Congress Passes Sweeping Anti-Money Laundering and Corporate Beneficial Ownership Law

January 4, 2021

On January 1, 2021, Congress enacted the National Defense Authorization Act for Fiscal Year 2021 ("NDAA"), overriding a presidential veto by overwhelming, bipartisan margins. This annual military spending bill includes the "Anti-Money Laundering Act of 2020" ("AML Act"), which makes the most significant changes to U.S. anti-money laundering/countering the financing of terrorism ("AML/CFT") laws since the USA PATRIOT Act of 2001.[1]

The AML Act will bring foundational changes to the AML/CFT compliance framework, with widespread implications for not only financial institutions but also a diverse array of other companies and industries in the United States.

Among other provisions relating to AML/CFT, sanctions and financial crimes compliance matters, the AML Act:

- Requires a broad range of companies to report their beneficial owners and creates a registry of such information at the Treasury Department's Financial Crimes Enforcement Network ("FinCEN") (secs. 6402-6403);

- Grants the U.S. Treasury and Justice Departments broad authority to subpoena records held outside the United States by any foreign bank that maintains a correspondent account in the United States (sec. 6308);

- Expands the definition of "financial institutions" subject to the Bank Secrecy Act ("BSA") to include persons engaged in the trade of antiquities and the stated purpose of the BSA to include, for example, preventing money laundering through "reasonably designed" and "risk-based" AML programs that, among other things, take into account the need of the underbanked for financial services (sec. 6110);

- Enhances various BSA penalties, including for repeat violations of the BSA and corresponding AML/CFT regulations (sec. 6309);

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[1] H.R. REP. NO. 116-617 (2020) (Conf. Rep.) *available* here.

- Requires the U.S. Treasury Department to issue rules that permit the sharing of information related to suspicious activity reports ("SARs") with foreign offices of financial institutions, subject to certain limits (sec. 6212);

- Tasks FinCEN, in consultation with others, to conduct an assessment on whether to establish a process for FinCEN's issuance of no-action letters in response to AML inquiries (sec. 6305);

- Establishes a new whistleblower reward program for information leading to the prosecution of BSA offenses, similar to existing programs under the securities laws (sec. 6314);

- Expands and amends various trade and economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"); and

- Identifies virtual currency as an emerging payment method with the potential to act as a conduit for illicit funds and revises general BSA definitions and money transmitter registration requirements to expressly encompass "value that substitutes for currency" (sec. 6102).[2]

Below, in this Debevoise In Depth, we highlight certain of these provisions and provide in the Appendix a comprehensive inventory of key sections. We expect to write in greater detail about many of these issues in coming weeks and months, especially as the required rulemakings take place.

Relevant Highlights

New Beneficial Ownership Reporting Requirements and a National Corporate Registry

One of the most significant changes in the AML Act is a requirement for broad categories of companies organized in the United States to report beneficial ownership information to FinCEN at formation, for new entities, or, for companies already in existence, two years after the Treasury Department issues implementing regulations. Reporting companies also will be required to report changes in their beneficial ownership on a going-forward basis.

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[2] The adoption of virtual currencies is garnering increased attention from regulators. In December 2020, FinCEN issued a proposed rule imposing compliance obligations on banks and money service businesses that process certain transactions involving convertible virtual currency. *See* Debevoise In Depth, FinCEN Proposes Reporting, Recordkeeping and Verification Requirements for Digital Currency Transactions Involving Unhosted Wallets (Dec. 31, 2020) *available* here.

Although a number of exemptions exist to the definition of "reporting companies," including for financial institutions, public companies and governmental entities, the creation of a corporate registry at FinCEN signals a landmark change to corporate law in the United States, which international AML/CFT bodies have long criticized for insufficient transparency. Precisely how the legislative text will be implemented remains to be seen; the AML Act requires the Treasury Department to publish implementing regulations pursuant to a notice-and-comment process within one year of enactment.

The AML Act also requires the Treasury Department to reconcile these provisions with FinCEN's Customer Due Diligence ("CDD") Rule that became effective in 2018 and to "reduce any burdens on financial institutions" that are "unnecessary and duplicative" in light of the new reporting regime. Given the myriad of compliance challenges financial institutions have faced implementing the CDD rule, this may be welcome news.

Broad Subpoena Authority for Foreign Bank Records

Among the more controversial provisions within the AML Act is expansive subpoena authority permitting the Treasury Secretary or Attorney General to seek production of "any records" relating to "any account" of a foreign bank that maintains a correspondent account in the United States, even if such records are held outside the United States. Although a foreign bank served with a subpoena issued under this authority may petition the federal courts for relief, conflict with foreign secrecy or confidentiality laws, without more, is not grounds for objecting. Failure to comply can lead to various penalties for a foreign bank, including losing access to banking services in the United States.

Many, especially in the foreign bank community, advocated for a narrower approach, arguing that this new authority could provide an unwarranted and unnecessary mechanism for U.S. law enforcement to avoid longstanding discovery mechanisms established by Mutual Legal Assistance Treaties ("MLATs") and other bilateral and multilateral agreements. By disallowing objections based on conflict of laws, moreover, this authority could place foreign banks in the difficult position of violating local laws, including as related to data privacy, or being held in contempt of a U.S. subpoena and losing access to the U.S. banking system.

