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# Anti-Money Laundering: An Overview for Congress

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## Summary

Anti-money laundering (AML) refers to efforts to prevent criminal exploitation of financial systems to conceal the location, ownership, source, nature, or control of illicit proceeds. Despite the existence of longstanding domestic regulatory and enforcement mechanisms, as well as international commitments and guidance on best practices, policymakers remain challenged to identify and address policy gaps and new laundering methods that criminals exploit. According to United Nations estimates recognized by the U.S. Department of the Treasury, criminals in the United States generate some \$300 billion in illicit proceeds that might involve money laundering. Rough International Monetary Fund estimates also indicate that the global volume of money laundering could amount to as much as 2.7% of the world's gross domestic product, or \$1.6 trillion annually.

Money laundering is broadly recognized to have potentially significant economic and political consequences at both national and international levels. Despite robust AML efforts in the United States, the ability to counter money laundering effectively remains challenged by a variety of factors. These include:

- the scale of global money laundering;
- the diversity of illicit methods to move and store ill-gotten proceeds through the international financial system;
- the introduction of new and emerging threats (e.g., cyber-related financial crimes);
- the ongoing use of old methods (e.g., bulk cash smuggling);
- gaps in legal, regulatory, and enforcement regimes, including uneven availability of international training and technical assistance for AML purposes; and
- the costs associated with financial institution compliance with global AML guidance and national laws.

### **AML Policy Framework**

In the United States, the legislative foundation for domestic AML originated in 1970 with the Bank Secrecy Act (BSA) of 1970 and its major component, the Currency and Foreign Transaction Reporting Act. Amendments to the BSA and related provisions in the 1980s and 1990s expanded AML policy tools available to combat crime, particularly drug trafficking, and prevent criminals from laundering their illicitly derived profits.

Key elements to the BSA's AML legal framework, which are codified in Titles 12 (Banks and Banking) and 31 (Money and Finance) of the U.S. Code, include requirements for customer identification, recordkeeping, reporting, and compliance programs intended to identify and prevent money laundering abuses. Substantive criminal statutes in Titles 31 and 18 (Crimes and Criminal Procedures) of the U.S. Code prohibit money laundering and related activities and establish civil penalties and forfeiture provisions. Moreover, federal authorities have applied administrative forfeiture, non-conviction based forfeiture, and criminal forfeiture tools.

In response to the terrorist attacks on the U.S. homeland on September 11, 2001, Congress expanded the BSA's AML policy framework to incorporate additional provisions to combat the financing of terrorism (CFT). Although CFT is not the primary focus of this CRS report, post-9/11 legislation provided the Executive Branch with greater authority and additional tools to counter the convergence of illicit threats, including the financial dimensions of organized crime, corruption, and terrorism.

### **Policy Outlook for the 115<sup>th</sup> Congress**

Although CFT will likely remain a pressing national security concern for policymakers and Congress, some see the beginning of the 115<sup>th</sup> Congress as an opportunity to revisit the existing AML policy framework, assess its effectiveness, and propose regulatory and statutory changes. Such efforts could further address issues raised in hearings and proposed legislation during the 114<sup>th</sup> Congress, including beneficial ownership, the application of targeted financial sanctions, and barriers to international AML information sharing. Drawing from past legislative activity, the 115<sup>th</sup> Congress may also revisit proposals to require the Executive Branch to develop a roadmap for identifying key AML policy challenges and balancing AML priorities in a national strategy. Some observers have gone further to propose broader changes to the BSA/AML regime. The 115<sup>th</sup> Congress may also seek to address tensions that remain in balancing the policy objectives of improving financial services access and inclusion while also accounting for money laundering risks and vulnerabilities that may result in the exclusion (or “de-risking”) of others from the international financial system.

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## Introduction

Money laundering is a term generally associated with various types of financial transactions that are conducted by criminals to conceal the location, ownership, source, nature or control of illicit proceeds. In the process, illicit proceeds are made virtually unrecognizable from proceeds derived from legitimate sources and, thus, are usable within the national and international financial system. Money laundering is not a new problem and efforts to stem such activity remain a global policy concern.

Money laundering occurs in three stages, which, in practice, may involve additional complexity.<sup>1</sup>

- The first stage is “placement” and involves the introduction of illicit funds into the financial system.
- The second stage involves “layering,” whereby illicitly placed funds undergo a series of processes to conceal their true source and ownership.
- The third stage is “integration,” at which point illicit funds become indistinguishable from legitimately obtained funds and flow undetected through the financial system.

Anti-money laundering (AML) policies are chiefly governed by national laws and regulations that establish the parameters of legal financial activity and the responsibilities of financial institutions and related sectors to comply with AML requirements. In the United States, a robust policy apparatus is in place to implement national laws through financial regulations, enforcement actions including prosecutions, and targeted sanctions. The U.S. government also supports the improvement of foreign government legal regimes and technical capacity for AML. International treaty instruments that address crime provide some tools to encourage international cooperation on financial crime matters. Several international institutions provide standard-setting guidance and maintain capabilities to monitor and assess the status of national AML policies. Multilateral institutions and donor nations also provide training and technical assistance to improve AML capabilities.

Halting the introduction and circulation of criminally generated proceeds in the financial system, and, ultimately, depriving criminals from using illicit wealth remains a challenge. Despite the existence of longstanding domestic regulatory and enforcement mechanisms, as well as international commitments and guidance on best practices, policymakers are challenged to identify and address policy gaps and new laundering methods that criminals continue to exploit. Moreover, policymakers also may attempt to balance AML efforts with principles of financial inclusion, including providing access to financial services in developing countries, and avoiding unnecessary administrative and compliance burdens being placed on the public and private sectors.

