

The Reform and Modernization of BSA/AML

By: Julia A. Gutierrez

With technology changing and growing at what seems like the speed of light, banking laws and regulations can struggle to keep up. All too often we skim across various regulations that revolve around paper transactions or technology that barely exists. One area of banking that can be especially impacted by an inability to keep up with the ever-changing world of technology or modernization is the Bank Secrecy Act. The Bank Secrecy Act has been around since 1970 when it was passed by Congress as the first set of laws to combat money laundering in the United States. With the exception of the amendment to incorporate the provisions of the USA PATRIOT Act, there haven't been many significant changes to the Act until recent years. In order to fulfill its purpose of fighting money laundering and financial crimes as effectively today as it did 50 years ago, the Act must be revised and revamped to meet the challenges and technological advances of the time.

Background

Over the past several years, the Financial Crimes Enforcement Network (FinCEN) has placed a great deal of focus on reforming and modernizing the BSA. The objective really began years earlier when the Bank Secrecy Act Information Technology (IT) Modernization Program was developed in 2010 to provide a modernized IT foundation to collect, store, safeguard, analyze, and share data collected pursuant to the expectation of the BSA. Modernization remains a critical component of government efforts to ensure transparency among U.S. financial systems to detect and deter crime, to strengthen national security, and to achieve economic stability and growth. More recently, the call for modernization returns to the forefront as FinCEN sets out to "re-examine the BSA regulatory framework and the broader AML regime".

In 2019, the House Financial Services Committee issued proposed bills related to the Bank Secrecy Act and Anti-Money Laundering and Combating the Financing of Terrorism (CFT) laws. One of the proposed bills set to reform the BSA/AML in an effort to strengthen and modernize the program by focusing on information sharing, resource sharing, and technological innovation. Congress has also considered various proposals which could restructure and modernize the BSA/AML. The U.S. Department of Treasury issued its 2020 National Strategy for Combating Terrorist and Other Illicit Financing which called for AML modernization by leveraging new technologies coupled with innovative compliance approaches.

Modernizing the BSA

Modernization seems to be the frequent theme when it comes to the Bank Secrecy Act. Much of this theme can be credited to the former director of FinCEN, Kenneth Blanco and his focus on the reform and modernization of the BSA/AML. The reform and modernization of the Bank Secrecy Act revolves around a collection of Advanced Notice of Proposed Rulemaking (ANPR), Final Rules, and new or amended laws.

As part of the reform efforts, FinCEN issued a Final Rule on September 14, 2020, which extended BSA/AML requirements to financial institutions lacking a federal functional regulator. The Final Rule required these institutions to develop and implement an Anti-Money Laundering program, to establish a written Customer Identification Program, and to verify the identity of beneficial owners. The final rule closed a regulatory gap between financial institutions and brought about consistency in reporting requirements and decreased the vulnerability of exploitation.

Just a couple days later, on September 16, 2020, FinCEN issued an Advanced Notice of Proposed Rulemaking (ANPR). This was one of the first major efforts in broadening and modernizing the regulatory framework of the BSA and the broader national AML regime. The intent is to provide greater flexibility in the allocation of resources and a greater alignment of priorities across the financial industry and government with a goal of an enhanced effectiveness and efficiency of anti-money launder (AML) programs. It would require financial institutions to have an AML compliance program, including a risk assessment as part of their program. In addition, the ANPR clearly outlines the expectation that financial institutions must meet when developing an “effective and reasonably designed” program. Such programs should: (1) assess and manage risk as informed by a financial institution’s own risk assessment process, including consideration of AML priorities to be issued by FinCEN consistent with the proposed amendments; (2) provide for compliance with BSA requirements, and (3) provide for the reporting of information with a high degree of usefulness to government authorities. The overall goal of the 2020 Final Rule is to enhance the effectiveness of anti-money laundering programs as it seeks to modernize the current BSA/AML. As most financial institutions already have risk assessments in place as part of their BSA/AML program, the ANPR may not necessarily add any new expectations, but rather make an industry best practice a regulatory requirement.

BSA/AML Reform continues January 1, 2021, when the Senate voted to override President Trump’s veto of the National Defense Authorization Act (NDAA) which had been previously overridden by the House on December 28, 2020. The NDAA may provide the most significant and comprehensive set of reforms to the BSA/AML since the USA PATRIOT Act of 2001. Some of the most significant reforms include expanding the ability to share Suspicious Activity Report (SAR), streamlined SAR and Currency Transaction Report (CTR), and modifying the BSA/AML program. It also reincorporates an emphasis on risk-based approaches to AML program requirements

The Anti-Money Laundering Act of 2020, part of the NDAA 2021, included the Corporate Transparency Act (CTA) and was effective as law with Congress’ override of President Trump’s veto of the NDAA on January 1, 2021. The CTA has been many years in the making and is intended to be fully implemented by 2023, including the creation of a database of beneficial ownership information with FinCEN. The CTA establishes a new framework for reporting and disclosing beneficial ownership information and really shifts the collection of information from financial institutions to reporting companies, modernizing, and streamlining much of the BSA/AML expectations.

The focus on reform and modernize seems to be ever where we turn as it becomes intertwined in new laws. The efforts and purpose of the Bank Secrecy Act and Anti-Money Laundering remain unchanged. What is changing is the world and technology around us demanding that modernization and reform become priority. It is critical that financial institutions remain knowledgeable of the regulatory and legal changes and embrace the modernization and reform which impacts their programs.



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Julia A. Gutierrez currently serves as C/A's Director of Education; developing curriculum and presentations, as well as presenting at various schools and seminars; both live and in a livestream/hybrid format. Julia has over 17 years of financial industry experience to the Compliance Alliance team. She began her career in banking in 2000 while receiving her Bachelor of Business Administration degree in Finance from the University of Alabama. Her compliance knowledge and understanding derive from her combined experience in community banks and consulting. Ms. Gutierrez

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