneficial ownership registry, (4) the law enforcement implications of AMLA implementation, and (5) pending bills related to FinCEN, the BSA and AML/CFT policy.

Challenges in Meeting AMLA Implementation Deadlines

Congressional oversight of AMLA implementation may continue to focus on whether FinCEN can meet the statutory deadlines for regulatory activity and reporting requirements. AMLA implementation deadlines were a critical topic of concern during the April 28, 2022 hearing with Acting FinCEN Director Das, held by the House Committee on Financial Services. Further delays may raise questions regarding FinCEN’s ability or willingness to prioritize AMLA implementation.

heads of other relevant national security, intelligence, and law enforcement agencies.

⁸⁸ See GAO, *Bank Secrecy Act: Views on Proposals to Improve Banking Access for Entities Transferring Funds to High-Risk Countries*, GAO-22-104792, December 16, 2021.

⁸⁹ See GAO, *Trafficking and Money Laundering: Strategies Used by Criminal Groups and Terrorists and Federal Efforts to Combat Them*, GAO-22-104807, December 21, 2021.

⁹⁰ See GAO, *Trafficking: Use of Online Marketplaces and Virtual Currencies in Drug and Human Trafficking*, GAO-22-105101, February 14, 2022.

According to Acting FinCEN Director Das, a lack of resources has been the driving factor hampering the agency’s ability to fully comply with AMLA’s requirements:

Timely and effective implementation of the AML Act is our top priority.... It’s important that we get it done right and we get it done quickly. We’ve accomplished a lot, but we also recognize that we need to do more. As you are aware, we are missing deadlines. And to be blunt, we will likely continue to do so because ... our budget situation has required us to make significant trade-offs among competing priorities.⁹¹

FinCEN reports that funding shortfalls for AMLA implementation have particularly limited its ability to comply with AMLA’s requirements, including to establish domestic and international FinCEN liaisons and other new staffing requirements.⁹² In the same April 2022 testimony, Acting FinCEN Director Das further asserted that limited resources are also slowing the agency’s efforts to implement AMLA’s whistleblower provisions (including staffing a new Office of the Whistleblower, reviewing tips and referring appropriate matters for investigation, and drafting regulations to further enhance the program).⁹³ As of FY2022, FinCEN maintained a staff of less than 300 full-time equivalent positions, including support staff—a staffing level that some observers indicate may challenge the agency from effectively achieving its broad and arguably growing mandate.⁹⁴

FinCEN Funding for AMLA Implementation

Section 6509 of AMLA authorizes appropriations for AMLA implementation. Specifically, AMLA authorizes the following amounts for FinCEN:

- \$136 million for FY2021;
- \$60 million for FY2022;
- \$35 million annually for FY2023-2026; and
- “such sums as may be necessary” to carry out the beneficial ownership information reporting requirements under 31 U.S.C. §5336 for each of the three fiscal years beginning on the effective date of beneficial ownership regulations required by AMLA.

As part of its annual appropriations activity, Congress may consider FinCEN’s requests for funding to facilitate AMLA implementation.⁹⁵

⁹¹ Prepared statement by Himamauli Das, FinCEN Acting Director, before the House Committee on Financial Services, April 28, 2022, p. 9.

⁹² Ibid., p. 9.

⁹³ Ibid., pp. 11-12.

⁹⁴ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 3. FinCEN staffing levels, relative to its statutory mandate, have long been identified as a policy challenge. See for example GAO, *Money Laundering: FinCEN’s Law Enforcement Support, Regulatory, and International Roles*, GAO/T-GGD-98-83, April 1, 1998; and Matthew Collin, “What the FinCEN Leaks Reveal about the Ongoing War on Dirty Money,” Brookings, September 25, 2020.

⁹⁵ Some Members of Congress have advocated for FinCEN to receive funding expressly for AMLA implementation. See, for example, Letter from Representative Maxine Waters, Chair of the House Financial Services Committee, to the Chair and Ranking Member of the House Appropriations Subcommittee on Financial Services and General Government Subcommittee, April 12, 2021; Letter from 14 Members of Congress to the Chair and Ranking Member of the House Appropriations Subcommittee on Financial Services and General Government, April 27, 2022; Letter from 23 Senators to the Chair and Ranking Member of the Senate Appropriations Subcommittee on Financial Services, May 12, 2022.