## Scope of the Problem

The scope of money laundering as a global problem is often framed in terms of the volume of illegal transactions, breadth of geographic concerns, and varied consequences resulting from such activity. Money laundering is a difficult phenomenon to accurately measure. In 1998, the International Monetary Fund (IMF) released a “consensus range” estimate of money laundering

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<sup>1</sup> U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, p. 2, June 12, 2015.

transactions totaling some 2-5% of global gross domestic product (GDP).<sup>2</sup> Based on 2009 data, the United Nations (U.N.) reviewed in 2011 existing national and international studies on money laundering and global crime proceeds to conclude that the scope of money laundering likely remained within the bounds of the IMF's rough estimate: approximately 2.7% of global GDP, or \$1.6 trillion.<sup>3</sup>

Due to its global dominance, the U.S. dollar generates trillions of dollars daily in transactions through U.S. financial institutions, which in turn exposes the U.S. financial system to potential money laundering activity and cross-border illicit financial flows.<sup>4</sup> The U.N. report further estimated that the United States, in 2010, likely generated some \$300 billion in illicit proceeds (excluding tax evasion), or roughly 2% of U.S. GDP. In 2015, the U.S. Department of the Treasury confirmed that the U.N.'s estimates are "comparable to U.S. estimates."<sup>5</sup> As in the United States, international surveys indicate that the most significant sources of illicit proceeds are generated through white collar crime (i.e., fraud, identity theft, and tax evasion) and organized crime, particularly drug trafficking.<sup>6</sup> Smaller sums, which are nevertheless significant for political and security reasons, are associated with public corruption and international terrorism.

In seeking to clean dirty money, launderers wield a wide range of methods to conceal from authorities the true origins, ownership, and volume of illicit proceeds. Particularly attractive are methods that preserve anonymity (e.g., use and movement of cash), avoid AML-related recordkeeping and reporting requirements (e.g., structuring bank deposit and withdrawal), and involve techniques that are hard for authorities to detect (e.g., trade-based money laundering). Money laundering may involve the use of complicit individuals (e.g., nominees, corrupt officials, banking insiders, front company business owners) and illegal financial service providers (e.g., unregistered money services businesses).

Money laundering may also involve the exploitation of legal off-shore corporate structures that obscure beneficial ownership (e.g., shell companies) and permissive foreign jurisdictions, including those accessible by correspondent banking relationships and business sectors with potentially lax AML controls.<sup>7</sup> "Beneficial owner" refers to the natural person who, directly or indirectly, controls or manages a legal entity and its assets.<sup>8</sup> According to the Financial Action

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<sup>2</sup> Michel Camdessus, Managing Director of the International Monetary Fund (IMF), address at the plenary meeting of the Financial Action Task Force (FATF), "Money Laundering: The Importance of International Countermeasures," February 10, 1998.

<sup>3</sup> United Nations Office on Drugs and Crime (UNODC), *Estimating Illicit Financial Flows Resulting from Drug Trafficking and Other Transnational Organized Crimes*, October 2011.

<sup>4</sup> FATF, *Mutual Evaluation of the United States*, December 2016.

<sup>5</sup> U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, June 12, 2015. Aggregating outside sources, Treasury reported that illicit drugs accounted for approximately \$64 billion of annual financial crime proceeds, while some \$236 billion is generated mostly from fraud (e.g., healthcare fraud, insurance fraud, identity theft, tax fraud, mortgage fraud, securities fraud, and retail and consumer fraud), as well as human smuggling, organized crime (e.g., extortion, illegal gambling, kidnapping, loan sharking, murder, prostitution, and racketeering), and public corruption.

<sup>6</sup> See FATF, *Global Money Laundering and Terrorist Financing Threat Assessment*, July 2010; UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, June 2010; and Jeremy Haken, Global Financial Integrity (GFI), *Transnational Crime in the Developing World*, February 2011.

<sup>7</sup> According to the Wolfsberg Group, an association of 13 global banks that develops guidance on minimizing AML and CFT risks: "Correspondent Banking is the provision of a current or other liability account, and related services, to another financial institution, including affiliates, used for the execution of third party payments and trade finance, as well as its own cash clearing, liquidity management and short-term borrowing or investment needs in a particular currency." See The Wolfsberg Group, *Wolfsberg Anti-Money Laundering Principles for Correspondent Banking*, 2014.

<sup>8</sup> The White House (Obama), *The U.S. Action Plan to Implement the G-20 High Level Principles on Beneficial Ownership*, October 16, 2015.

Task Force (FATF), an international AML standard-setting body, the lack of available information on the legal and beneficial ownership of corporate vehicles increases their vulnerability to exploitation for the purposes of laundering illicit proceeds.<sup>9</sup>

The Treasury Department describes money laundering as “a necessary consequence of almost all profit generating crimes and can occur almost anywhere in the world.”<sup>10</sup> As a global issue, the effectiveness of international AML efforts is often described as dependent on the international community’s weakest links: countries or jurisdictions that fail to establish appropriate AML safeguards. Unchecked money laundering can have global consequences; it can:

- Undermine the integrity of the international financial system, reduce consumer confidence in the financial system, and damage the reputation of financial regulatory bodies.
- Introduce economic distortions that affect economic growth, international trade, business competitiveness, money demand, capital flows, foreign investments, exchange rates, and securities markets.
- Violate border and customs controls through the facilitation of bulk cash smuggling and trade-based laundering methods that evade duties, tariffs, and taxes—legitimate sources of government revenue that become unavailable for public expenditure.
- Contribute to and exacerbate state fragility by rewarding illicit behavior at the expense of transparency, good governance, the rule of law, and accountability of public and private institutions.
- Enable criminals to sustain their networks and realize profits generated by their illicit activities, including political corruption.
- Facilitate the financing of terrorism.<sup>11</sup>

### Selected Global Assessments of Money Laundering Vulnerability

One way in which the scope of the money laundering can be viewed is in terms of the global breadth of geographic concerns. In evaluating global vulnerability to money laundering, the United States and the international community often refer to several country lists compiled variously by the Financial Action Task Force (FATF) and the U.S. Departments of State and the Treasury (see **Figure 1** below).

