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Looking Forward: AML/CFT Expectations in the Biden Administration



The Anti-Money Laundering Act of 2020 (AML Act) serves as the starting point for financial institutions and companies looking to understand what to expect from the Biden administration with respect to anti-money laundering/countering the financing of terrorism (AML/CFT) regulation and enforcement. Implementing the AML Act will be one of the top priorities of the U.S. Department of the Treasury.

Financial institutions already subject to rigorous requirements to detect and prevent financial crimes likely have encountered even greater challenges as a result of the pandemic. However, they should continue to stay abreast of the latest changes and consult with their in-house compliance teams, legal counsel, and third-party risk and compliance resources to ensure frameworks will stand up against regulatory scrutiny. Additionally, they should ensure they are effectively addressing pandemic-related challenges stemming from remote work, potentially weakened controls, and increased use of digital platforms. Fraud will also continue to be a heightened area of concern.

AML Act: Beneficial Ownership



One of the top priorities of the Treasury Department and its Financial Crimes Enforcement Network (FinCEN) will be the implementation of the AML Act, with a particular focus on the law's provisions addressing the practice of front/shell companies and their ability to conceal potentially illicit transactions. The law makes sweeping changes to the Bank Secrecy Act (BSA) and the current AML/CFT regulatory framework, and includes significantly enhanced tools to regulate, investigate, and ultimately punish AML violations.

While the implementation of regulations in many cases will take a year or more, some of the key changes include enhancements to the system for filing suspicious activity reports (SARs) and currency transaction reports (CTRs), new **beneficial ownership** disclosure rules for many corporate entities, new powers broadening the ability of the Treasury Department and U.S. Department of Justice (DOJ) to subpoena bank records held outside the United States, the creation of a whistleblower reward program for alleged BSA violations, and increased penalties for money laundering and related violations.

Financial institutions can expect sharp focus from the Biden administration on the AML Act's establishment of a centralized beneficial ownership registry to be operated by FinCEN that will provide for greater transparency into opaque legal structures. The legislation may also ultimately—if implemented carefully—ease the burden on banks, which currently must identify and report their customers' beneficial owners as part of existing know-your-customer (KYC) regulations.

Speaking at her **Senate confirmation hearing** on January 19, 2021, Treasury Secretary Yellen said the law “will enable [the Treasury Department] to identify beneficial ownership of shell corporations and really make a big, big difference in [its] ability to address terrorist financing.” Yellen also said she plans to quickly implement the beneficial ownership provisions of the AML Act: “This is a very important problem and [the AML Act] . . . gives [Treasury] an enormously potent tool to address this problem. We will try to get up and running as quickly as possible and devote ourselves to building that database so we can address these issues and will certainly be looking to give this a very high priority.”

AML Act: Penalizing Repeat Violations



The AML Act also creates new powers for the government in addressing money-laundering violations, such as increased penalties for repeat violations. Persons convicted of violating the BSA or related regulations will be required to repay to their employer any bonus they received during the calendar year in which the violation took place. It remains to be seen whether Biden officials and future appointments will use these new powers.

The administration will need to balance any pro-regulation stance with the need for economic recovery. There will be a laser focus on increased stimulus and relief funding with stricter accountability for fraud and abuse. There will also be a shift from a Main Street to a Wall Street focus, with greater enforcement attention on larger institutions and public companies. The financial and consumer protection appointments announced by President Biden—including Yellen at Treasury, Gary Gensler at the Securities and Exchange Commission, Rohit Chopra at the Consumer Financial Protection Bureau, and possibly Michael Barr at Office of the Comptroller of the Currency—are consumer-focused and intent on ensuring protections for all.

Regulatory Scrutiny and the Pandemic

With the pandemic stretching compliance teams thin, institutions with inefficient transaction-clearing processes have struggled to keep pace not only with the more serious AML/CFT alerts but with business as usual (BAU) alerts. As a result, institutions may find themselves facing a **backlog of alerts**—and should seek resources to help clear these alerts appropriately before facing regulatory examinations and the questions that come with them.

In addition to this, the Biden administration will certainly seek to hold those who received **Paycheck Protection Program** (PPP) loans accountable for compliance with the terms of these loans, particularly as recipients seek forgiveness. Recent congressional reauthorization of the program tightened language pledging no enforcement against lenders if they acted in good faith and complied with relevant federal and state regulations. However, there will be increased scrutiny of borrowers.

Rulemaking

The Biden administration immediately imposed a regulatory freeze on pending rules



and regulations undertaken by the previous administration. Many **industry groups and stakeholders** welcomed the freeze, as it provides more time for financial institutions to assess how they will respond and to amend internal processes as necessary.

Included in the freeze are highly debated regulations proposed in October 2020 by FinCEN and the Federal Reserve Board (FRB). These regulations would expand the applicability of existing BSA recordkeeping and “travel rule” requirements for U.S. cross-border transactions, likely increasing information-collection requirements for virtual asset service providers engaged in these money transfers. The proposal also would lower the reporting threshold to \$250 from \$3,000, apply BSA requirements to cross-border fund transfers, and add to the BSA a definition of “money” that specifically includes convertible virtual currencies (CVCs) and central bank digital currencies. The lowered reporting threshold would make U.S. requirements stricter than those recommended by global standards-setters, which could create friction in international transactions.

Looking into the future, financial services entities should anticipate changes and increased regulatory focus on AML/CFT programs. Working closely with compliance teams, legal counsel, and third-party compliance experts, entities can stay one step ahead, aiming to future-proof their compliance programs to stand up to change and challenges to come.