- For FY2021, the Treasury Department estimated that the minimum amount of new FinCEN funding necessary to implement AMLA, including the CTA, would be \$74.3 million; Congress, however, did not appropriate Treasury’s requested supplemental funding for AMLA implementation in FY2021.⁹⁶
- For FY2022, the President’s annual budget request included approximately \$190.5 million for FinCEN—of which FinCEN requested \$60.3 million specifically for AMLA implementation, including funding for 80 full-time equivalent (FTE) positions to implement AMLA.⁹⁷
- For FY2023, the President’s annual budget request included approximately \$210.3 million for FinCEN—of which FinCEN requested \$46.4 million specifically for AMLA implementation, including funding for 115 FTE positions to implement AMLA.⁹⁸

Appropriated funding for FinCEN in FY2022, which does not specify what proportion of total FinCEN funding should be allocated to AMLA implementation, fell short of the President’s budget request. Congress appropriated funding to FinCEN in the Consolidated Appropriations Act, 2022 (P.L. 117-103). Division E of the act, the Financial Services and General Government Appropriations Act, 2022, provided FinCEN with a total of \$161.0 million—up from approximately \$127.0 million appropriated in FY2021, but below the Administration’s \$190.5 million budget request for FY2022.⁹⁹

According to the Joint Explanatory Statement accompanying FY2022 appropriations, the act “includes funds for FinCEN to develop and maintain a national beneficial ownership database, and for staffing and support costs to implement and enforce the other new requirements” associated with AMLA, including the CTA.¹⁰⁰ FinCEN, however, has indicated that FY2022 appropriations provided funding for approximately four of the 80 requested FTE positions.¹⁰¹ Another source of funds for CTA implementation has been the Treasury Forfeiture Fund (TFF), administered by the Treasury Executive Office for Asset Forfeiture (TEOAF).¹⁰² TEOAF Strategic Support obligations for FY2021-2023 are supporting the initial development costs for

⁹⁶ “Appendix A: FinCEN – FY 2021 NDAA Cost Estimate (AML Act and CTA),” attached to letter from Representative Maxine Waters, Chair of the House Financial Services Committee, to the Chair and Ranking Member of the House Appropriations Subcommittee on Financial Services and General Government Subcommittee, April 12, 2021.

⁹⁷ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2022*, p. 4.

⁹⁸ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 3.

⁹⁹ Division N of the same act, the Ukraine Supplemental Appropriations Act, 2022, provided FinCEN with an additional \$19 million “to respond to the situation in Ukraine and for related expenses.” Section 602 of the Additional Ukraine Supplemental Appropriations Act, 2022 (P.L. 117-128) provides an additional \$52 million to the Department of the Treasury “to respond to the situation in Ukraine and for related expenses” and provided that such funds may be transferred to other appropriation accounts of the Department of the Treasury. Of the \$52 million appropriated, the Department of the Treasury transferred \$22.3 million to FinCEN. FinCEN response to CRS inquiry, September 20, 2022.

¹⁰⁰ Joint Explanatory Statement, Financial Services and General Government Appropriations Act, 2022, Division E of the Consolidated Appropriations Act, 2022 (P.L. 117-103), p. 5.

¹⁰¹ FinCEN response to CRS inquiry, March 22, 2022.

¹⁰² See 31 U.S.C. §9705; as described by the Treasury Department, TEOAF “Strategic Support allows TEOAF to fund priority Federal law enforcement initiatives with remaining unobligated balances at the close of the fiscal year, after an amount is reserved for the next fiscal year’s operations.” U.S. Department of the Treasury, *Treasury Executive Office of Asset Forfeiture: Congressional Budget Justification and Annual Performance Report and Plan, FY2023*, p. 3.

the establishment of a FinCEN information technology (IT) platform to securely collect, process, store, and disseminate beneficial ownership information in a system to be known as the Beneficial Ownership Secure System (BOSS).¹⁰³

Congress is considering FY2023 appropriations for FinCEN. On June 28, 2022, the House Committee on Appropriations reported the Financial Services and General Government Appropriations Bill, 2023 (H.Rept. 117-393, accompanying H.R. 8254). With respect to FinCEN funding, the committee recommended that FinCEN receive the full amount requested in its FY2023 budget request (approximately \$210.3 million).