Congressman Blaine Luetkemeyer (R-MO), a member of the Subcommittee on Consumer Protection and Financial Institutions of the House Financial Services Committee, gave voice to these concerns in a statement for the Congressional Record. He explained that this authority "may place foreign banks in the difficult position of either violating home country law or being in contempt for failure to comply with a subpoena issued by the United States government" and encouraged Treasury and the

DOJ to maintain "respect for home country requirements" when considering a subpoena seeking foreign bank records.[3]

Changes to AML/CFT Program Scope and Requirements; National Priorities

The AML Act updates and revises minimum standards for financial institutions' AML/CFT compliance programs by, among other things, requiring them to account for services provided to underbanked populations, such as remittances, and the threats these pose to the U.S. financial system. It modernizes BSA definitions to reflect virtual currency and other financial innovations since 2001—effectively requiring institutions to account for risks presented by these instruments.

The AML Act also requires the Treasury Department to issue priorities for AML/CFT policy at least every four years, which priorities are expected to be reflected in financial institutions' compliance programs. Supervisory examinations will consider a financial institution's review and incorporation of these priorities into the institution's AML/CFT program.

Finally, the AML Act expands the definition of "financial institution" and, thus, the scope of BSA coverage, to include persons engaged in the trade of antiquities, including advisors and consultants. This reflects growing concern that high-value transactions in art and antiques have become common tools for money laundering and sanctions evasion.[4]

Enhanced Penalties for BSA Violations

The AML Act contains a number of enhancements to existing BSA penalty regimes. Among other things, the Act permits the imposition of additional damages for repeat violations of the BSA. Specifically, repeat BSA violators may be subject to civil penalties in an amount not more than the greater of (1) three times the profit gained or loss avoided by such person as a result of the violation or (2) two times the maximum penalty with respect to the violation. These new damages may be applied as of the enactment of the NDAA but will not be applied retroactively to prior conduct. In addition, the AML Act prohibits a person determined to have committed an "egregious violation" of the BSA from serving on the board of directors of a U.S. financial institution for ten years after a conviction or judgment for such violation.

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[3] 166 Cong. Rec. H6935 (daily ed. Dec. 8, 2020).

[4] We wrote in August 2020 about the Senate Subcommittee report highlighting money laundering and sanctions risks in the art industry. *See* Debevoise In Depth, Senate Subcommittee Report Highlights Money Laundering and Sanctions Risks in the Art Industry (Aug. 27, 2020) *available* here.

New Whistleblower Program

The new whistleblower program created by the AML Act significantly enhances the financial incentives for informants. The previous program capped awards at the lesser of 25% of the resulting financial penalty or $150,000. The new program will allow whistleblowers who provide information leading to the successful enforcement of a judicial or administrative action to be awarded up to 30% of the money collected in the action or related actions.

Information Sharing and Feedback

The AML Act contains a number of provisions that focus on feedback and information sharing. For example, the AML Act requires FinCEN to disclose summary information to each financial institution on any SARs filed by such institution that were useful to federal or state criminal or civil law enforcement agencies, subject to certain exceptions. In addition, the AML Act establishes an Office of Domestic Liaison within FinCEN that will contain at least six U.S. regional liaisons to conduct outreach to financial institutions and their functional regulators and communicate feedback to FinCEN, and federal and state regulators.

With respect to information sharing, the AML Act establishes what it has termed the "FinCEN Exchange" to facilitate a voluntary public-private information sharing partnership among law enforcement agencies, national security agencies, financial institutions, and FinCEN. In addition, within one year of the NDAA's enactment, the AML Act requires the Treasury Department to issue rules establishing a pilot program permitting financial institutions to share SAR-related information with their foreign branches, affiliates, and subsidiaries, except those located in certain jurisdictions, including China and Russia.

Studies

The NDAA calls for a number of studies and reports. Below is a brief list of some of the key studies, with a more detailed listing contained in Appendix A.

- Study on the facilitation of money laundering through art trade;
- Study on the effectiveness of beneficial ownership information reporting requirements and other aspects of new reporting regime;
- Study on the effectiveness of the currency transaction reporting regime and effects of raising the relevant threshold;

- Study on the role of payment systems, virtual currencies and online marketplaces in human and drug trafficking;

- Study on trade-based money laundering;

- Study on illicit finance risks from China and a strategy to combat Chinese money laundering activities; and

- Study on how foreign authoritarian regimes use the U.S. financial system for political influence, exporting corruption, funding organizations to advance their interest, undermining U.S. democratic governance and sustaining kleptocratic methods.

Trade and Economic Sanctions and Export Control Provisions

The NDAA also reflects the increasing importance of sanctions and export control programs to U.S. foreign policy objectives, including with respect to the Russia, the Middle East and China. To that end, it, among other measures:

- Expands existing Russia-related sanctions related to energy export pipelines, now targeting, among other activities, "services for the testing, inspection, or certification necessary or essential for the completion or operation of the Nord Stream 2 pipeline" (earlier sanctions were related only to certain activities of pipe-laying vessels);

- Imposes sanctions, no later than January 31, 2021, under authority granted in the Countering America's Adversaries Through Sanctions Act of 2017 ("CAATSA"), against each person determined to have assisted or supported the Government of Turkey, a NATO ally of the United States, in its recent acquisition of an S-400 air defense system from Russia (similar sanctions have already been imposed against China);

- Requires the Secretary of Defense to annually publish a list of "Chinese military companies," similar to recent announcements under Section 1237 of the FY99 NDAA but now under new a new definition for "Chinese military company," for operating directly or indirectly in the United States or any of its territories or possessions (although this provision does not itself trigger any requirements or restrictions, inclusion on this list is likely to have consequences under other measures, including the Export Administration Regulations or Executive Order 13959[5]; and

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[5] President Trump issued Executive Order 13959 on November 12, 2020. *See* Debevoise Debrief, The Trump Administration Targets China with Additional Sanctions (Nov. 17, 2020) *available* here. OFAC released Frequently Asked Questions regarding Executive Order 13959 on December 28, 2020. *See* Debevoise Debrief,

- Mandates an assessment from the Secretary of Defense of the impact of U.S. export control policy, among many other factors, on the "national security innovation base" of the United States (U.S. export controls are already being used to limit Chinese companies' access to U.S. software, technology and advanced hardware, including semiconductors manufactured outside the United States, and are likely to continue being leveraged by the Biden Administration as it considers China's challenge to U.S. technological ascendency, particularly related to military and dual-use technology.