**Financial Action Task Force List.** Three times each year, FATF identifies jurisdictions with strategic AML/CFT (combating the financing of terrorism) deficiencies with the aim of working with such jurisdictions to mitigate the risks they pose to the international financial system. In October 2016, FATF jurisdictions with strategic deficiencies included Afghanistan, Bosnia and Herzegovina, Iraq, Laos, Syria, Uganda, Vanuatu, and Yemen.<sup>12</sup> In addition to identifying Iran as a jurisdiction with strategic deficiencies, FATF called on its members and other jurisdictions “to apply enhanced due diligence measures proportionate to the risks arising from the jurisdiction.” With respect to North Korea, which FATF described as having failed to address its significant AML/CFT deficiencies, FATF also called on its members and other jurisdictions “to apply counter-measures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/TF) risks.”<sup>13</sup>

**U.S. Department of State List.** Each year in March, the Department of State’s Bureau of International Narcotics

<sup>9</sup> FATF, *Guidance on Transparency and Beneficial Ownership*, October 2014.

<sup>10</sup> U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, June 12, 2015.

<sup>11</sup> See U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, June 12, 2015; FATF, *Global Money Laundering and Terrorist Financing Threat Assessment*, July 2010; UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment*, June 2010.

<sup>12</sup> FATF, *Improving Global AML/CFT Compliance: Ongoing Process*, October 21, 2016.

<sup>13</sup> FATF, Public Statement, October 21, 2016.

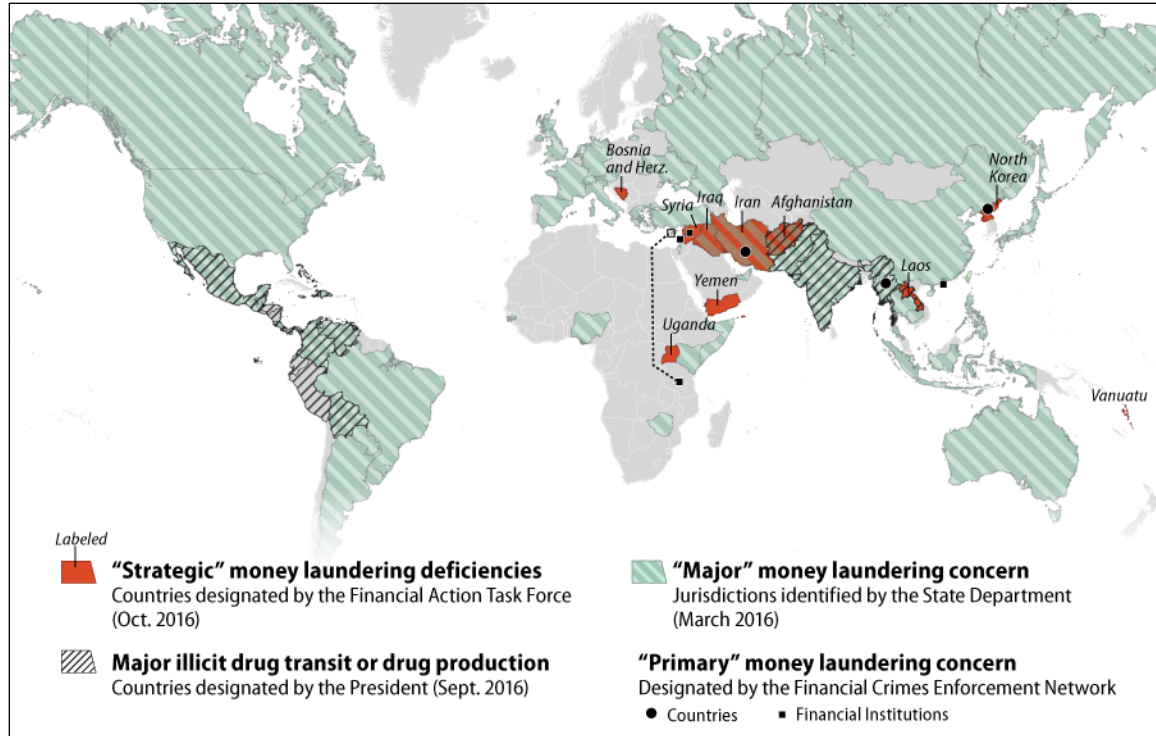
and Law Enforcement Affairs (INL) issues a two-volume report to Congress, titled the *International Narcotics Control Strategy Report* (INCSR), required by Section 489 of the Foreign Assistance Act of 1961, as amended (22 U.S.C. 2291). In addition to requiring the President to annually identify a list of major illicit drug source and trafficking countries, the INCSR also requires the State Department to identify “major” money laundering countries “whose financial institutions engage in currency transactions involving significant amounts of proceeds from international narcotics trafficking.” In practice, the annual INCSR list of major money laundering countries includes those whose financial institutions, non-financial businesses and professions, and other value transfer systems are used to conduct transactions involving significant amounts of proceeds from “all serious crime.”<sup>14</sup>

