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IN FOCUS

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Introduction to Financial Services: Anti-Money Laundering Regulation

Background

Anti-money laundering (AML) regulation refers to efforts to prevent criminal exploitation of financial systems to conceal the location, ownership, source, nature, or control of illicit proceeds. According to the United Nations, some $300 billion in illicit transnational crime proceeds (excluding tax evasion) likely flowed through the U.S. financial system in 2010, equivalent to roughly 2% of U.S. gross domestic product (GDP). In 2015, the U.S. Department of the Treasury confirmed that the U.N.'s estimates are comparable to U.S. estimates. Rough International Monetary Fund (IMF) estimates also indicate that the global volume of money laundering could amount to as much as 2.7% of the world's GDP, or $1.6 trillion annually.

Money laundering is broadly recognized to have potentially significant economic and political consequences at both national and international levels. Despite robust AML efforts in the United States, policymakers face challenges in their ability to counter money laundering effectively, including the diversity of illicit methods to move and store ill-gotten proceeds through the international financial system; the introduction of new and emerging threats (e.g., cyber-related financial crimes); the ongoing use of old methods (e.g., bulk cash smuggling); gaps in legal, regulatory, and enforcement regimes, including uneven availability of international training and technical assistance for AML purposes; and the costs associated with financial institution compliance with global AML guidance and national laws.

Legal Framework

In the United States, the legislative foundation for domestic AML regulation originated in 1970 with the Bank Secrecy Act (BSA) of 1970 and its major component, the Currency and Foreign Transactions Reporting Act. Amendments to the BSA and related provisions in the 1980s and 1990s expanded AML policy tools available to combat crime—particularly drug trafficking—and prevent criminals from laundering their illicitly derived profits.

Key elements to the BSA's AML legal framework, which are codified in Titles 12 (Banks and Banking) and 31 (Money and Finance) of the *U.S. Code*, include requirements for customer identification, recordkeeping, reporting, and compliance programs intended to identify and prevent money laundering abuses. Substantive criminal statutes in Titles 31 and 18 (Crimes and Criminal Procedures) of *the U.S. Code* prohibit money laundering and related activities and establish civil penalties and forfeiture provisions. Federal authorities have also applied administrative forfeiture, nonconviction-based forfeiture, and criminal forfeiture tools to combat money laundering. In response to the terrorist attacks on the U.S. homeland on September 11, 2001, Congress expanded the BSA's AML policy framework to incorporate additional provisions to combat the financing of terrorism through the USA PATRIOT Act. This provided the executive branch with greater authority and additional tools to counter the convergence of illicit threats, including the financial dimensions of organized crime, corruption, and terrorism.

Regulatory Framework

Multiple federal agencies play various roles in combating money laundering. This includes enforcing AML requirements and prosecuting violators domestically, engaging in international information sharing and providing technical assistance to foreign countries, and developing AML policies. Examples include Treasury's 2004 establishment of the Office of the Under Secretary of Terrorism and Financial Intelligence (TFI) to safeguard the financial system against illicit use and national security threats. Also within Treasury, the Office of Foreign Assets Control (OFAC) administers and enforces U.S. economic sanctions programs, including blocking transactions and freezing assets under U.S. jurisdiction of specified foreign terrorist, criminal, and political entities. The Internal Revenue Service (IRS) also enforces compliance with BSA requirements, particularly for nonbanking financial institutions not regulated by another federal agency, such as money service businesses (MSBs), casinos, and charities.

Federal functional regulators of financial institutions—including the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of the Comptroller of the Currency—conduct oversight and examine entities in industries under their supervision for compliance with BSA and AML requirements. These regulators are responsible for the safety and soundness examinations of the institutions they supervise, and generally conduct BSA examinations concurrently with those routine inspections. When there is cause to do so, however, any of the regulators may carry out a special BSA examination. When a regulator finds BSA violations or deficiencies in AML compliance programs it may take informal or formal enforcement action, including possible civil fines. Other federal agencies with AML regulatory responsibilities include the Securities and Exchange Commission and the Commodity Futures Trading Commission.

The BSA's AML policy framework is premised on banks and other covered financial entities filing a range of reports with Treasury's Financial Crimes Enforcement Network (FinCEN) when their clients engage in suspicious financial transactions, large cash transactions, or certain other transactions. The accurate, timely, and complete reporting of such activity to FinCEN flags situations that may warrant further investigation by law enforcement. Other reports are variously required to be submitted to FINCEN by individuals transporting large amounts of cash internationally, persons with large foreign financial accounts, and nonfinancial entities conducting large cash transactions.