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It would not be hyperbole to describe the AML Act as the most significant development in AML/CFT law and regulation in two decades. Although its precise requirements will become clear only through the course of future rulemakings, it already is apparent that a legacy of the 116th Congress will be fundamental changes to corporate law and financial crimes compliance in the United States.

We will continue to monitor developments and provide additional updates as warranted. Please do not hesitate to contact us with any questions.

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OFAC Issues Guidance Regarding Restrictions on Transactions in Securities Issued by Communist Chinese Military Companies (Dec. 30, 2020) *available* here.

Appendix A

National Defense Authorization Act for Fiscal Year 2021

Summary of Anti-Money Laundering and Related Provisions

Section Title	Section	Summary
Anti-Money Laundering Act of 2020 (Division F, secs. 6001-6511)		
Title LXI—Strengthening Treasury Financial Intelligence, Anti-Money Laundering, and Countering the Financing of Terrorism Programs		
Establishment of national exam and supervision priorities.	Sec. 6101	• Expands the stated purpose of the Bank Secrecy Act's ("BSA") records and reports provisions, by replacing "*international* terrorism" with "terrorism" and adding the purposes of (i) preventing money laundering and terrorism financing ("ML/TF") through reasonably designed anti-money laundering/combatting the financing of terrorism ("AML/CFT") programs; (ii) facilitating the tracking of illicit money; (iii) assessing ML/TF, tax evasion and fraud risks to financial institutions; and (iv) establishing information sharing frameworks. (Amends 31 U.S.C. 5311) • Requires regulations prescribing minimum standards for AML/CFT programs, and compliance supervision by functional regulators, to take into account certain factors, including, among others: (i) extending financial services to the underbanked and facilitating remittances are U.S. policy goals; and (ii) ensuring AML/CFT programs are (i) "reasonably designed to assure and monitor compliance" with BSA regulations; and (ii) risk-based, including ensuring more attention and resources are directed toward high-risk customers and activities. (Amends 31 U.S.C. 5318(h)) • Requires the Treasury Secretary, in consultation with the U.S. Attorney General ("AG"), federal functional regulators, relevant state financial regulators and relevant national security agencies, to publish AML/CFT policy priorities within 180 days of the National Defense Authorization Act's ("NDAA") enactment (and update such priorities at least every four years thereafter) and promulgate implementing regulations, as appropriate, within 180 days of the publication of policy priorities. (Amends 31 U.S.C. 5318(h)) • Requires supervisory examinations to evaluate financial institutions' incorporation of the AML/CFT policy priorities into AML/CFT programs. (Amends 31 U.S.C. 5318(h))
Strengthening FinCEN.	Sec. 6102	• Expresses the congressional sense that emerging payment methods (such as virtual currencies) may be vulnerable to use as conduits for illicit funds and the Financial Crimes

Section Title	Section	Summary
		Enforcement Network ("FinCEN") should ensure combating emerging forms of illicit financing is a high priority. • Expands FinCEN's authority to collect information to counter terrorism financing and other forms of illicit finance. (Amends 31 U.S.C. 310(b)(2), 5318(a)(2), 5312(a)) • Revises general BSA definitions and money transmitter registration requirements to expressly encompass "value that substitutes for currency." (Amends 31 U.S.C. 5330(d))
FinCEN Exchange.	Sec. 6103	• Establishes the FinCEN Exchange to facilitate a voluntary public-private information sharing partnership among law enforcement agencies, national security agencies, financial institutions, and FinCEN. Requires FinCEN to establish procedures to protect shared information. (Amends 31 U.S.C. 310)
Establishment of FinCEN Domestic Liaisons.	Sec. 6107	• Establishes an Office of Domestic Liaison within FinCEN headed by a Chief Domestic Liaison and requires the appointment of at least six U.S. regional liaisons to conduct outreach to financial institutions and their functional regulators and communicate feedback to FinCEN, and federal and state regulators. (Amends 31 U.S.C. 310)
BSA application to dealers in antiquities and assessment of BSA application to dealers in arts.	Sec. 6110	• Requires the Treasury Secretary to propose regulations within 360 days after the NDAA's enactment subjecting persons engaged in the trade of antiquities, including advisors and consultants, to the BSA as such persons are within the definition of "financial institutions.". (Amends 31 U.S.C. 5312(a)(2)) • Requires the Treasury Secretary, in coordination with the Director of the Federal Bureau of Investigation ("FBI"), AG, and the Secretary of Homeland Security ("HS Secretary"), to conduct a study of the facilitation of money laundering through art trade.
Title LXII—Modernizing the Anti-Money Laundering and Countering the Financing of Terrorism System		
Annual reporting requirements.	Sec. 6201	• Requires the AG, in consultation with the Treasury Secretary, federal law enforcement agencies, the Director of National Intelligence ("DNI"), federal functional regulators and other appropriate federal agencies, to submit an annual report to the Treasury Secretary on the use of data derived from financial institutions' BSA reporting to evaluate the usefulness of and potential revisions to BSA reporting requirements.
Additional considerations for suspicious activity reporting requirements.	Sec. 6202	• Requires that in imposing any requirement to submit suspicious activity reports ("SARs"), the Treasury Secretary, in consultation with the AG, state bank and credit union supervisors, and federal functional regulators, consider: (i) the priorities established by the Treasury Secretary, (ii) the