**U.S. Department of the Treasury List.** 31 U.S.C. 5318A (added by Section 311 of the USA PATRIOT Act) authorizes Treasury to identify foreign jurisdictions, financial institutions, international transactions, or types of accounts that are of “primary money laundering concern.” Discussed further below, Section 311 is a potentially powerful regulatory tool that Treasury’s Financial Crimes Enforcement Network (FinCEN) has applied in limited circumstances. Current primary money laundering concerns include three countries (Burma, North Korea, and Iran), and five jurisdictions or financial institutions (Banco Delta Asia, the Commercial Bank of Syria, FMBE Bank Ltd., the Halawi Exchange, Iran, and the Kassem Rmeiti & Co. For Exchange).<sup>15</sup>

<sup>14</sup> U.S. Department of State, International Narcotics and Law Enforcement Affairs Bureau, *International Narcotics Control Strategy Report*, Vol. 2, “Money Laundering and Financial Crimes,” March 2016. The 2015 “major” money laundering countries were identified as the following: Afghanistan, Antigua and Barbuda, Argentina, Australia, Austria, Bahamas, Belize, Bolivia, Brazil, British Virgin Islands, Burma, Cambodia, Canada, Cayman Islands, China, Colombia, Costa Rica, Curacao, Cyprus, Dominican Republic, France, Germany, Greece, Guatemala, Guernsey, Guinea Bissau, Haiti, Hong Kong, India, Indonesia, Iran, Iraq, Isle of Man, Israel, Italy, Japan, Jersey, Kenya, Latvia, Lebanon, Liechtenstein, Luxembourg, Macau, Mexico, Netherlands, Nigeria, Pakistan, Panama, Paraguay, Philippines, Russia, Singapore, Sint Maarten, Somalia, Spain, Switzerland, Taiwan, Thailand, Turkey, Ukraine, United Arab Emirates, United Kingdom, United States, Uruguay, Venezuela, West Bank and Gaza, and Zimbabwe.

<sup>15</sup> U.S. Department of the Treasury, Financial Crimes Enforcement Network (FinCEN), *311 Special Measures*, webpage, <https://www.fincen.gov/resources/statutes-and-regulations/311-special-measures>.



**Figure I. Global Overview of Money Laundering Hotspots**

**Source:** Graphic prepared by CRS, based on information published by the FATF (October 2016 press releases), U.S. Departments of State (2016 *International Narcotics Control Strategy Report*) and the Treasury (FinCEN 311 special measures), and the White House (September 2016 presidential determination on major illicit drug producing or transit countries for FY2017).

## Anti-Money Laundering Policy Overview

### U.S. Legal Framework

In the United States, the legislative foundation for domestic AML originated in 1970 with the Bank Secrecy Act (BSA) of 1970 and its major component, the Currency and Foreign Transaction Reporting Act. Deriving from an emerging recognition that financial transaction records have a "high degree of usefulness in criminal, tax, or regulatory investigations or proceedings," the legislation authorized the Secretary of the Treasury to require financial institutions to establish and adhere to certain AML practices.<sup>16</sup> Amendments to the BSA and related provisions in the 1980s and 1990s expanded AML policy tools available to combat crime, particularly drug trafficking, and prevent criminals from laundering their illicitly derived profits.

Key elements to the BSA's AML legal framework, which are codified in Titles 12 (Banks and Banking) and 31 (Money and Finance) of the U.S. Code, include requirements for reporting, customer identification and due diligence, recordkeeping, and the establishment and maintenance of BSA/AML compliance programs. Bank examiners are required to probe banking entities on

<sup>16</sup> 31 U.S.C. 5311 et seq. and 12 U.S.C. 1786(q), 1818(s), 1829b, and 1951-1959. The definition of a "financial institution," a term which has evolved since 1970 to expand beyond banks, is located at 31 U.S.C. 5312. This section discusses the federal response to anti-money laundering, but states may have additional requirements.

the effectiveness of AML policies and procedures. Substantive criminal statutes in Titles 31 and 18 (Crimes and Criminal Procedures) of the U.S. Code prohibit money laundering and related activities and establish civil penalties and forfeiture provisions (see text box below on enforcement actions).<sup>17</sup> The establishment of a “follow the money” approach among federal law enforcement agencies in pursuing predicate offense investigations has contributed to, on average, 1,200 money laundering-related convictions annually.<sup>18</sup> Moreover, federal authorities apply administrative forfeiture, non-conviction based forfeiture, and criminal forfeiture tools to confiscate assets, with more than \$4.4 billion in assets confiscated in 2014.<sup>19</sup>

In response to the terrorist attacks on the U.S. homeland on September 11, 2001, Congress expanded the BSA’s AML policy framework to incorporate additional provisions to combat the financing of terrorism (CFT). Legislation following the September 11 attacks, including Title III of the USA PATRIOT Act of 2001, the International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, provided the Executive Branch with greater authority and additional tools to counter the convergence of illicit threats, including the financial dimensions of organized crime, corruption, and terrorism.<sup>20</sup>

