



## Congress Should Pass Anti-Money Laundering Reform Legislation Now

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On July 21, the House passed legislation to modernize the U.S. anti-money laundering/countering the financing of terrorism (AML/CFT) framework. The Maloney-Cleaver Amendment, which was added to the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (NDAA), is the product of a multi-year effort to improve the effectiveness of U.S. Bank Secrecy Act requirements imposed on financial institutions and close a loophole in the U.S. corporate formation system that allows for anonymous ownership of U.S. companies – a loophole exploited by human traffickers, terrorist financiers, kleptocrats, sanctions evaders, money launderers and other nefarious actors.

### CRIMINALS SHOULD NOT BE ALLOWED TO HIDE BEHIND ANONYMOUS SHELL COMPANIES

All too often criminal investigations hit a dead end when law enforcement encounters a company with hidden ownership, and lack the time and resources to peel back the many layers of secrecy currently permitted by U.S. law.<sup>1</sup> The pending legislation can provide law enforcement with key pieces of ownership information on true shell companies and has received broad support from a diverse coalition of stakeholders including [non-profits](#) fighting to end human trafficking and the exploitation of minors, [national security experts](#), [law enforcement](#), business associations such as the [U.S. Chamber of Commerce](#), [financial services associations](#), and non-partisan advocacy organizations such as the [FACT Coalition](#). Approximately 75% of small business owners with an opinion support requiring small business owners to provide their personal information when forming a company, according to a [Morning Consult survey](#) conducted on behalf of BPI.

The U.S. has repeatedly been criticized by the Financial Action Task Force, an inter-governmental AML standard-setting body, for this deficiency in our system. As a workaround, in 2016, the Treasury Department finalized regulations requiring banks to determine corporate ownership and use that information to monitor for suspicious activity. This regime requires bank clients to provide ownership information at every new account opening. Yet, many criminals avoid the banking system and launder money by forming limited liability companies and using them to hold real estate, art, jewelry or other valuables — all without having to open a bank account. Enacting federal legislation that ends anonymous shell companies is essential to closing this gap.

### BANK ANTI-MONEY LAUNDERING EFFORTS SHOULD BE EFFECTIVE AND USEFUL, NOT PEDANTIC COMPLIANCE EXERCISES.

The goal of the BSA regime is to provide information that is of a “high degree of usefulness”<sup>2</sup> to law enforcement, yet today’s compliance expectations do not account for this effort and instead focus on “check-the-box” requirements such as perfecting policies and procedures; measuring the number of alerts generated and reports filed rather than the bad actors captured; and documenting, explaining and governing decisions. A BPI [study](#) found that almost 50% of AML personnel are not involved in tasks directly focused on reporting

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<sup>1</sup> See Statement of Steven M. D’Antuono before the Committee on Banking, Housing, and Urban Affairs, United States Senate, (May 21, 2019); available at [www.banking.senate.gov/imo/media/doc/D'Antuono%20Testimony%205-21-19.pdf](http://www.banking.senate.gov/imo/media/doc/D'Antuono%20Testimony%205-21-19.pdf).

<sup>2</sup> See 31 U.S.C. § 5311.

to law enforcement.<sup>3</sup> Instead, they focus on issuing policies and procedures; conducting quality assurance over data and processes; and auditing such programs and systems, among other things.

The BPI study also found that, in 2017, survey participants reviewed approximately 16 million alerts and filed over 640,000 suspicious activity reports (SAR). Institutions that record data regarding law enforcement inquiries reported that a median of 4% of SARs resulted in follow-up inquiries from law enforcement.<sup>4</sup> As the data shows, bank resources could be more effectively deployed.

The pending legislation would require regulators to evaluate, update and streamline requirements to improve the utility of SARs and other BSA-mandated reports. Such a review, along with the exploration of the provision of real-time data and law enforcement feedback, could assist in allowing financial institutions to provide more robust and higher-value information to law enforcement as it will permit banks to re-deploy resources to more proactive and effective efforts like identifying and developing techniques to combat emerging trends in illicit activity, investing more heavily in innovation generally (e.g. machine learning) and engaging in more proactive intelligence-led investigations.

### **SUPPORT FOR REFORM IS BICAMERAL AND BIPARTISAN, SO SHOULD BE WITHIN REACH**

The Maloney-Cleaver Amendment combines two bills that enjoy bipartisan support. The first is a bill that ends anonymous shell companies and was most recently introduced by Representative Carolyn Maloney (D-NY) in May 2019. The second is Representative Emanuel Cleaver's (D-MO) COUNTER Act, which modernizes AML/CFT expectations. The combined bills initially passed the House on October 22, 2019 on a bipartisan basis and, as part of the NDAA, passed the House with a bipartisan vote of 295 – 125. It would:

- Require a critical review of financial institution currency transaction report (CTR) and SAR requirements to determine ways to improve their effectiveness and streamline reporting;
- Improve information sharing among, and between, the public and private sector by studying law enforcement feedback on BSA reports, create a pilot program to allow financial institutions to share information related to suspicious activity within a financial group, increase the sharing of threat pattern and trend information with financial institutions and formally establish the Financial Crimes Enforcement Network's (FinCEN) exchange program, which is a voluntary public-private information sharing partnership;
- Provide mechanisms to promote bank adoption of innovative AML/CFT technologies;
- Require certain companies to report ownership information to FinCEN, provide financial institutions with access to reported information and direct Treasury to bring the customer due diligence (CDD) rule into alignment with the legislation's requirements and reduce unnecessary or duplicative expectations; and
- Update and strengthen certain Treasury authorities and require studies of various illicit finance typologies as well as the drivers of de-risking.

In June 2019, before the House initially passed its AML reform legislation, the Senate Banking Committee held a hearing exploring how best to end anonymous shell companies, and a [bipartisan group of senators](#) released AML/CFT reform legislation of their own, known as the ILLICIT Cash Act ([S. 2563](#)). Senate Banking

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<sup>3</sup> For example, developing suspicious activity models, screening transactions, investigating potentially suspicious activity and filing SARs. Getting to Effectiveness – Report on U.S. Financial Institution Resources Devoted to BSA/AML & Sanctions Compliance, (October 29, 2018); available at [bpi.com/wp-content/uploads/2018/10/BPI\\_AML\\_Sanctions\\_Study\\_vF.pdf](https://bpi.com/wp-content/uploads/2018/10/BPI_AML_Sanctions_Study_vF.pdf).

<sup>4</sup> As discussed in BPI's study, because there is no established metric for measuring whether banks' BSA reports are "useful" to law enforcement a proxy was used, which was derived from tracking instances where law enforcement reached out to institutions, including through subpoenas, national security letters or requests for SAR backup documentation.

Committee Chairman Crapo and Ranking Member Brown recently introduced the Anti-Money Laundering Act of 2020 as an amendment to the Senate defense authorization act, the bill is an updated version of the ILLICIT Cash Act, reflecting negotiations by the committee's leadership.

Clearly, there is broad bipartisan support for this commonsense legislation and this week's House passage of the Corporate Transparency Act and COUNTER Act is a significant step forward in realizing these important reforms that will improve the safety and security of the United States.

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