Section Title	Section	Summary
		purposes described in 12 U.S.C. 5311, and (iii) the means and form of reporting, including the burdens to reporters and efficacy of reports. (Amends 31 U.S.C. 5318(g)) • Requires that the reports filed under 31 U.S.C. 5318 be guided by financial institutions' BSA compliance programs, including their risk assessment processes. (Amends 31 U.S.C. 5318(g)) • Requires the establishment of streamlined, including automated, processes to permit the filing of noncomplex categories of reports, appropriate. (Amends 31 U.S.C. 5318(g))
Law enforcement feedback on SARs.	Sec. 6203	• Requires FinCEN to share feedback periodically solicited from financial institutions with state and federal functional regulators. • Requires FinCEN to periodically disclose summary information to each financial institution on any SARs filed by such institution that were useful to federal or state criminal or civil law enforcement agencies, subject to certain exceptions.
Streamlining requirements for currency transaction reports and SARs.	Sec. 6204	• Requires the Treasury Secretary, in consultation with the AG, federal law enforcement agencies, the HS Secretary, federal functional regulators, and state bank and credit union supervisors, to conduct a formal review of requirements relating to currency transaction reports ("CTRs") and SARs (to be based substantially on information obtained through the BSA Data Value Analysis Project) and, within one year after the NDAA's enactment, submit a report to Congress that includes proposed rulemakings to reduce unnecessary burdensome requirements and improve reporting, as appropriate.
CTR and SAR thresholds review.	Sec. 6205	• Requires the Treasury Secretary, in consultation with the AG, the DNI, the HS Secretary, federal function regulators, and state bank and credit union supervisors, to publish a report, within one year after the NDAA's enactment, evaluating whether the dollar thresholds, including aggregate thresholds, under 31 U.S.C. 5313, 5318(g), and 5331, including regulations issued under those sections, should be adjusted (relying substantially on information obtained through the BSA Data Value Analysis Project and the Government Accountability Office ("GAO") CTR study (discussed below)) and proposing rulemakings, as appropriate. • Requires submission of follow-on reports to Congress, not less frequently than once every five years during the ten-year period beginning on the date of the NDAA's enactment.
Sharing of threat pattern and trend information.	Sec. 6206	• Requires the Director of FinCEN to publish semi-annually threat pattern and trend information "to provide meaningful information about the preparation, use, and value" of filed

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		SARs and other BSA reports. (Amends 31 U.S.C. 5318(g))
Testing methods rulemaking.	Sec. 6209	• Requires the Treasury Secretary, in consultation with the head of each agency with delegated authority, to issue a rule specifying standards for financial institutions' testing of technology and related technology internal processes designed for BSA compliance and update the relevant Financial Institutions Examination Council ("FFIEC") manual and other regulatory guidance to reflect the rulemaking. (Amends 31 U.S.C. 5318)
Financial technology assessment.	Sec. 6210	• Requires the Treasury Secretary, in consultation with financial regulators, technology experts, and other groups, to analyze the impact of financial technology on financial crimes compliance, including with respect to money laundering, terrorism financing, proliferation finance, serious tax fraud, trafficking, sanctions evasion, and other illicit finance, and submit a report to Congress within one year after the NDAA's enactment.
Pilot program on sharing of information related to SARs within a financial group.	Sec. 6212	• Requires the Treasury Secretary, in coordination with the Director of FinCEN, to issue rules within one year after the NDAA's enactment, establishing a pilot program permitting financial institutions to share SAR-related information with their foreign branches, affiliates, and subsidiaries, except those located in certain jurisdictions, including China and Russia. (Amends 31 U.S.C. 5318(g)) • Authorizes the Treasury Secretary to consider, implement, and enforce regulations holding foreign affiliates liable for disclosing SAR information. (Amends 31 U.S.C. 5318(g)) • Extends the confidentiality requirements applicable to financial institutions' suspicious transaction reports to SAR-related information from foreign affiliates. (Amends 31 U.S.C. 5318(g)) • Requires the Treasury Secretary to brief Congress one year after the rules are implemented and every three years thereafter. (Amends 31 U.S.C. 5318(g))
Sharing of compliance resources.	Sec. 6213	• Permits financial institutions to enter into collaborative arrangements, as described in the October 3, 2018 interagency statement, "Interagency Statement on Sharing Bank Secrecy Act Resources." (Amends 31 U.S.C. 5318)
Financial services de-risking.	Sec. 6215	• Expresses the congressional sense that (i) humanitarian organizations, as well as underserved individuals and entities such as those sending remittances face difficulties in accessing transparent, regulated financial channels to send funds internationally; (ii) financial exclusion caused by "de-risking" can ultimately drive money into less transparent, shadow