## Reporting Requirements

The BSA’s AML policy framework is premised on the effective implementation, primarily by financial institutions, of suspicious activity monitoring systems. The accurate, timely, and complete reporting of suspicious activity to the Treasury Department ensures that situations that may warrant further investigation are flagged for law enforcement authorities. Other reports are variously required to be submitted by individuals transporting large amounts of cash internationally, persons with large foreign financial interests, and nonfinancial entities conducting large cash transactions. Other reporting requirements are unique to specific countries, jurisdictions, or situations. Among such reporting requirements are:

- **Suspicious activity reports (SARs).** FinCEN<sup>21</sup> has issued implementing regulations pursuant to 31 U.S.C. 5318 requiring a broad range of entities covered by the BSA’s definition of “financial institution,”<sup>22</sup> to file SARs on “any suspicious transaction relevant to a possible violation of law or regulation.” Separate regulations specify SAR reporting requirements for banks; casinos and

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<sup>17</sup> See 18 U.S.C. 1956 on “laundering of monetary instruments;” 18 U.S.C. 1957 on “engaging in monetary transactions in property derived from specified unlawful activity;” 18 U.S.C. 1960 on “prohibition of unlicensed money transmitting businesses;” 31 U.S.C. 5322 on “criminal penalties” for failing to file currency transaction reports (CTRs), currency or monetary instruments reports (CMIRs), or form 8300 (on reporting of cash payments over \$10,000 received in a trade or business); 31 U.S.C. 5324 on “structuring transactions to evade reporting requirement[s]...,” and 31 U.S.C. 5332 on “bulk cash smuggling into or out of the United States.” See also CRS Report RL33315, *Money Laundering: An Overview of 18 U.S.C. 1956 and Related Federal Criminal Law*, by Charles Doyle.

<sup>18</sup> FATF, *Mutual Evaluation of the United States*, December 2016.

<sup>19</sup> *Ibid.*

<sup>20</sup> 115 Stat. 272. For further information, see CRS Report RL31208, *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001, Title III of P.L. 107-56 (USA PATRIOT Act)*, by M. Maureen Murphy. See also George A. Lyden, “The International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001: Congress Wears a Blindfold While Giving Money Laundering Legislation a Facelift,” *Fordham Journal of Corporate and Financial Law*, Vol. 8, No. 1 (2003), pp. 201-243.

<sup>21</sup> Under 31 C.F.R. 1010.810 the Director of Financial Crimes Enforcement Network (FinCEN) has been delegated “[o]verall authority for enforcement and compliance, including coordination and direction of procedures and activities of all other agencies exercising delegated authority under [the Bank Secrecy Act].”

<sup>22</sup> This definition of “financial institution” can be found in 31 U.S.C. 5312(a)(2).

card clubs; money services businesses; brokers or dealers in securities; mutual funds; insurance companies; futures commission merchants and introducing brokers in commodities; dealers in precious metals, precious stones, or jewels; operators of credit card systems; loan or financing companies; and housing government sponsored enterprises.<sup>23</sup>

- **Currency transaction reports (CTRs).** Implementing regulations pursuant to 31 U.S.C. 5313 require all financial institutions—including, for example, money services businesses and casinos—to file CTRs for each transaction or group of related cash transactions in a day that aggregate to more than \$10,000.<sup>24</sup> IRS Form 8300 is used for trades and businesses to report cash payments of more than \$10,000.<sup>25</sup>
- **Currency or monetary instruments reports (CMIRs).** Implementing regulations pursuant to 31 U.S.C. 5316 requires individuals to report the import or export of more than \$10,000 in monetary instruments (e.g., currency, traveler’s checks, and all bearer negotiable financial instruments).<sup>26</sup>
- **Foreign bank and financial accounts reporting (FBAR).** FinCEN regulations issued pursuant to 31 U.S.C. 5314 require U.S. persons to file an FBAR “if the United States person had a financial interest in or signature authority over at least one financial account located outside of the United States; and the aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year reported.”<sup>27</sup>
- **Geographic targeting orders (GTOs).** Pursuant to 31 U.S.C. 5326, FinCEN has authority to impose recordkeeping and reporting requirements on domestic financial institutions or nonfinancial businesses in a particular geographic area in order to assist regulators and law enforcement agencies in identifying criminal activity. In the absence of extensions, such GTOs may only remain in effect for a maximum of 180 days.

### Recent Policy Developments on GTOs

In recent years, FinCEN appears to have begun to rely more heavily on Geographic Targeting Orders (GTOs) to address longstanding and acute AML threats, a tool that was first authorized in 1988 (31 U.S.C. 5326). A GTO imposes additional, but time-limited, recordkeeping and reporting requirements on domestic financial institutions or nonfinancial businesses in a particular geographic area in order to assist regulators and law enforcement agencies in identifying criminal activity. In the absence of extensions, GTOs may only remain in effect for a maximum of 180 days. Several recent GTOs have been used to enhance U.S. efforts to combat trade-based money laundering (TBML) and drug trafficking-related money laundering. In addition to its temporary and geographically limited scope, GTOs are

<sup>23</sup> Subpart C of the regulations applicable to the various types of financial institutions specifies particular requirements for filing Suspicious Activity Reports (SARs). SAR requirements for banks are found in 31 C.F.R. 1010.320; casinos and card clubs (31 C.F.R. 1020.320); money services businesses (31 C.F.R. 1022.320); brokers or dealers in securities (31 C.F.R. 1023.320); mutual funds (31 C.F.R. 1024.320); insurance companies (31 C.F.R. 1025.320); futures commission merchants and introducing brokers in commodities (31 C.F.R. 1026.320); dealers in precious metals, precious stones, or jewels (31 C.F.R. 1027.320); operators of credit card systems (31 C.F.R. 1028.320); loan or financing companies (31 C.F.R. 1029.320); and housing government sponsored enterprises (31 C.F.R. 1030.320).

