

AMERICAN BANKER.

Bankers hope shell-company reforms are prelude to broader AML overhaul

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December 22, 2020

Banks are close to having a key anti-money-laundering burden eliminated, but their push to ease AML rules seen as costly and time-consuming is far from over.

The industry cheered Congress's veto-proof passage of a measure requiring companies to disclose their true owners to the Financial Crimes Enforcement Network. Shifting that tedious task to companies themselves will release banks from having to report customers' beneficial owners to Fincen.

Assuming the bill becomes law, the focus will shift to implementation and requirements in the legislation that officials monitor banks' AML obligations that remain unchanged. Those include reporting of suspicious activity reports and currency transaction reports. (The beneficial ownership provision was included in a defense spending bill that President Trump has threatened to veto, but Congress has enough votes to override the veto.)

Industry representatives say they have not given up urging Congress to increase the minimum transaction thresholds for SARs and CTRs, an idea that lawmakers tossed aside in the defense spending package.

“As we look forward, the bill took a good first step in the sense of studying and reviewing the CTR and SAR thresholds,” said Chip Bartlett, vice president of congressional affairs at the Consumer Bankers Association. “As we continue to advance this dialogue and the conversation, those thresholds need to be addressed and updated.”

Some are also holding out hope that banks could receive more relief through the implementation process. The bill requires Fincen to update AML rules for banks to eliminate true-owner requirements, tasks regulators with examining the current CTR and SAR thresholds to determine if they need to be changed, and requires a review of ways to improve technology and information sharing between regulators, law enforcement and financial institutions.

“There will be a whole set of new Fincen regulations to implement the beneficial ownership registry and there could be some surprises there depending on how aggressive Fincen is,” said Ross Delston, an independent attorney specializing in AML compliance.

Meanwhile, bank regulators recently issued proposals to provide exemptions from certain SAR requirements for institutions that had developed innovative technology to meet Bank Secrecy Act requirements more efficiently.

In the battle over AML reform in Congress, bankers thus far have failed in their attempts to raise the thresholds. The industry says the constant reporting resulting from minimum CTR and SAR transaction amounts, respectively, of \$10,000 and \$5,000 flood law enforcement with mountains of data that do not result in more criminals getting caught.

Law enforcement agencies successfully argued that the information they receive from the reports at the current levels is useful. But industry representatives note that those thresholds have been in place for decades, and have not been adjusted for inflation.

"Those thresholds have been in place since the 70s," said Bartlett. "I am anxious to see where we land on that conversation. ... I think that could be the next hurdle."

Jennifer Schulp, director of financial regulation studies at the Cato Institute, said that she thinks the burden should be on law enforcement to prove that the current thresholds for CTRs and SARS are necessary.

“This large data dump is not only expensive for the banks, but not necessarily effectual either, and I think that there is potential room for looking at ways to improve the quality of the information that is being produced in these reports,” Schulp said. “I think law enforcement in some ways needs to justify that the thresholds do make sense.”

Rep. Blaine Luetkemeyer, R-Mo., introduced an industry-backed bill in 2018 that would have raised the threshold for reporting CTRs to \$30,000. The SAR threshold would also increase to \$10,000 under the legislation. But the bill couldn't pass muster due to successful pushback from law enforcement.

But as the House debated the recent defense authorization bill in December, Luetkemeyer indicated that the AML reform amendment should be the beginning of reforms to CTRs and SARs, not the end.

The measure that passed Congress "authorizes new resources for the Treasury Department to combat illicit finance and requires Treasury to apply more rigor to its data collection," Luetkemeyer said in a Dec. 8 House floor speech. “This will allow suspicious activity reports

and currency transaction reports to be as useful as possible for law enforcement. For too long, Congress and the private sector have had little to no insight into how the executive branch uses these reports, which has decreased accountability and prevents us from modernizing the reporting regime. That ends with this bill.”

Dan Stipano, a partner at Buckley, said that if bankers are unsuccessful in their push to raise the CTR and SAR thresholds, regulators could use their own authority still to simplify the CTR and SAR reporting forms.

“There may be some ways to have a ‘SAR-light,’ a SAR where you may not have to deal with all of the existing fields in the SAR form, because the facts are relatively straightforward and you’re filing thousands of SARs that are similar,” Stipano said. “This is an area that might be able to get some traction.”

Bankers will also be “keenly interested” in how Fincen updates banks' customer reporting rules to reflect the legislative reforms of beneficial ownership , Stipano said.

Fincen issued a final rule in 2016, known as the Customer Due Diligence rule, requiring banks to identify and verify the identity of the beneficial owners of companies opening accounts, in order to crack down on anonymous shell companies. That rule came with strong opposition from the industry, leading members of Congress to push for the amendment that was included in the defense spending package.

The amendment compels regulators to create a database at Fincen for companies to report their true owners that law enforcement can access. The hope for bankers is that the database will eliminate the need for them to track down their customers’ ownership information.

“The key there is really now to reduce the burden on the lenders’ side,” said Paul Merski, group executive vice president for congressional relations and strategy at the Independent Community Bankers of America. “As small businesses are reporting that information directly to Fincen, that should, if implemented properly, reduce the research and paperwork burdens on the banks’ side.”

But aside from the CTR and SAR reporting thresholds and the beneficial ownership database, bankers and AML experts say that the new law opens the door for regulators to modernize an outdated AML regime.

Jenna Burke, associate general counsel at the CBA, said that communication channels between regulators, law enforcement and financial institutions can be improved, so bankers can get better feedback on the reports they submit to Fincen.

“We’ve heard for a long time that the ... banks that supply this information to law enforcement don’t always get that feedback from law enforcement they need,” Burke said. “I think that any opportunity that we have ... to make sure that all stakeholders have access to the same information can only improve that feedback loop.”

Stipano added that Fincen’s Customer Identification Program could be updated to reflect the trend of consumers opening bank accounts through digital channels. He said that current customer identification requirements were put in place when consumers typically opened up bank accounts in person at a bank branch.

“I think the CIP rule is ripe for a hard look particularly in light of technological elements,” Stipano said. “There may be a way to verify a customer’s identity using technology that wasn’t available in 2003 to make that process more effective and more efficient.”

Ultimately, Schulp said, bankers will push regulators in any way to reduce the costs they currently face in complying with money laundering rules.

“The banks’ primary concerns here are really in costs. AML costs are astronomical,” Schulp said. “Getting more guidance on what is an effective AML program is something that banks are looking for.”