Section Title	Section	Summary
		channels; (iii) AML, CFT, and sanctions policies should not unduly hinder or delay legitimate humanitarian efforts or financial access; and (iv) policies that encourage financial inclusion, particularly of underserved populations, and risk-based approaches to ensuring the integrity of the financial system must be prioritized. • Defines "de-risking" as actions taken by a financial institution to terminate, fail to initiate, or restrict a business relationship with a customer, or a category of customers, rather than manage the risk associated with that relationship consistent with risk-based supervisory or regulatory requirements, due to drivers such as profitability, reputational risk, reduced risk appetites, regulatory burdens or unclear expectations, and sanctions regimes. • Requires the GAO to submit a de-risking report to Congress within one year after the NDAA's enactment. • Requires the Treasury Secretary, in consultation with the federal functional regulators, state bank and credit union supervisors, and appropriate public- and private-sector stakeholders, to (i) undertake a formal review of the financial institution reporting requirements, (ii) propose changes to reduce any unnecessarily burdensome regulatory requirements, (iii) upon completion of the review, develop a strategy to reduce de-risking and adverse consequences related to de-risking; and (iv) submit a report to Congress on the review and strategy within one year after completion of the GAO report.
Review of regulations and guidance.	Sec.6216	• Requires the Treasury Secretary, in consultation with the federal functional regulators, the FFIEC, the AG, federal law enforcement agencies, the DNI, the HS Secretary and the Commissioner of Internal Revenue, to undertake a formal review, with public comment, of the regulations implementing the BSA and guidance and deliver a report to Congress within one year after the NDAA's enactment.
Title LXIII—Improving the Anti-Money Laundering and Countering the Financing of Terrorism Communication, Oversight, and Processes		
Improved interagency coordination and consultation.	Sec. 6301	• Requires the Treasury Secretary to invite, as appropriate, appropriate state bank and credit union supervisors to participate in the interagency consultation and coordination with the federal depository institution regulators regarding the development or modification of any rule or regulation under 31 U.S.C. Ch. 53, Subchapter II. (Amends 31 U.S.C. 5318)
Subcommittee on Information Security and	Sec. 6302	• Forms a subcommittee of the BSA Advisory Group on information security and confidentiality to advise the Treasury

Section Title	Section	Summary
Confidentiality.		Secretary on the information security and confidentiality implications of regulations, guidance, information sharing programs, and examinations related to the BSA. (Amends 31 U.S.C. 5311 note)
Assessment of BSA no-action letters.	Sec. 6305	• Requires the Director of FinCEN, in consultation with the AG, federal functional regulators, state bank and credit union supervisors, and other federal agencies, to conduct an assessment on whether to establish a process for FinCEN's issuance of no-action letters in response to inquiries concerning the application of the BSA, USA PATRIOT Act, section 8(s) of the FDI Act or any other AML/CFT law or regulations and the intention of the regulator to take an enforcement action with respect to specific conduct. Requires the Treasury Secretary, in coordination with the FBI Director, AG, the HS Secretary and the federal functional regulators, to submit a report of its assessment and propose rulemakings to Congress within 180 days after the NDAA's enactment.
Cooperation with law enforcement.	Sec. 6306	• Establishes a process for federal, state, tribal and local law enforcement agencies to notify FinCEN of the intent to submit a written request to a financial institution requesting that the financial institution keep an account or transaction open (a "keep open request"), and a corresponding safe harbor for financial institutions with respect to accounts and customer transactions maintained and effectuated based on a "keep open request" if the financial institution maintains the account and/or transactions consistent with the "parameters and timing of the request." This does not relieve financial institutions of SAR reporting obligations. (Amends 31 U.S.C. Ch. 53, Subchapter II; Pub. L. No. 91-508, title I, ch. 2, 84 Stat. 1116 (codified as amended at 12 U.S.C. 1951 et seq.))
Training for examiners on anti-money laundering and countering the financing of terrorism.	Sec. 6307	• Establishes that each federal examiner reviewing compliance with the BSA attend annual training as determined by the Treasury Secretary, including: (i) potential risk profiles and warning signs that an examiner may encounter; (ii) financial crime patterns and trends; (iii) why AML and countering the financing of terrorism programs are necessary and the risks they seek to mitigate; and (iv) de-risking and the effects of de-risking on the provision of financial services. (Amends 31 U.S.C . Ch. 53, Subchapter II)
Obtaining foreign bank records from banks with United States correspondent accounts.	Sec. 6308	• Empowers each of the Treasury Secretary and AG to issue subpoenas to any foreign bank maintaining a correspondent account in the U.S. and request any records relating to such account or any account at the foreign bank, including records maintained outside the U.S., that are the subject of (i) a criminal investigation; (ii) an investigation of a violation of 31 U.S.C. Ch. 53, Subchapter II; (iii) a civil forfeiture action; or

