AML/BSA Reform Is on the Horizon

When Congress pushed through the National Defense Authorization Act for fiscal year 2021, the banking industry breathed a sigh of relief with the glimmer of hope for the potential elimination of excessive regulatory burdens under the Bank Secrecy Act.

The reason for hope is the section within the legislation dedicated solely to improvements to anti-money laundering rules, including to:

- Improve coordination and information sharing among the agencies tasked with administering anti-money laundering and countering the financing of terrorism requirements, the agencies that examine financial institutions for compliance with those requirements, Federal law enforcement agencies, national security agencies, the intelligence community, and financial institutions;
- Modernize anti-money laundering and countering the financing of terrorism laws to adapt the government and private sector response to new and emerging threats;
- Encourage technological innovation and the adoption of new technology by financial institutions to more effectively counter money laundering and the financing of terrorism;
- Reinforce that the anti-money laundering and countering the financing of terrorism policies, procedures, and controls of financial institutions shall be risk-based;
- Establish uniform beneficial ownership information reporting requirements to--
    - Improve transparency for national security, intelligence, and law enforcement agencies and financial institutions concerning corporate structures and insight into the flow of illicit funds through those structures;
    - Discourage the use of shell corporations as a tool to disguise and move illicit funds;
    - Assist national security, intelligence, and law enforcement agencies with the pursuit of crimes; and
    - Protect the national security of the United States; and
- Establish a secure, nonpublic database at FinCEN for beneficial ownership information.

The main purpose of this immense undertaking will continue to focus on safeguarding the United States financial system and those financial institutions that make up that system from the abuse of money laundering, terrorist financing, and other illicit financial crimes.

Today, banks must develop and implement an effective risk-based AML program consistent with rules that transcend roughly fifty (50) years of banking. Over that period of time many things have changed, especially the recent digital innovations relating to how consumers interact and conduct their banking and transactions. Unfortunately, the same cannot be said for the regulatory burden to file reports under archaic and arbitrary thresholds.

Under the current BSA Currency Transaction Reports (CTRs) requirements (not considering exemptions as they are a burden unto themselves), financial institutions must report currency transactions over $10,000 conducted by, or on behalf of, one person, as well as multiple currency transactions that aggregate to be over $10,000 in a single day.

In addition to filing CTRs, the industry must report suspicious activity under the following thresholds:

- Criminal violations involving insider abuse in any amount.
- Criminal violations aggregating $5,000 or more when a suspect can be identified.
- Criminal violations aggregating $25,000 or more regardless of a potential suspect.
    - Transactions conducted or attempted by, at, or through the bank (or an affiliate) and aggregating $5,000 or more, if the bank or affiliate knows, suspects, or has reason to suspect that the transaction involves money laundering or other illegal activity, evades the BSA or has no business or apparent lawful purpose.

Under the current legislation, the Treasury Department is to undergo a formal review of these current arbitrary thresholds established for filing CTRs and Suspicious Activity Reports (SARs), including:

- Review of Thresholds for Certain Currency Transaction Reports and Suspicious Activity Reports.
    - The Secretary, in consultation with the Attorney General, the Director of National Intelligence, the Secretary of Homeland Security, the Federal functional regulators, State bank supervisors, State credit union supervisors, and other relevant stakeholders, shall review and determine whether the dollar thresholds, including aggregate thresholds, under sections 5313, 5318(g), and 5331 of title 31, United States Code, including regulations issued under those sections, should be adjusted.
- Considerations. In making the determinations required under subsection (a), the Secretary, in consultation with the Attorney General, the Director of National Intelligence, the Secretary of Homeland Security, the Federal functional regulators, State bank supervisors, State credit union supervisors, and other relevant stakeholders, shall:
    - Rely substantially on information obtained through the BSA Data Value Analysis Project conducted by FinCEN and on information obtained through the Currency Transaction Report analyses conducted by the Comptroller General of the United States; and
    - Consider:
        - The effects that adjusting the thresholds would have on law enforcement, intelligence, national security, and homeland security agencies;
        - The costs likely to be incurred or saved by financial institutions from any adjustment to the thresholds;
        - Whether adjusting the thresholds would better conform the United States with international norms and standards to counter money laundering and the financing of terrorism;
        - Whether currency transaction report thresholds should be tied to inflation or otherwise, be adjusted based on other factors consistent with the purposes of the Bank Secrecy Act;
        - Any other matter that the Secretary determines is appropriate.
- Report and Rulemakings. Not later than 1 year after the date of enactment of this Act, the Secretary, in consultation with the Attorney General, the Director of National Intelligence, the Secretary of Homeland Security, the Federal functional regulators, State bank supervisors, State credit union supervisors, and other relevant stakeholders, shall:
    - Publish a report of the findings from the review required under subsection (a); and
    - Propose rulemakings, as appropriate, to implement the findings and determinations described in paragraph (1).

- Updates. Not less frequently than once every 5 years during the 10-year period beginning on the date of enactment of this Act, the Secretary shall:
    - Evaluate findings and rulemakings described in subsection (c); and
    - Transmit a written summary of the evaluation to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate; and
    - Propose rulemakings, as appropriate, in response to the evaluation required under paragraph (1).

How will all this play out? Well, we'll have to wait and see. Hopefully, an increase in the reporting thresholds will bring some semblance of actual tangible benefits to financial institutions being burdened under the current BSA regulatory reporting structure.

About the Author

Steve Manderscheid, Compliance Officer – Compliance Alliance
Steve Manderscheid brings over 25 years of financial industry experience to the Compliance Alliance team. Previously, he focused on all aspects of regulatory compliance risk management while also serving in a Bank Secrecy Act officer capacity. In recent years, he has ventured into leadership roles in enterprise-wide risk management (ERM), complaint management, and vendor and third-party relationships.
In his role as Compliance Officer, Steve brings all of his experience to completing reviews, and working on developing tools, training materials, and training events for our members. Recently, he's started expanding his educational role and has become the main presenter of our popular C/A Minute videos.