



BSA/AML COMPLIANCE: A Growing Consensus For Change





INTRODUCTION

At 50 years old, the Bank Secrecy Act (BSA) still serves a vital purpose for the United States financial system: protecting its individual members from being used to finance illegal activity. But its ability to achieve that purpose has not kept pace with an ever-evolving world.

In fact, the original sponsors of the BSA would barely recognize today's financial system or global economy—they are so thoroughly different from what they were in 1970. Even so, the law remains largely unchanged except for a handful of updates, including the USA PATRIOT Act, which brought more industries under BSA jurisdiction.

The resulting tug-of-war—between regulatory agencies charged with examining and enforcing BSA compliance and the financial institutions required to comply with the law in a vastly different world from the one for which it was written—continues to move in a positive direction. Consensus on the need to modernize the BSA is growing.

POSITIVE SIGNS FOR BSA/AML COMPLIANCE

The financial services industry has been advocating for a BSA overhaul for some time. At the core of its argument: The law's current framework has failed to keep pace with ongoing changes in the industry, global economy and technology, which limits the BSA's ability to fulfill its original and still very relevant purpose.

All the while, the cost of BSA compliance continues to rise, thus placing significant and, arguably, incongruent burdens on financial institutions. When testifying before the House Financial Services Committee¹ in 2019, CEOs Michael Corbat and Jamie Dimon revealed that Citigroup and JPMorgan, respectively, spend \$1 billion or more annually on BSA/AML compliance.

Furthermore, a recent Government Accountability Office (GAO) report on Anti-Money Laundering² anecdotally found that community banks and credit unions bear the greatest BSA/AML burden. Although the two very largest banks in the study spent more money for BSA/AML compliance, their totals represented less than 1 percent of all their operating expenses.

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Acknowledgement of significant innovations

It's not surprising that the world would evolve over the 50-year existence of a law, but the pace of change in financial institutions and technology over the last two decades has been faster and more drastic than the previous 30 years. Consider that in 2001, the year the USA PATRIOT Act was enacted, no one had a smartphone, much less transacted or even imagined making financial transactions from it.

According to FinCEN, "Over the past several years, there have been significant innovations in the financial sector and the development of new business models, products, and services, fueled in part by rapid technological changes."

Recognition of BSA compliance challenges

As a result of the breakneck speed of innovation, financial institutions can now offer new channels and products to their customers, and financial criminals have new avenues to potentially exploit. Complying with the very static BSA in such a complex environment presents significant financial, operational and even reputational costs for institutions.

Recognizing these challenges, FinCEN is focused on adapting the BSA's AML regime to confront threats related to illicit financial activities, while awarding financial institutions the flexibility necessary to address such threats.

FinCEN's national AML priorities

Up until now, financial institutions mostly had to guess which specific issues were top priorities on the national radar. In that scenario, they may not focus on the AML areas of greatest concern to overall national security or priority, which could lead to problems at exam time, as well as contribute to the inefficient use of resources.

FinCEN has proposed publishing its Strategic AML Priorities. By doing so, it will:

- Inform an institution's risk assessment depending on its size, complexity, customers, geographic footprint, products and services
- Enhance the ability of institutions to provide information with a high degree of usefulness to law enforcement and government authorities
- Allow law enforcement to better understand and address risks in specific areas
- Improve information sharing, including public-private forums

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RECENT UPDATES TO ENHANCE AML COMPLIANCE

As FinCEN seeks to provide clarity on existing guidance, one of the recent changes includes updates to Section 314(b) of the USA PATRIOT Act, which allows financial institutions to share information about suspicious activity related to money laundering and terrorist financing.

In addition to rescinding previous guidance, FinCEN issued a new 314(b) Fact Sheet³ to strengthen this provision and empower financial institutions to fight financial crime. Updates to Section 314(b) include:

- A financial institution may share information specific to activities it suspects involve the proceeds of a suspicious unlawful activity (SUA).
- Financial institutions may share information about activities that are suspected to involve terrorist financing or money laundering, even without specific information that the suspected activities directly relate to proceeds of an SUA.
- A financial institution may share information related to suspicious activities even if the activities do not constitute a transaction, meaning information about attempts to engage in a transaction can be shared.

Though participation in Section 314(b) is voluntary, it is considered a critical component of a robust AML program for any institution, and these recent clarifications will serve to further facilitate compliance with regulatory requirements.



The Corporate Transparency Act

Another recent update gaining momentum is the Corporate Transparency Act (CTA), built within the Anti-Money Laundering Act of 2020, or the AML Act. The AML Act—which is a component of the National Defense Authorization Act (NDAA)—provides sweeping reform to the BSA and other AML regulations, including bolstering transparency efforts to mitigate the threat of illicit activities.

The CTA will create a beneficial ownership database at FinCEN and require “reporting companies” to disclose information about their “beneficial owners.” Though various exemptions exist, a reporting company is broadly defined in the CTA as any corporation, limited liability company or other similar entity created in a U.S. state or Indian tribe, as well as a foreign entity registered to conduct business in the U.S.



By modernizing AML regulations with provisions such as the CTA, financial institutions will have enhanced tools to combat emerging money-laundering and terrorist-financing threats.

At present, the responsibility of identifying and verifying customers’ beneficial owners, pursuant to the BSA’s due diligence requirements, falls to financial institutions. Under the new requirement, reporting companies must identify and disclose their own beneficial owners.

It’s important to note that this updated beneficial ownership reporting requirement does not currently override or rescind the existing regulations within the Beneficial Ownership/ Customer Due Diligence Rule⁴, which requires financial institutions to implement procedures for identifying and verifying beneficial owners of legal entity customers.

According to the CTA, a beneficial owner is “an individual who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise—(i) exercises substantial

control over the entity or (ii) owns or controls not less than 25 percent of the ownership interests of the entity.” The CTA requires reporting companies to submit the following information about their beneficial owners to FinCEN:

- Name
- Date of Birth
- Address
- Unique Identifying Number

Financial institutions already obtain similar information for BSA compliance, but this new regulation will help prevent the use of shell companies to obscure the identity of reporting companies’ beneficial owners. By modernizing AML regulations with provisions such as the CTA, financial institutions will have enhanced tools to combat emerging money-laundering and terrorist-financing threats.



LOOKING AHEAD: STRENGTHENING BSA/AML COMPLIANCE

No one on either the industry or the regulatory side disputes the need to protect the financial system from being used to perpetrate financial fraud or support other illicit activities, such as drug or human trafficking, terrorism or organized crime. As consensus on modernizing AML regulations grows, recent updates to the BSA are an important step on the path to strengthening AML compliance and keeping pace with the reality of today's changing world.



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¹ [Top Tier Banks Spend in Excess of \\$1B Annually on BSA/AML Programs](#)

² [Anti-Money Laundering: Opportunities Exist to Increase Law Enforcement Use of Bank Secrecy Act Reports, and Banks' Costs to Comply with the Act Varied](#)

³ [Section 314\(b\) Fact Sheet](#)

⁴ [Electronic Code of Federal Regulations §1010.230](#)