Section Title	Section	Summary
		(iv) an investigation pursuant to 31 U.S.C. 5318A. (Amends 31 U.S.C. 5318(k)) • Permits the foreign bank to petition the relevant U.S. district court to modify or quash the subpoena or the prohibition against disclosure (see below). However, conflicts with foreign secrecy or confidentiality laws are not grounds for objecting. (Amends 31 U.S.C. 5318(k)) • Prohibits the foreign bank from informing an accountholder named in the subpoena about the existence or contents of the subpoena and authorizes the AG to impose a civil penalty for a violation in an amount equal to (i) double the amount of the suspected criminal proceeds sent through the account in the related investigation or (ii) if no such proceeds can be identified, not more than $250,000. (Amends 31 U.S.C. 5318(k)) • Authorizes each of the Treasury Secretary and AG to require a financial institution to terminate a correspondent relationship with a foreign bank that fails to comply with a subpoena or prevail in proceedings; non-compliance may subject a financial institution to a civil penalty. (Amends 31 U.S.C. 5318(k))
Additional damages for repeat BSA violators.	Sec. 6309	• Authorizes the Treasury Secretary to impose an additional civil penalty for each additional violation of the BSA (after the NDAA's enactment), in an amount not more than the greater of (i) three times the profit gained or loss avoided by such person as a result of the violation, or (ii) two times the maximum penalty with respect to the violation. (Amends 31 U.S.C. 5321)
Certain violators barred from serving on boards of U.S. financial institutions.	Sec. 6310	• Bars individuals determined to have committed an "egregious violation" of the BSA from serving on the board of directors of a U.S. financial institution for ten years after a conviction or judgment for such violation. Egregious violations are those for which an individual is convicted where the maximum term of imprisonment is more than one year and a civil violation where the individual willfully committed a violation and such violation facilitated money laundering or the financing of terrorism. (Amends 31 U.S.C. 5321)
Return of profits and bonuses.	Sec. 6312	• Provides authority for a person convicted of violating a provision of the BSA to, in addition to any other fine imposed, (i) be fined an amount equal to the profit gained by the person for such violation and (ii) repay to the financial institution any bonus paid during the calendar year in which and after which the violation occurred. (Amends 31 U.S.C. 5322)
Prohibition on concealment of the source of assets in monetary transactions.	Sec. 6313	• Prohibits persons from knowingly concealing, falsifying, or misrepresenting, or attempting to conceal, falsify, or misrepresent, from or to a financial institution, a material fact

Section Title	Section	Summary
		(i) concerning the ownership or control of assets involved in a monetary transaction" if the persons or entities owning or controlling the assets are politically exposed persons and the aggregate value of the assets involved is at least $1,000,000, or (ii) the source of funds in a monetary transaction involving an entity of primary money laundering concern and violating prohibitions or conditions under 31 U.S.C. 5318A(b)(5). Penalties for violating the prohibitions include imprisonment for up to ten years, fines up to $1,000,000, or both. (Amends 31 U.S.C. Ch. 53, Subchapter II)
Updating whistleblower incentives and protection.	Sec. 6314	• Authorizes rulemaking permitting the Treasury Secretary, in consultation with the AG, to award whistleblowers who provided information that led to the successful enforcement of a judicial or administrative action to be awarded an amount equaling up to 30% of what was collected of the monetary sanctions imposed in the action or related actions. (Amends 31 U.S.C. 5323)
Title LIV—Establishing Beneficial Ownership Information Reporting Requirements		
Sense of Congress.	Sec. 6402	• Expresses the sense of Congress that (i) malign actors conceal ownership of corporate entities to facilitate illicit activity, harming U.S. national security; (ii) federal legislation is needed to set a clear standard for incorporation practices; and (iii) collected information on beneficial ownership should be protected, subject to effective safeguards and controls, and directly available only to authorized government authorities.
Beneficial ownership information reporting requirements.	Sec. 6403	• Requires "reporting companies" to submit a beneficial ownership information report to FinCEN, either within two years after the issuance of regulations by Treasury for existing entities, or at the time of formation or registration for entities formed or registered after the issuance of regulations. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Requires reporting companies to report changes in beneficial ownership within one year (and commissions a review on the need for a shorter time period for reporting updates to beneficial ownership information). (Amends 31 U.S.C. Ch. 53, Subchapter II) • Defines "beneficial owner" to include individuals that "exercise[] substantial control" over an entity, as well as individuals owning 25% or more of the ownership interests of an entity. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Excludes from the definition of "beneficial owner" any individual acting solely as an employee of an entity. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Provides 24 exclusions to the definition of "reporting company." One exclusion is for a "pooled investment vehicle,"

Section Title	Section	Summary
		("PIV") which is defined to include only investment companies defined in section 3(a) of the Investment Company Act of 1940, and entities exempt under sections 3(c)(1) and 3(c)(7) of that Act (but not under other exemptions) and identified by legal name in the applicable investment adviser's Form ADV. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Requires PIVs formed under the laws of a foreign country ("Foreign PIVs") to file a written certification with FinCEN identifying an individual that exercises substantial control over the PIV, although the trigger for Foreign PIVs' reporting obligation is unclear. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Allows reporting companies that are owned by exempt entities to provide only the name of the exempt entity for beneficial ownership reporting purposes. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Mandates beneficial ownership information reports to FinCEN contain certain information, or the "FinCEN identifier," for a beneficial owner. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Permits FinCEN to disclose beneficial ownership information only upon request from (i) upon certain conditions, a federal agency engaged in national security, intelligence or law enforcement activity, or a state, local or Tribal law enforcement agency; (ii) a financial institution subject to requirements under the Customer Due Diligence ("CDD") Rule to facilitate CDD Rule compliance, with the reporting company's consent; or (iii) a federal functional regulator or other appropriate regulatory agency, upon certain conditions. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Permits Treasury Department employees to access beneficial ownership information in connection with their official duties, including tax administration purposes. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Imposes requirements for protection of beneficial ownership information and audit of requests for beneficial ownership information. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Authorizes civil and criminal penalties for (i) reporting violations (with a 90-day safe harbor for voluntarily correcting a report previously submitted with inaccurate information, subject to certain conditions) and (ii) unauthorized disclosure or use violations. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Requires, within two years after the NDAA's enactment, the Administrator for Federal Procurement Policy to revise the Federal Acquisition Regulation to require federal contractors that are reporting companies to submit beneficial ownership information as part of any bid or proposal for contracts above