The Committee strongly supports the critical work performed by the Department of the Treasury in combating terrorist financing and money laundering. The enactment of the Anti-Money Laundering Act and Corporate Transparency Act in early 2021 represented the first comprehensive revision to anti-money laundering and countering the financing of terrorism law in nearly 20 years.¹⁰⁴

H.Rept. 117-393 further noted:

The recommendation supports FinCEN’s continued implementation of the provisions of the Anti-Money Laundering Act of 2020 (AMLA). Within AMLA, the Corporate Transparency Act (CTA) includes requirements for corporations, limited liability companies, and similar entities, to report on the beneficial ownership of these entities, and for FinCEN to develop a system to collect and secure this information. Once fully implemented, these actions will help protect the U.S. financial system from money laundering and other illicit financial exchanges and make it harder for bad actors, including Russian oligarchs, to evade oversight and conceal proceeds of corrupt acts using shell companies and other legal entities.... Further, the Committee urges FinCEN and the Department to proceed expeditiously to complete the rulemaking and other requirements in order to fully implement the mandates of AMLA/CTA.¹⁰⁵

Status of Beneficial Ownership Rulemaking and Registry

As noted above, FinCEN remains in the early stages of CTA implementation. When Acting FinCEN Director Das was asked directly during the April 28, 2022 House Financial Services Committee hearing about when the beneficial ownership database would be ready, Das said, “I do not have a timeline for the establishment of the database.”¹⁰⁶ To accomplish this new collection of beneficial ownership information, FinCEN asserts it would need to invest more heavily in its information technology (IT) platform, which, as FinCEN describes, will be “the foundational architecture for the CTA beneficial ownership system.”¹⁰⁷ In FY2021 and FY2022, FinCEN has reportedly invested approximately \$37.4 million on the development of BOSS, drawing from a combination of TEOAF Strategic Support and appropriated funds.¹⁰⁸

¹⁰³ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2022*, p. 19; U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 15.

¹⁰⁴ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2023*, p. 4.

¹⁰⁵ H.Rept. 117-393, accompanying H.R. 8254, p. 21.

¹⁰⁶ See CQ transcripts, *House Financial Services Committee Holds Hearing on Financial Crimes Enforcement Network*, April 28, 2022.

¹⁰⁷ U.S. Department of the Treasury, *Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report, FY2022*, May 2021, p. 19.

¹⁰⁸ CRS interview with FinCEN, September 16, 2022.

Some observers have contended that the future success of the U.S. beneficial ownership registry may depend on how accessible it is to parties who require the information. Some have suggested that while the CTA is clear on prohibiting public access to this information, FinCEN may have some discretion in upcoming rulemakings regarding how much access to grant to financial institutions, which could help them conduct customer due diligence.

In a March 2, 2022, letter to Secretary of the Treasury Janet Yellen and FinCEN Acting Director Das, Ranking House Financial Services Committee Member Patrick McHenry and Ranking House Committee on Small Business Member Blaine Luetkemeyer cautioned against efforts to expand the CTA's mandate.¹⁰⁹ The status of CTA implementation—including how much access to beneficial ownership data will be allowed under future FinCEN rulemaking—remained a major issue of debate during the April 2022 House Financial Services Committee hearing.¹¹⁰ Although some Members lauded the progress FinCEN has been able to make to date toward establishing the beneficial ownership registry and other AMLA requirements, others criticized the ongoing rulemaking process.¹¹¹

Law Enforcement Implications for AMLA Implementation

AMLA provides U.S. law enforcement with several potentially powerful tools for combating money laundering. Various observers have commented on the *potential* for several such provisions to improve U.S. enforcement of BSA violations, including provisions to increase BSA penalties, strengthen whistleblower incentives, combat corruption, and expand subpoena powers for obtaining foreign bank records.¹¹² As AMLA implementation continues, more observers, as well as Members of Congress, may focus on questions related to how AMLA is improving U.S. efforts to investigate and prosecute financial crimes *in practice*. The practical effect of AMLA provisions on law enforcement outcomes has implications for the success of other U.S. policy initiatives, including counternarcotics.¹¹³

As enacted, AMLA directs the Attorney General to play a key consultative role in the implementation of many of its provisions and requires the Attorney General to prepare certain reports—although not all such reports are required to be submitted to Congress. One annual reporting requirement, for example, requires the Attorney General to report to the Secretary of the

¹⁰⁹ Letter from Representatives Patrick McHenry, Ranking Member of the House Committee on Financial Services, and Blaine Luetkemeyer, Ranking Member of the House Committee on Small Business, to Secretary of the Treasury Janet Yellen and Acting FinCEN Director Him Das, March 2, 2022.

