

## Treasury Department Releases 2020 National Strategy for Key Updates to AML/CFT Regime

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On February 6, 2020, the U.S. Department of the Treasury issued the [2020 National Strategy for Combating Terrorist and Other Illicit Financing](#) (the “2020 Strategy”), which provides an important roadmap of expected updates to the anti-money laundering and countering the financing of terrorism (AML/CFT) regime in the United States.

The first AML/CFT law in the United States, now known as the Bank Secrecy Act (BSA), was passed 50 years ago – and updated substantively after September 11, 2001. The 2020 Strategy provides a roadmap for modernization, including: (1) increased transparency and closing gaps within the existing framework; (2) improving the efficiency and effectiveness of the AML/CFT framework for financial institutions; and (3) enhancing AML/CFT operational capabilities. The 2020 Strategy also includes key priorities, such as proposed legislative and regulatory changes to close gaps in the AML/CFT legal framework and coordinated efforts to make the overall AML/CFT framework more effective. It is a bold document in that it sets goals against which the Treasury Department can be measured.

Importantly, some of the objectives to increase transparency and close legal framework gaps include the below key actions, which we discuss in more detail:

1. Requiring the collection of beneficial ownership information by the federal (rather than state) government at the time of company formation and after ownership changes;
2. Minimizing the risks of laundering illicit proceeds through real estate purchases;
3. Extending AML program obligations to certain financial institutions and intermediaries currently outside the scope of the BSA; and
4. Clarifying or updating the regulatory framework to expand coverage of digital assets.

**Require the Collection of Beneficial Ownership Information by the Government at Time of Company Formation and After Ownership Changes** Currently, the United States does not require that companies disclose beneficial owner information at the time of formation. For years, the United States and other countries have discussed and set forth proposed legislation implementing government-mandated disclosure requirements, weighing the value of such a requirement against individual privacy concerns and burdens for small business owners. Hearings, dating back to 2006, before the Senate Permanent Subcommittee on Investigations addressed the topic but focused on requiring the States (with the responsibility for corporate formation) to collect the information. This past fall, the House of

Representatives Passed the Corporate Transparency Act, which, if enacted, would require certain U.S. corporations and limited liability companies to report identifying information regarding their beneficial owners to the U.S. Department of the Treasury's Financial Crimes Enforcement Network (FinCEN) (See our [Alert](#) related to the Corporate Transparency Act).

The 2020 Strategy reports that the Administration is working with Congress to pass beneficial ownership legislation in 2020, closely aligning the definition of "beneficial owner" to that in FinCEN's Customer Due Diligence rule.

### **Minimize the Risks of the Laundering of Illicit Proceeds Through Real Estate Purchases**

The 2020 Strategy reports that an estimated 20 percent of current real estate purchases do not involve financing or involve parties with existing BSA requirements. Thus, criminals may be attracted to real estate investments as a means to launder funds anonymously. The 2020 Strategy confirms that Treasury is committed to working with Congress to minimize the risks of the laundering of illicit proceeds through real estate purchases.

### **Extend AML Program Obligations to Certain Financial Institutions and Intermediaries Currently Outside the Scope of the BSA**

Currently, certain banks without a federal functional regulator are subject to less stringent AML requirements than banks that are regulated by a federal functional regulator. This includes, but is not limited to, private banks, non-federally insured credit unions, and certain state-chartered trust companies. FinCEN issued Notice of Proposed Rulemaking (NPRM) in August 2016, noting that the gap in regulations presents a vulnerability to the U.S. financial system that could be exploited by bad actors.

The 2020 Strategy reports that FinCEN is working to finalize a proposed rule, which will close the gap, and set forth minimum standards for AML programs for such institutions. Under the final rule, banks without a federal functional regulator will be required to establish and implement AML controls, and comply with Customer Identification Program (CIP) and beneficial ownership information requirements. The 2020 Strategy also reports that the Treasury Department will also "explore harmonizing AML/CFT obligations for other key financial intermediaries, such as investment advisers."

### **Clarify or Update our Regulatory Framework to Expand Coverage of Digital Assets**

The 2020 Strategy notes that the United States is continuing to work to identify areas for updates to regulatory framework in line with technological advancements. In particular, the Treasury Department is working to ensure all types of digital asset transactions are covered by the AML/CFT framework. Furthermore, while the current rules permit anonymous cross-border transactions below \$3,000, the Treasury Department is working to lower the threshold for customer identification for such wires as a result of digital asset transaction developments. In addition, the Treasury Department is working to ensure travel and recordkeeping regulations are more in line with technological advancements.

Importantly, the 2020 Strategy notes: "Treasury and other U.S. agencies will also use all tools at their disposal to prevent individuals and entities from providing financial services involving digital assets or other novel technological financial products that we believe do not effectively mitigate illicit financial risks."

### **Takeaways**

- We may see bipartisan beneficial ownership legislation enacted in 2020, requiring the collection of beneficial ownership information by the federal government at the time of company formation and after ownership changes. Implementation of any such database will require assurances of adequate data privacy controls and must include an enforcement mechanism. Further, any such legislation will require an alignment with the current Customer Due Diligence requirements within the BSA.
- We also may see new legislation or guidance for those involved in the real estate sector to minimize the risks of the laundering of illicit proceeds through real estate purchases.
- Banks without a federal functional regulator, including private banks, non-federally insured credit unions, and certain state-chartered trust companies, should expect to see the current AML/CFT regulatory gap closed, bringing them under the full suite of regulatory obligations as banks with a federal functional regulator under the BSA.

- This year finally may bring clarified and expanded AML/CFT regulations to cover digital assets. Treasury and other U.S. agencies may also implement rules to prevent persons from providing financial services involving digital assets that do not effectively mitigate illicit financial risks.

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