Section Title	Section	Summary
		a certain value threshold. • Requires the Treasury Secretary to issue regulations implementing the beneficial ownership information reporting requirements within one year after the NDAA's enactment. (Amends 31 U.S.C. Ch. 53, Subchapter II) • Requires the Treasury Secretary, within one year of the issuance of regulations to implement the beneficial ownership information reporting requirements, to revise the CDD Rule to (i) conform to the Corporate Transparency Act, including rescinding and replacing 31 CFR 1010.230(b)-(j); (ii) account for financial institutions' access to the beneficial ownership registry in order to confirm beneficial ownership information provided directly to institutions; and (iii) reduce unnecessary and duplicative burdens on financial institutions and legal entity customers.
Title LXV—Miscellaneous		
GAO and Treasury studies on beneficial ownership information reporting requirements.	Sec. 6502	• Requires the GAO, within two years of the issuance of regulations to implement the beneficial ownership information reporting requirements, to report to Congress its findings from a study on the effectiveness of beneficial ownership information reporting requirements imposed under the Corporate Transparency Act. • Requires the Treasury Secretary, in consultation with the AG, to report to the relevant committees of jurisdiction its findings from conduct a study on the effectiveness of using FinCEN identifiers and an alternative reporting regime. • Requires the GAO, within two years of the issuance of regulations to implement the beneficial ownership information reporting requirements, to report to Congress its findings from a study, conducted in consultation with the Treasury Secretary, federal functional regulations, the AG, the HS Secretary and the intelligence community, reviewing the entities excluded from beneficial ownership information reporting requirements. • Requires the GAO, within two years of the issuance of regulations to implement the beneficial ownership information reporting requirements, to report to Congress its findings from a study identifying states with beneficial ownership reporting requirements and evaluating the lack of available beneficial ownership information for partnerships, trusts or other legal entities.
GAO study on feedback loops.	Sec. 6503	• Requires the GAO, within 18 months after the NDAA's enactment, to report to Congress its findings from a study on best practices for feedback provided by the government to relevant parties.

Section Title	Section	Summary
GAO CTR study and report.	Sec. 6504	• Requires the GAO, by December 31, 2025, to report to the Treasury Secretary and Congress its findings from a study on the effectiveness of the CTR regime and effects of raising the CTR threshold.
GAO studies on trafficking.	Sec. 6505	• Requires the GAO, within one year after the NDAA's enactment, to report to Congress its findings from a study, conducted in consultation with law enforcement, relevant federal agencies, appropriate private sector stakeholders (including financial institutions and data and technology companies), and academic and other research organizations, on illicit trafficking and the role of federal agencies, financial institutions gatekeepers and emerging technologies. • Requires the GAO, within one year after the NDAA's enactment, to report to Congress its findings from a study on the role of payment systems, virtual currencies and online marketplaces in human and drug trafficking.
Treasury study and strategy on trade-based money laundering.	Sec. 6506	• Requires the Treasury Secretary, within one year after the NDAA's enactment, to report to Congress its findings from a study, in consultation with appropriate private sector stakeholders, academic and other international trade experts, and federal agencies, on trade-based money laundering.
Treasury study and strategy on money laundering by the People's Republic of China.	Sec. 6507	• Requires the Treasury Secretary, within one year after the NDAA's enactment, to report to Congress its findings from a study on illicit finance risks from China and a strategy to combat Chinese money laundering activities, developed in consultation with such other federal agencies as the Treasury Secretary deems appropriate.
Treasury and Justice study on the efforts of authoritarian regimes to exploit the financial system of the United States.	Sec. 6508	• Requires the Treasury Secretary, within two years after the NDAA's enactment, to report to Congress its findings from a study conducted by the Treasury Secretary and the AG, in consultation with the heads of other relevant national security, intelligence and law enforcement agencies, on how foreign authoritarian regimes use the U.S. financial system to (i) conduct political influence operations; (ii) sustain kleptocratic methods; (iii) export corruption; (iv) fund U.S. nongovernmental organizations, media organizations or academic initiatives to advance their interests; and (v) undermine democratic governance of the U.S. and its allies.

Section Title	Section	Summary
Other AML-Related Provisions		
Title XCVII—Financial Services Matters		
Kleptocracy Asset Recovery Rewards Act.	Div. H, Tit. XCVII, Subtitle A, secs. 9701-9703	• Establishes the Kleptocracy Asset Recovery Rewards Pilot Program to help identify and recover stolen assets linked to foreign government corruption and the proceeds of such corruption hidden behind complex financial structures through the payment of rewards.
Combating Russian Money Laundering.	Div. H, Tit. XCVII, Subtitle B, secs. 9711-9714	• Requires the Treasury Secretary, within one year after the NDAA's enactment, to report to Congress any additional regulations, statutory changes, enhanced due diligence and reporting requirements necessary to "better identify, prevent, and combat money laundering linked to Russia."
Sanctions		
Title XII—Matters Relating to Foreign Nations		
Annual report on military and security developments involving the Russian Federation.	Div. A, Tit. XII, Subtitle D, sec. 1234	• Not expressly sanctions related. • Requires the Secretary of Defense, in consultation with other relevant federal agencies, to report annually to the appropriate congressional committees on Russia's security and military strategies and capabilities, including, among other national security-related assessments, descriptions of Russia's proliferation activities and Russia's disinformation campaigns.
Determination and imposition of sanctions with respect to Turkey's acquisition of the S–400 air defense system.	Div. A, Tit. XII, Subtitle E, sec. 1241	• Determines the Turkish Government's acquisition of the S-400 air defense system from Russia in 2019 constitutes a "significant transaction" under the Countering America's Adversaries Through Sanctions Act ("CAATSA"). • Requires the U.S. President to impose, within 30 days after the NDAA's enactment, CAATSA sanctions on "each person that knowingly engaged in the acquisition of the S-400 air defense system" with a carve-out prohibiting sanctions on the importation of goods.
Clarification and expansion of sanctions relating to construction of Nord Stream 2 or TurkStream pipeline projects.	Div. A, Tit. XII, Subtitle E, sec. 1242	• Expands Protecting Europe's Energy Security Act sanctions related to the Nord Stream 2 and TurkStream pipeline projects to encompass (i) "pipe-laying activities," defined as activities facilitating pipe-laying; (ii) foreign persons providing underwriting services or insurance or reinsurance for vessels involved in the projects; (iii) foreign persons providing technology upgrades, installation of welding equipment, retrofitting or tethering of vessels involved in the projects; and (iv) foreign persons providing testing, inspection or certification services related to Nord Stream 2. (Amends 22 U.S.C. 9526 note)
Public reporting of Chinese	Div. A, Tit.	• Requires the Secretary of Defense to annually publish in the