<sup>24</sup> 31 C.F.R. 1010.310-1010.314.

<sup>25</sup> 31 U.S.C. 533.

<sup>26</sup> 31 C.F.R. 1010.340.

<sup>27</sup> See FinCEN “Report Foreign Bank and Financial Accounts,” webpage, <https://www.fincen.gov/report-foreign-bank-and-financial-accounts>.

also confined to address monetary instruments. On May 5, 2016, the Obama Administration proposed a legislative amendment to the Treasury Department's GTO authority that would replace language referring to coins and currency with "funds," thereby including a broader range of financial services, such as wire transfers.

- **Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA)<sup>28</sup> reporting.** Regulations issued by FinCEN<sup>29</sup> require U.S. banks, upon receipt of a written request from FinCEN, to report on whether they maintain correspondent accounts or payable through accounts for foreign financial institutions, which maintain correspondent accounts with Iranian-linked financial institutions designated by the United States for sanctions. U.S. banks must also inquire as to and report on whether such foreign banks have processed other transactions, directly or indirectly, for Iranian-linked and sanctioned financial institutions or for Iran's Islamic Revolutionary Guard Corps.<sup>30</sup>
- **Special measures.** 31 U.S.C. 5318A, as added by Section 311 of the USA PATRIOT Act, authorizes the imposition of certain regulatory restrictions, known as "special measures," upon finding that a jurisdiction outside the United States, a financial institution outside the United States, a class of transactions involving a jurisdiction outside the United States, or a type of account, is "of primary money laundering concern."<sup>31</sup> Most of the special measures that may be imposed involve detailed recordkeeping and reporting requirements relating to underlying transactions and beneficial ownership of accounts.<sup>32</sup> Section 311 is administered by FinCEN pursuant to delegation of authority from the Secretary of the Treasury. Institution of "special measures" requires consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Reserve Board, as well as with other appropriate federal regulators.

## Customer Identification and Due Diligence Requirements

FinCEN has issued regulations requiring various types of financial institutions to establish anti-money laundering programs.<sup>33</sup> Such regulations require a financial institution to set internal policies, procedures, and processes for customer identification and due diligence, along with other requirements.<sup>34</sup> FinCEN, for example, requires banks to have a customer identification

<sup>28</sup> P.L. 111-195, 124 Stat. 1312, 1332.

<sup>29</sup> Pursuant to 31 C.F.R. Part 1060, implementing Section 104(e)(1)(B) of the Comprehensive Iran Sanctions, Accountability and Divestment Act (CISADA).

<sup>30</sup> 31 C.F.R. 1060.300.

<sup>31</sup> 31 U.S.C. 5318.

<sup>32</sup> The strictest special measure, known as the "Fifth Special Measure," could involve prohibiting the maintenance of payable-through or correspondent accounts for such institutions or jurisdictions and, thus, could effectively eliminate their ability to access the U.S. financial system.

<sup>33</sup> Pursuant to 31 U.S.C. 5318(h), FinCEN has issued regulations requiring anti-money laundering programs for banks, savings associations, and credit unions regulated only by a federal financial regulator (31 C.F.R. 1021.210); casinos (31 C.F.R. 1020.210); money services businesses (31 C.F.R. 1022.210); brokers or dealers in securities (31 C.F.R. 1023.210); mutual funds (31 C.F.R. 1024.210); insurance companies (31 C.F.R. 1025.210); futures commission merchants and introducing brokers in commodities (31 C.F.R. 1026.210); dealers in precious metals, precious stones, or jewels (31 C.F.R. 1027.210); operators of credit card systems (31 C.F.R. 1028.210); loan or finance companies (31 C.F.R. 1029.210); housing government-sponsored enterprises (31 C.F.R. 1030.210).

<sup>34</sup> See 31 U.S.C. 5318(h).

program, including the verification of account holders' name and address.<sup>35</sup> Implementing regulations specify that before opening a new account, banks must also obtain account holders' date of birth and either a taxpayer identification number for U.S. persons or a comparable government-issued identifying document for non-U.S. persons.<sup>36</sup> Beyond customer identification and verification, regulators examine the appropriateness and comprehensiveness of financial institutions' customer due diligence (CDD) efforts. CDD includes assessing customer risk and conducting enhanced due diligence (EDD) on customers that pose greater risks and, in turn, greater money laundering exposure to banks.<sup>37</sup>

Minimum standards for anti-money laundering programs for banks are found in 31 C.F.R. 1010.610 regarding due diligence programs for correspondent accounts for foreign financial institutions, and in 31 C.F.R. 1010.620, regarding due diligence programs for private banking accounts. These are supplemented by guidance and regulations issued by the federal banking regulators.<sup>38</sup> In addition to recordkeeping requirements, FinCEN also requires domestic financial institutions and agencies to obtain and retain additional customer information associated with targeted jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern—including information relating to beneficial ownership, certain payable-through accounts, and certain correspondent accounts.<sup>39</sup>

### **Customer Due Diligence (CDD) Requirements for Financial Institutions**

On May 11, 2016, the Treasury Department's Financial Crimes Enforcement Network (FinCEN) issued a final rule on CDD, pursuant to its BSA regulatory authorities.<sup>40</sup> The regulations cover financial institutions that are currently required to develop AML programs—e.g., banks, securities brokers or dealers, mutual funds, futures commission merchants, and introducing brokers in commodities. The final rule prescribes a two-year implementation period for the new regulations. Central to the new CDD regulations are:

- The establishment and maintenance of procedures to identify and verify beneficial owners of a legal entity opening a new account—a new requirement, which financial institutions would have until May 11, 2018 to implement. Identification is required for individual beneficial owners owning 25% or more of the legal entity and for one individual in the management of the entity. Such procedures would be similar to existing procedures for identifying and verifying the identity of accountholders, already in effect pursuant to 31 U.S.C. 5318, as amended by the USA PATRIOT Act.
- A requirement for financial institutions to develop customer risk profiles and to update customer information on a risk basis for the purposes of ongoing monitoring and suspicious transaction reporting. These requirements make explicit what has been an implicit component of BSA/AML compliance programs. Under current SAR

<sup>35</sup> Pursuant to 31 U.S.C. 5318 as amended by Section 326 of the USA PATRIOT Act.

<sup>36</sup> For non-U.S. persons, such comparable documentation may include one or more of the following: a taxpayer identification number, a passport number and country of issuance, an alien identification card number, or a number and country of issuance of any other unexpired government-issued document evidencing nationality or residence and bearing a photograph or similar safeguard.

<sup>37</sup> EDD may include obtaining customer information regarding: the purpose of the account; source of funds and wealth; identity of individuals with ownership or control of the account; occupation or type of business of those with ownership or control of the account; financial statements; banking references; domicile of where the business is organized; proximity to the financial institution of the customer's residence, place of employment, or place of business; description of the customer's primary trade area and whether international transactions are expected to be routine; description of the business operations, the anticipated volume of currency and total sales, and a list of major customers and suppliers; explanations for changes in account activity.

<sup>38</sup> See Federal Financial Institution Examination Council Bank Secrecy Act/Anti-Money Laundering InfoBase, "BSA/AML Compliance Program—Overview," [https://www.ffiec.gov/bsa\\_aml\\_infobase/pages\\_manual/OLM\\_007.htm](https://www.ffiec.gov/bsa_aml_infobase/pages_manual/OLM_007.htm).

<sup>39</sup> Pursuant to 31 U.S.C. 5318A.

<sup>40</sup> See *Federal Register*, Vol. 81, No. 91, May 11, 2016, pp. 29398-29458.



regulations, for example, banks must file an SAR when transactions appear to have no business or apparent lawful purpose or when customers engage in unusual and unexplainable financial activity. Without establishing a profile of the customer's usual business and financial transactions and monitoring and updating such a profile, the bank would be unable to spot unusual or extraordinary transactions that may warrant SAR reporting.

The May 2016 final rule was the culmination of efforts that began in March 2012, when FinCEN issued an advance notice of proposed rulemaking, which was followed by a series of public hearings, a notice of proposed rulemaking in August 2014, and the publication of a preliminary regulatory impact assessment and regulatory flexibility analysis (i.e., cost-benefit assessment) in December 2015. As part of the May 2016 final rule, FinCEN assessed that the annual cost of the final rule could range between \$148 million and \$153 million (under low-cost scenarios) and \$282 million and \$287 million (under high-cost scenarios). The Treasury Department expects that anticipated benefits, in terms of reduced illicit proceeds generated annually in the United States due to financial crimes, outweigh the costs.

## **Recordkeeping Requirements**

In addition to required reporting and customer identification requirements, financial institutions are required to maintain certain financial records, often for at least five years. Such recordkeeping requirements are designed to assist authorities during an investigation and to assist financial institutions, as part of their AML compliance programs, in revealing patterns of unusual activity.<sup>41</sup> The system in place to preserve such records is examined by financial regulators. Basic recordkeeping requirements were established by the BSA in 1970 and expanded over time.<sup>42</sup> Records include customer identification material, as well as explanations of the methods used to verify customer identification. Records also include, but are not limited to, account statements, checks and deposits in excess of \$100, international transactions over \$10,000, purchase of monetary instruments (e.g., bank checks or drafts, cashier's checks, money orders, and traveler's checks) of at least \$3,000; funds transfers of at least \$3,000; and actions taken in response to U.S. economic sanctions programs, including blocked assets or funds and rejected transactions.

## **Sanctions Compliance**

The United States often imposes economic sanctions in response to threats to the nation's security, foreign policy, or economy. Many of the existing financial sanctions programs are based on the International Emergency Economic Powers Act (IEEPA; 50 U.S.C. 1701 et seq.), which authorizes the President, upon declaration of a national emergency (pursuant to authorities stated in the National Emergencies Act; 50 U.S.C. 1601 et seq.) with respect to an "unusual and extraordinary threat which has its source in whole or in part outside the United States," to investigate, regulate, or prohibit a variety of asset and property transactions, subject to U.S. jurisdiction. The Office of Foreign Assets Control (OFAC) in the Treasury Department administers and enforces IEEPA-based financial sanctions programs, as well as other authorized sanctions programs, against foreign countries, political regimes, terrorists, narcotics traffickers, transnational organized criminals, and proliferators of weapons of mass destruction. Implementing regulations require financial institutions to comply with sanctions provisions that variously prohibit financial transactions and freeze or block assets and property under U.S. jurisdiction associated with designated individuals and entities. Regulators examine banks for

<sup>41</sup> See 31 C.F.R. 103.

<sup>42</sup> For example, Funds Transfer Record Keeping and Travel Rule Requirements are found at 31 C.F.R. 103.33(e) and (g); and the Record retention requirements, which require a bank to retain either the original, microfilm, or other copy, or reproduction of the records required by the BSA for at least five years are found at 31 C.F.R. 103.22(d), 103.27(a)(3), 103.29(c), 103.33(a)-(c), 103.34(a)(1)(ii), and 103.34(b)(1)-(13).

compliance with sanctions provisions; violations are subject to potential civil and criminal penalties.

