

Issue Update

Treasury's Financial Crimes Enforcement Network (FinCEN) continues to implement Anti-Money Laundering Act (AML), Congress' first major reform to Bank Secrecy Act (BSA) laws in decades. Congress' intent for the AML was to reinforce a risk-based approach to BSA compliance, reduce burden on banks, and eliminate or update outdated rules. More work is needed to realize the intent of the AML, reinforce a true risk-based approach, and minimize check-the-box compliance burden on banks. The AML also includes the Corporate Transparency Act (CTA), which requires small businesses to report their beneficial ownership information directly to FinCEN, intended to ensure bad actors cannot hide transactions by using anonymous shell corporations, so that the United States is not a haven for dirty money. The CTA extends FinCEN's jurisdiction to over 33 million small businesses, who must report beneficial ownership information directly to FinCEN. The CTA and FinCEN's implementing rules have faced multiple court challenges, and as of December 2024, are subject to a preliminary injunction.

Why it Matters

Complying with outdated reporting requirements (such as currency transaction reports or CTRs) and repeatedly requiring banks to collect and verify duplicative information are not de minimis burdens—and they divert banks' critical resources from focusing on illicit transactions. FinCEN must accurately understand the burden outdated rules impose. A true risk-based approach means banks must be allowed to divert compliance resources away from lower-risk customers and activities to focus on higher-risk customers and activities. FinCEN must revise its rules (e.g., the BSA program rule, CDD rule, and reporting rules) to reduce duplicative, inefficient, and burdensome requirements on banks. The expectations for banks must be clear and reasonable, with sufficient lead time to implement. The CTA was intended to fight the use of shell companies to commit crimes, while also reducing burden on banks. Legal challenges to the CTA create confusion and uncertainty that affect bank customers and bank operations. Banks with trust departments face their own reporting challenges under the CTA. Changes should be made to existing rules to clarify Congress' intent to exclude banks from reporting requirements. Rules should clarify banks cannot be expected to serve as de facto regulators of their customers.

Recommended Action Items

- Given the uncertainty surrounding the CTA, make Congress and Treasury aware of how the confusion has affected bank customers, and bank operations. Share the CTA-related challenges banks and customers are facing (e.g. Amish customers who need paper filing).
- Encourage changes by Congress and Treasury that will reduce regulatory burdens on banks and bank customers, consistent with the purpose of the AML. Explain that banks cannot police their customers.
- Reinforce ABA messaging regarding the burden outdated BSA rules place on banks. Provide examples of the impact of outdated rules on bank operations, and how they make it difficult to allocate resources on the basis of risk – banks shouldn't have to re-collect information on existing customers at every new account opening. Explain that CTR reporting thresholds (unchanged since 1945)

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require banks to allocate significant compliance resources to report on law-abiding customers, and away from suspicious activity.

- Ask for more feedback regarding evolving threats, as well as the value of BSA reporting.