Section Title	Section	Summary
military companies operating in the United States.	XII, Subtitle F, sec. 1260H	Federal Register an unclassified list of "Chinese military companies" operating directly or indirectly in the United States "Chinese military companies" are defined separately from Section 1237 of the FY99 NDAA and include "military-civil fusion contributors" to the Chinese defense industry. • Not expressly sanctions related but inclusion on the list may have an impact under other measures including the Export Administration Regulations or Executive Order 13959.
Countering white identity terrorism globally.	Division A, Title XII, Subtitle K, sec. 1299F	• Requires the Secretary of State, within six months after the NDAA's enactment, to develop and submit to Congress a "Department of State Strategy for Countering White Identity Terrorism Globally," developed in coordination with the Director of the National Counterterrorism Center and in consultation with the Director of the Central Intelligence Agency, the AG, the DNI, the HS Secretary, the Director of the FBI and the Treasury Secretary, which, among other elements, must outline how the State Department will use Specially Designated Global Terrorists and foreign terrorist organization designations to support the strategy. • Requires the U.S. President, within 120 days and again 240 days after the submission of each annual country report on terrorism submitted pursuant to section 140 of the Foreign Relations Authorization Act, to report to Congress whether foreign persons, organizations or networks identified in the annual country reports on terrorism qualify as foreign terrorist organizations or Specially Designated Global Terrorists.
Export Controls		
Title VIII—Acquisition Policy, Acquisition Management, and Related Matters		
Assessment and enhancement of national security innovation base.	Div. A, Tit. VIII, Subtitle F, sec. 889	• Requires the Secretary of Defense, by March 1, 2022, to submit an assessment of the impact of U.S. export control policy, among other matters, on the U.S. "national security innovation base."
Title XII—Matters Relating to Foreign Nations		
Extension and modification of prohibition on commercial export of certain covered munitions items to the Hong Kong Police Force.	Div. A, Tit. XII, Subtitle F, sec. 1252	• Extends prohibition on commercial exportation of certain munitions to the Hong Kong Police Force through December 31, 2021. (Amends Pub. L. No. 116–77, 133 Stat. 1173)

Section Title	Section	Summary
Eligibility of Israel for the Strategic Trade Authorization Exception to Certain Export Control Licensing Requirements.	Div. A, Tit. XII, Subtitle F, sec. 1276	• Requires the Secretary of State, within 120 days after the NDAA's enactment, to brief congressional committees on steps taken to include Israel in the list of countries eligible for the strategic trade authorization exception under 15 U.S.C. 740.20(c)(1).
Other		
Strengthening Federal networks; CISA cybersecurity support to Agencies.	Div. A, Tit. XVII, sec. 1705	• Charges the HS Secretary with strengthening federal cyber networks by "hunting for and identifying . . . threats and vulnerabilities within Federal information systems" and providing services and aid to federal agencies with respect to agencies' information security programs. (Amends 44 U.S.C. 3553) • Authorizes information sharing that allows the HS Secretary to carry out these functions "notwithstanding any other provision of law . . . for the purpose of protecting information and information systems from cybersecurity risks." (Amends 44 U.S.C. 3553)
Subpoena authority.	Div. A, Tit. XVII, sec. 1716	• Authorizes the Director of the Cybersecurity and Infrastructure Security Agency of the Department of Homeland Security to (i) identify systems connected to the internet that have a "specific security vulnerability" related to critical infrastructure and affecting a "covered device or system" (which does not include personal devices and systems); and (ii) if ownership or operation of such device or system is unknown, the Director may issue a subpoena for production of information necessary to identify and notify such entity at risk. (Amends 6 U.S.C. 659)
National Artificial Intelligence Initiative Act.	Div. E, secs. 5001-5501	• Establishes the National Artificial Intelligence Initiative and Office to, among other things: (i) ensure continued U.S. leadership in artificial intelligence research and development; (ii) lead the world in the development and use of trustworthy artificial intelligence systems in the public and private sector; and (iii) coordinate ongoing artificial intelligence research, development, and demonstration activities among the civilian agencies, the Department of Defense and the Intelligence Community to ensure that each informs the work of the others.
Fairness for Taiwan nationals regarding employment at international financial institutions.	Div. H, Tit. XCVII, Subtitle C, sec. 9724	• Calls for Taiwan nationals not to be discriminated against in seeking employment at international financial institutions.