

AUGUST 28, 2020



ISSUE BRIEF

Bank Secrecy Act/Anti-Money Laundering/Beneficial Ownership

BACKGROUND

Credit unions support efforts to combat criminal activity in the financial system. NAFCU has consistently recognized the importance of the Financial Crimes Enforcement Network (FinCEN), *Bank Secrecy Act* (BSA), and Anti-Money Laundering (AML) requirements in assisting in the prevention of tax evasion, money laundering and terror financing. Credit unions have a good working relationship with FinCEN, and believe that the publication of periodic BSA/AML guidance is very helpful. However, BSA/AML requirements can be a burden to implement. NAFCU believes that the BSA/AML system is in need of improvements and reform, and we are pleased that Congress is working on bipartisan solutions to strengthen and improve the BSA/AML system and disclose the true “beneficial owners” of companies.

LEGISLATIVE DEVELOPMENTS

The House passed two NAFCU-supported measures first in October 2019 and then again in July 2020 as an amendment to H.R. 6395, the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for Fiscal Year 2021:

H.R. 2513, the Corporate Transparency Act

- › House passed H.R. 2513, which was amended to include much of H.R. 2514, the COUNTER Act, in a bipartisan vote of 249-173 on October 22, 2019
- › The Corporate Transparency Act and COUNTER Act were also added to the House NDAA in a bipartisan vote of 336-71. The House passed their version of the NDAA in a bipartisan vote of 295-125 on July 21, 2020
- › Introduced by Representatives Carolyn Maloney (D-NY) and Pete King (R-NY)
- › Would help financial institutions, including credit unions, comply with the new Customer Due Diligence (CDD) Rule by requiring companies to disclose their true “beneficial owners” to FinCEN for creation of a database of beneficial ownership information that would be available to law enforcement agencies and financial institutions

H.R. 2514, the COUNTER Act

- › House passed by a unanimous voice vote on October 28, 2019
- › Introduced by Representatives Emmanuel Cleaver (D-MO) and Steve Stivers (R-OH)

- › Takes important steps to have FinCEN encourage more coordination between law enforcement priorities and credit union examiners and to help train examiners on countering the financing of terrorism (CFT) and AML issues
- › Seeks AML improvements by encouraging innovation and providing exemptive relief to facilitate the testing of new technologies and innovations
- › Addresses the community institution compliance burdens from Suspicious Activity Reports (SARs) and Currency Transaction Reports (CTRs), including programs to create a modified SAR in certain instances and indexing the CTR level for inflation.

In the Senate, a bipartisan group of Senators on the Banking Committee tried to include NAFCU-supported BSA reform legislation as an amendment to S. 4049, the National Defense Authorization Act for Fiscal Year 2021:

S.Amdt.2198 to S. 4049, the Anti-Money Laundering Act of 2020

- › Submitted by Senators Mike Crapo (R-ID), Sherrod Brown (D-OH), Tom Cotton (R-AR), Mark Warner (D-VA), Mike Rounds (R-SD), Doug Jones (D-AL), Jerry Moran (R-KS), Robert Menendez (D-NJ), and John Kennedy (R-LA) on June 25, 2020. Ultimately not voted on and not included in the Senate NDAA
- › Creates a database of beneficial ownership information that would be available to law enforcement agencies. Financial institutions would be able to request confirmation of beneficial ownership information for purposes of compliance with the CDD Rule (like the Corporate Transparency Act)
- › Modernizes and improves the BSA/AML system by establishing risk-based AML/CFT priorities, improving communication between law enforcement, regulators and financial institutions, reviewing and streamlining reporting requirements, and encouraging the development of new technologies

OUTLOOK AND ASK

Since the House included BSA reform in their version of the NDAA, the issue is on the table as Congress heads to conference to reconcile the different versions of the NDAA. Even though the Senate failed to include the *Anti-Money Laundering Act of 2020* in their version of the NDAA, the conference committee will potentially be considering that language alongside the *Corporate Transparency Act* and COUNTER Act. It is also possible that the conference committee chooses to drop BSA reform from the NDAA altogether. We urge you to weigh in with your members of Congress and urge them to support the inclusion of BSA reform in the final NDAA.