The Improving Laundering Laws and Increasing Comprehensive Information Tracking of Criminal Activity in Shell Holdings (ILLICIT CASH) Act

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Designing a More Effective and Efficient AML-CFT Regime

Title I—Strengthening Treasury's Ability to Determine and Implement anti-money laundering (AML)-combatting the financing of terrorism (CFT) Policy

Title I provides the framework for a modern risk-based AML-CFT regime. Specifically, it establishes statutory purposes for certain AML-CFT provisions to emphasize the risk-based nature of these programs, updates Treasury's duties and powers consistent with this legislation, and requires Treasury to establish national exam and supervision priorities.

Additionally, the section modernizes the staffing structure of FinCEN and the broader AML regime putting FinCEN employees on a competitive pay scale and establishing an interagency staffing rotation. It also creates a hub of AML-CFT financial expert investigators at Treasury to investigate potential AML-CFT activity in collaboration with requesting federal government agencies.

1. Establishes statutory purposes for certain AML-CFT provisions to emphasize the risk-based nature of AML-CFT programs, updates Treasury's duties and powers consistent with this legislation, and requires Treasury to establish national exam and supervision priorities that will supplement and guide financial institutions, financial regulators and law enforcement on handling AML-CFT threats.
2. Puts FinCEN employees on a pay scale comparable to that of federal financial regulators
3. Creates a hub of AML-CFT financial expert investigators at FinCEN to investigate potential AML-CFT activity in collaboration with requesting federal government agencies

   Creates a team of technology experts at FinCEN for the purpose of furthering the development of emerging technologies that can assist the federal government and financial institutions in their efforts to combat money laundering.

4. Establishes a Treasury financial institution liaison to seek and receive comments from financial institutions regarding AML-CFT rules and regulations and examinations, including regarding the banking regulators.

5. Establishes an interagency AML-CFT staffing rotation program among the Treasury Department, financial regulators, and law enforcement for the purposes of improving interagency cooperation and staffing experience.

Title II—Improving AML-CFT Communication, Oversight and Processes

Title II establishes new process and procedures to facilitate feedback between law enforcement, financial institutions, and financial regulators for the purposes of improving outcomes of the comprehensive AML-CFT regime.

1. Requires annual reports from DOJ to Treasury on the use of BSA reporting by law enforcement. Among other relevant items, the DOJ, at its discretion shall provide metrics on the following; a) the frequency of which the AML-CFT data from financial institutions contains information useful for further law enforcement purposes, b) the extent such data leads to investigations of bad actors; c) the retrospective trends as well as emerging patterns and threats DOJ identifies in the AML-CFT landscape.

2. Requires periodic law enforcement feedback to financial institutions on their suspicious activity reports. This periodic feedback shall also be coordinated and conducted in the presence of financial regulators.

3. Reviews and streamlines reporting requirements to ensure a "high degree of usefulness" for CTR/ SAR filings, including a review of reporting fields, as well as a review of appropriate ways to promote financial inclusions and avoid unnecessary de-risking.

4. Requires Treasury and the Attorney General to review the CTR and SAR thresholds and determine whether any changes are necessary.

5. Requires a formal review of all AML-CFT regulations and guidance with public comment to remove outdated or unnecessary regulations and guidance.

6. Encourages AML-CFT penalty coordination among federal and state entities

7. Establishes a "keep open" letter safe harbor. This process gives guidance to financial institutions who receive formal instruction from law enforcement to maintain accounts that are under investigation.

Title III—Creating a 21st Century AML-CFT System

Updates the current AML-CFT system to provide a clear pathway for the adoption of current and future technologies that will improve outcomes for combatting money laundering and terrorist financing, including transaction monitoring software and information sharing. In addition, this section strengthens whistleblowers protections and incentives, codifies FinCEN's jurisdiction of digital currency, and requires additional studies of challenges facing the AML-CFT system.

1. Provides a process for the approval of transaction monitoring software. This process will facilitate the adoption of new technologies to improve the risk-based system of tracking individual transactions.

   Further details:

   As defined in the bill, transaction monitoring software is any software capable of sorting financial transactions on a risk scale. This includes both "rules-based" software and "learning" technologies.

   Transaction monitoring software shall be submitted by its owner (both third party vendors and in house applications) to FinCEN, who then will examine the software for its effectiveness in sorting transaction by riskiness, by back testing and other examination means.

   For each transaction monitoring software, FinCEN will determine three categories of transactions that will inform the use of the software by financial institutions. (The use of approved software does not on its own fulfill the BSA/ AML requirements to create a full risk-based compliance system.) Transactions the software, as determined by FinCEN, flags as low-risk shall require no further investigation by the financial institutions. Medium-risk transactions would require further investigation before the determination of whether a SAR or other report shall be filed. Finally, high risk transaction would mandatorily require the filing of a SAR.

2. Establishes a path for financial institutions to share de-identified AML-CFT information for purposes of identifying suspicious activity. Similar to the sharing of de-identified information in other industries, information can be shared only if all identifying information is removed, or it is determined by a data science expert that there is little risk for identification.

3. Creates a statutory FinCEN no-action letter process for financial institutions.

4. Permits information sharing between a financial institution and its foreign branches and affiliates.

5. Requires foreign banks to produce records in a manner that establishes their authenticity and reliability for evidentiary purposes, compels foreign bank compliance with subpoenas and authorizes contempt sanctions for failure to comply, and prohibits recipients of subpoenas from disclosing them to potential subjects of an investigation.

6. Updates and strengthens the whistleblower incentives and protection provisions of the BSA.

7. Updates the definition of "coins and currency" to include digital currency, ensuring the inclusion of current and future payment systems in the AML-CFT regime.

8. Requires GAO studies on the

    a. Use of virtual currencies and online marketplaces to facilitate sex and drug trafficking
    b. Use of shell companies and money laundering by Putin and his inner circle to strengthen their control over Russia
    c. Effects of AML-CFT system on underbanked

Title IV—Beneficial Ownership Disclosure Requirements

Establishes a federal reporting requirements for all beneficial ownership information to be maintained in a comprehensive federal database, accessible by federal and local law enforcement. Reporting requirements will, to the extent practicable, utilize existing processes and procedures in order to minimize burdens on small businesses.

1. Requires non-exempt companies to disclose to FinCEN the identity of their beneficial owners. FinCEN will establish an information reporting process that shall rely, to the extent practicable, on existing federal and state business reporting procedures that will result in an accurate, comprehensive database of ownership information, while also minimizing burdens on small businesses.

   Existing companies must report relevant information within two years. Companies formed after enactment of the bill shall provide beneficial ownership information at incorporation. Upon a change in ownership, companies must report updated ownership information to FinCEN, within a prescribed period of time, but not later than 90 days, pursuant to rule by Treasury.

Provides civil and criminal penalties for knowing and willful violation of the reporting requirements.

Allows federal and local law enforcement access to the database, with safeguards to prevent unauthorized disclosure of ownership information.

Provides a *de minimis* exemption for owners who take reasonable steps to update minor or *de minimis* errors.

Imposes stiff criminal penalties on the misuse of beneficial ownership data and includes rigorous oversight to protect sensitive data.

2. Requires title insurance companies to obtain and report beneficial ownership information of foreign entities purchasing residential real estate in high-value transactions
3. Requires studies on the applicability of beneficial ownership reporting requirements to other legal entities including partnerships and trusts.