¹¹⁰ See, for example, questioning by Ranking Member Rep. Patrick McHenry in CQ transcripts, *House Financial Services Committee Holds Hearing on Financial Crimes Enforcement Network*, April 28, 2022.

¹¹¹ *Ibid.*

¹¹² See, for example, Gibson Dunn, “The Top 10 Takeaways for Financial Institutions from the Anti-Money Laundering Act of 2020,” Client Alert, January 1, 2021, <https://www.gibsondunn.com/the-top-10-takeaways-for-financial-institutions-from-the-anti-money-laundering-act-of-2020/>; and Matthew Stephenson, “It’s Not Just the Corporate Transparency Act: Other Reasons to Welcome the Passage of the U.S. NDAA,” The Global Anticorruption Blog, January 12, 2021, <https://globalanticorruptionblog.com/2021/01/12/its-not-just-the-corporate-transparency-act-other-reasons-to-welcome-the-passage-of-the-u-s-ndaa/>.

¹¹³ The Performance Review System Report, a component of the Biden Administration’s 2022 National Drug Control Strategy (as required by 21 U.S.C. §1705), for example, acknowledges that “a single source database that can track whole-of-government efforts against the illicit finance activities of the TCOs or their enablers” does not currently exist; however, efforts “to track all enforcement action and prosecutorial outcomes against the full FinCEN dataset” are underway in response to AMLA’s requirement for a more robust feedback mechanism between regulatory, national security, law enforcement, and financial industry partners on illicit finance risks and priorities. White House, Executive Office of the President, Office of National Drug Control Policy, *National Drug Control Strategy Performance Review System Report*, April 2022, pp. 32-33.

Treasury on law enforcement use of BSA financial intelligence data (§6201). Congress may seek further information directly from the Department of Justice and other federal agencies to evaluate the measurable impact of AMLA’s implementation in terms of law enforcement outcomes in prosecuting money laundering and other BSA violations, as amended or added by AMLA.

Selected Legislation in the 117th Congress

In addition to AMLA implementation, there is congressional interest in further amending the U.S. AML/CFT framework through legislation. While such congressional activity reflects the ongoing view of some observers that the U.S. AML/CFT regime requires further improvement, others may caution that enactment of additional measures could further challenge FinCEN’s ability to implement AMLA and achieve other strategic objectives.

The House-passed National Defense Authorization Act for Fiscal Year 2023 (H.R. 7900; FY2023 NDAA), for example, includes provisions on financial services matters (Title LIV, §§5401-5475). Included in the House-passed FY2023 NDAA is the Establishing New Authorities for Businesses Laundering and Enabling Risks to Securities Act (ENABLERS Act; see also H.R. 5525), which, among other provisions, seeks to subject certain non-bank professional service providers (“gatekeepers”) to AML/CFT compliance requirements. Section 5415 of the House-passed FY2023 NDAA would also amend and expand FinCEN’s authority to apply a new special measure prohibiting or setting conditions on certain transmittals of funds involving a foreign jurisdiction or financial institution “of primary money laundering concern” (see also H.R. 7128, Special Measures to Fight Modern Threats Act).¹¹⁴

Potentially reflecting a desire for increased congressional oversight and accountability on AML/CFT matters and FinCEN’s role, the Financial Crimes Enforcement Network Improvements Act (H.R. 7623), among other provisions, seeks to require the President to appoint the FinCEN Director and the Senate to confirm the appointment. Other bills in the 117th Congress, which, if enacted, could affect FinCEN, the BSA, and/or AML/CFT policy implementation include the: Timely Delivery of Bank Secrecy Act Reports Act (H.R. 7734, which passed the House); FinCEN Exam Delegation Study (H.R. 6328); Financial Crimes Enforcement Network Exchange Improvement Act (H.R. 5320); Nowhere to Hide Oligarchs’ Assets Act (H.R. 7080); Protecting Financial Privacy Act of 2021 (H.R. 5451); Digital Asset Market Structure and Investor Protection Act (H.R. 4741); and Gun Violence Prevention Through Financial Intelligence Act (H.R. 5764 and S. 3117).

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¹¹⁴ The current authority to apply special measures is codified at 31 U.S.C. §5318A.

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