

Bank Secrecy Act Reform Legislation Advanced Unanimously by House Financial Services Committee

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The House Financial Services Committee unanimously recommended to the full House on May 9, 2019 a bill that would reform the U.S. anti-money laundering (AML) regime. H.R. 2514, the [Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019](#) (the COUNTER Act), would amend the Bank Secrecy Act (the BSA), take steps to modernize the U.S. approach to AML compliance, encourage U.S. regulator engagement with law enforcement and the private sector, and provide the Financial Crimes Enforcement Network (FinCEN) with resources to address regional or industry specific risks. Below, we outline some of the key provisions of the COUNTER Act.

Coordination, Collaboration and Information Sharing. The COUNTER Act seeks to improve and expand collaboration and information sharing efforts—both domestically and globally—among law enforcement, governments, financial institutions and FinCEN. It would:

- Appoint FinCEN Domestic Liaisons, who will be assigned to particular regions in the United States to focus on specific risks and outreach with the private sector in their respective geographic areas;
- Establish a Treasury Attaché Program that will place Treasury attachés with AML expertise in U.S. embassies to conduct outreach and create and maintain relationships with foreign counterparts;
- Codify the existing [FinCEN Exchange](#) established by FinCEN in December 2017, a voluntary public-private information sharing partnership among law enforcement, financial institutions and FinCEN;

- Codify regulatory **guidance** issued in October 2018 that allows financial institutions to enter into collaborative arrangements amongst themselves in order to share compliance resources;
- Allow financial institutions to share suspicious activity reports with their foreign branches, subsidiaries, and affiliates, with certain exceptions, to enable AML compliance coordination within financial institutions; and
- Amend Section 314(a) of the USA PATRIOT Act to require the Treasury Department to share monthly with financial institutions typologies on emerging money laundering and counter-terrorist financing threat patterns and trends.

Improving AML/Countering the Financing of Terrorist (CFT) Oversight. In order to improve AML/CFT oversight, the COUNTER Act would:

- Require federal examiners to complete annual AML/CFT training about potential risk profiles and red flags that may be encountered during an examination, financial crime patterns and trends, context for purposes of AML/CFT programs, and derisking and its effects;
- Commission a report on trade-based money laundering and strategies to combat it;
- Require a formal review of financial institutions' de-risking strategies; and
- Commission a FinCEN study and report on the value of the BSA.

Addressing Privacy Concerns. The COUNTER Act includes measures designed to address issues related to access to personal information. Such measures would:

- Appoint a Civil Liberties and Privacy Officer with data privacy experience at each of FinCEN, the Federal Reserve, the Consumer Financial Protection Bureau, the Federal Deposit Insurance Company (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC) and the Internal Revenue Service to advise on data privacy issues; and
- Establish a Privacy and Civil Liberties Council to which these privacy officers will belong.

Enforcement. In order to strengthen enforcement of AML regulations, the COUNTER Act would:

- Enhance whistleblower protections for persons who come forward with information about AML violations;
- Provide for the assessment of additional civil penalties against repeat AML compliance violators;
- Require the Attorney General to issue an annual report to Congress of all deferred and/or non-prosecution agreements entered into with respect to an alleged violations of the BSA during the previous year; and
- Mandate that any person convicted of an AML compliance violation (i) repay to his or her employer any bonus received during the fiscal year the violation occurred and (ii) be fined in an amount equal to the profit gained by reason of the violation.

Closing BSA Coverage Loopholes and Studying Certain AML Issues. The COUNTER Act seeks to fix certain coverage gaps in the BSA through measures that would:

- Amend the BSA so that it applies to dealers in art or antiquities by including them within the definition of financial institutions; and
- Revise FinCEN's November 2018 [Geographic Targeting Order](#), which requires insurance companies to collect and report on beneficial ownership information for certain residential real estate transactions, so that it applies to commercial real estate as well.

Reforming FinCEN's Pay Scale. To enable FinCEN to hire and retain mission critical staff, the COUNTER Act would require that the Secretary of the Treasury:

- Ensure that compensation of FinCEN employees is comparable to that of other U.S. banking agencies.

Encouraging AML Innovation. Finally, the COUNTER Act would facilitate efforts by the financial industry to adopt new, advanced tools to improve AML compliance efforts through measures that would:

- Encourage FinCEN to provide financial institutions with exemptions to certain requirements under the BSA/AML regulatory regime to facilitate the testing and use of new technology and other innovative methods for AML compliance,

codifying a [statement](#) released by FinCEN and federal regulators in December 2018; and

- Establish “Innovation Labs” and “Innovation Councils” within the Treasury Department, the Federal Reserve, the FDIC, the NCUA, the OCC and the Securities and Exchange Commission to support the implementation of innovative new technologies used to comply with BSA requirements.
- Require the Treasury Department to issue a rule specifying under what circumstances a financial institution (i) must test new technology and processes alongside legacy technology and processes (parallel runs) and (ii) may replace or terminate legacy technology and processes.

The global financial system has undergone significant changes and it faces new threats since the BSA was enacted almost 50 years ago and even since the USA PATRIOT Act was passed in 2001. The COUNTER Act would take steps to modernize the AML compliance regime to account for new technology and innovative approaches to AML compliance, improve AML/CFT oversight, encourage public/private sector coordination, close existing loopholes in the BSA regime, and help the financial sector and law enforcement keep pace with emerging and ongoing threats. The COUNTER Act now awaits a vote on the House floor, where it remains to be seen whether it will garner the same level of bipartisan support it has in Committee.