International Framework

Given the global nature of the international financial system and the transnational criminal activity that attempts to exploit it, the United States and other countries have engaged in a variety of international efforts designed to improve global AML responses and build international coordination, cooperation, and information sharing on AML issues, including through formal bilateral requests for mutual legal assistance on financial crime investigative matters. Multiple international organizations contribute to international AML cooperation through global standard setting, cross-border information sharing, AML assessment and monitoring, and AML technical assistance.

Some entities, such as the Financial Action Task Force (FATF) and the Basel Committee on Banking Supervision, provide standard-setting guidance relevant to AML matters. Others, such as the Egmont Group of Financial Intelligence Units and the International Criminal Police Organization (INTERPOL), contribute to the implementation of such standards through information sharing. The U.N. Office of Drugs and Crime (UNODC), the World Bank, and the IMF also maintain capabilities to variously monitor and assess the status of national AML policies, as well as provide technical assistance on AML capacity building priorities. Other international and regional organizations, including the Organization for Economic Cooperation and Development (OECD), the G-20, and the Organization of American States (OAS), have working groups and initiatives focused on various AML matters.

Selected Policy Issues for Congress

This In Focus highlights two policy issues related to AML efforts that have drawn significant congressional attention.

Beneficial Ownership

The term *beneficial owner* broadly refers to the natural person(s) who own or control a legal entity, such as a corporation or limited liability company (LLC). When such entities are set up without physical operations or assets, they are often referred to as *shell companies*. Shell companies can be used to conceal beneficial ownership and facilitate anonymous financial transactions. U.S. policymakers' concern regarding potential risks posed by shell companies whose beneficial ownership is not transparent has grown in recent years, driven by a series of leaks to the media regarding the use of shell companies, such as "the Panama Papers," and sustained multilateral criticism of current U.S. practices by the FATF.

In 2018, a new Treasury regulation came into effect that increased the requirements for banks to conduct customer due diligence (CDD) and ascertain beneficial owners in certain cases. Central to the CDD rule is a requirement for financial institutions to establish and maintain procedures to identify and verify beneficial owners of a legal entity opening a new account.

Legislation was also introduced in the 115th Congress that would address a perceived need for beneficial ownership information. S. 1454 (TITLE Act) would require states receiving certain funds under the Omnibus Crime Control and Safe Streets Act of 1968 to include in their state incorporation or formation systems specified requirements for collecting and maintaining beneficial ownership information from corporations and LLCs within those states. Another bill, H.R. 3089, would require the Secretary of the Treasury to issue regulations requiring beneficial ownership information from corporations, LLCs and other legal entities unless they are formed in a state with an incorporation system that collects beneficial ownership information meeting standards specified in the bill.

Greater Transparency in Real Estate Transactions

According to FinCEN, real estate transactions are attractive and vulnerable to money launderers because they involve high-value assets that (1) allow a large amount of money to be "cleaned" in a single transaction and (2) offer the opportunity for capital appreciation. Money launderers are also attracted by the ability to purchase real estate anonymously using shell companies and by relatively lax AML oversight of the real estate industry. While "persons involved in real estate closings and settlements" fall within the BSA's definition of *financial institutions* subject to AML oversight, FinCEN has specifically exempted them from certain AML obligations that apply to other financial institutions. In response to these risks and reports of widespread money laundering in high-end real estate, FinCEN has imposed certain additional recordkeeping and reporting requirements on businesses in prescribed geographic areas using what have been called Geographic Targeting Orders (GTOs). Most recently, on November 15, 2018, FinCEN issued GTOs requiring title insurance companies to collect and report identifying information about the beneficial ownerships of legal entities purchasing in cash (i.e., without financing) real estate worth $300,000 or more in 12 major metropolitan areas: Boston, Chicago, Dallas-Fort Worth, Honolulu, Las Vegas, Los Angeles, Miami, New York City, San Antonio, San Diego, San Francisco, and Seattle.

CRS Resources

CRS Report R44776, *Anti-Money Laundering: An Overview for Congress*

CRS In Focus IF11014, *Implementation of Treasury's New Customer Due Diligence Rule: A Step Toward Beneficial Ownership Transparency?*

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