### **The USA PATRIOT Act's "Section 311" Special Measures**

31 U.S.C. 5318A, as added by Section 311 of the USA PATRIOT Act, established a process for identifying and imposing a range of up to five "special measures" against foreign jurisdictions, financial institutions, international transactions, or types of accounts determined by the Secretary of the Treasury to be of "primary money laundering concern." As discussed above, several of these special measures involve enhanced requirements for reporting and customer identification. The fifth and most severe of the special measures authorizes the Secretary of the Treasury to impose prohibitions on the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or agency for or on behalf of a foreign banking institution—if such accounts or transactions involve a designated jurisdiction or institution determined to be of primary money laundering concern.

In making a finding with respect to a jurisdiction of primary money laundering concern, 31 U.S.C. 5318A requires the Secretary of the Treasury to consider several factors, including:

- whether organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction (WMD) or missiles conduct transactions in that jurisdiction and the extent to which that jurisdiction is characterized by political corruption;
- the extent to which bank secrecy or special regulatory advantages to foreign persons are offered in that jurisdiction, disproportions in the size of the local economy vis-a-vis the volume of financial transactions, and whether it has been identified as an offshore banking or secrecy haven; and
- the strength and effectiveness of that jurisdiction's AML/CFT regulatory regime, including the administration of bank supervision, the experiences of U.S. officials in obtaining financial information for law enforcement or regulatory purposes, and whether the United States maintains a mutual legal assistance treaty with that jurisdiction.

As of December 2016, FinCEN has taken action, pursuant to 31 U.S.C. 5318A, on 24 jurisdictions, financial institutions, or international transactions of primary money laundering concern—eight of which remain in effect.

## **National Strategies**

In the past, Congress has required the President to develop national strategies for combating money laundering and related financial crimes. Pursuant to the Money Laundering and Financial Crimes Strategy Act of 1998, as amended, the Administrations of Bill Clinton and George W. Bush transmitted national strategies on money laundering to Congress in 1999, 2000, 2001, 2002, 2003, 2005, and 2007 (the only years for which such strategy reports were required by Congress).<sup>43</sup> In 2006, the Bush Administration also released a U.S. Money Laundering Threat Assessment. In 2015, the Obama Administration released a National Money Laundering Risk Assessment and a National Terrorist Financing Risk Assessment.

Pursuant to Chapter 8 of Part I of the Foreign Assistance Act of 1961 (FAA, as amended by the International Narcotics Control Act of 1992) and the Foreign Relations Authorization Act, Fiscal Year 2003 (P.L. 107-228), the U.S. Department of State's Bureau of International Narcotics Control and Law Enforcement Affairs (INL) annually issues the International Narcotics Control

<sup>43</sup> In addition to requiring a national strategy on money laundering in selected years between 1999 and 2007, the Money Laundering and Financial Crime Strategy Act of 1998 conceived of "high-risk money laundering and related financial crime areas" (31 U.S.C. 5342). The purpose of designating such areas would be to concentrate law enforcement action to address financial crime in those jurisdictions and encourage a "comprehensive approach" to responding to such crimes through improved coordination among federal, state, local law enforcement agencies, prosecutor, and financial regulators. Renamed high intensity financial crime areas (HIFCAs), they may be defined geographically or may address specific industry sectors, financial institutions, or groups of financial institutions. Current HIFCA-designated jurisdictions cover parts of California, Arizona, counties in Texas along the southwest border, Chicago, New York, New Jersey, Puerto Rico, the U.S. Virgin Islands, and South Florida.<sup>43</sup>

Strategy Report (INCSR) in two volumes: one on drug and chemical control and a second on money laundering and financial crimes.<sup>44</sup> Both volumes contain country-by-country surveys of relevant foreign government policies and current implementation challenges. The FAA (as amended by the International Narcotics Control Corrections Act of 1994) also requires the INCSR to list jurisdictions considered to be “major money laundering” countries, which are, in turn, divided into three categories: (1) countries/jurisdictions of primary concern; (2) countries/jurisdictions of concern; and (3) other countries/jurisdictions monitored.<sup>45</sup> The INCSR also provides an annual overview of U.S. activities to combat international drug trafficking and financial crime.

The Obama Administration incorporated AML objectives in other strategy documents and White House releases, including the:

- **National Security Strategy.** The most recent National Security Strategy, issued in February 2015, stated that economic sanctions “will remain an effective tool for imposing costs on irresponsible actors and helping to dismantle criminal and terrorist networks.”<sup>46</sup> The National Security Strategy also aimed to work within the international standards-setting body known as the Financial Action Task Force (FATF), the G-20, and other international fora “to promote financial transparency and prevent the global financial system from being abused by transnational criminal and terrorist organizations to engage in, or launder the proceeds of illegal activity.”
- **Transnational Organized Crime Strategy.** The first-ever national strategy to combat transnational organized crime, issued in July 2011, established as one of six overarching policy objectives the goal to “protect the financial system and strategic markets against transnational organized crime.”<sup>47</sup> The Strategy also recommended enhanced use of intelligence and information sharing among domestic and international law enforcement authorities, including with respect to the Consolidated Priority Organized Targets, the United States’ most wanted international drug and money laundering criminals.
- **National Drug Control Strategy.** The most recent National Drug Control Strategy, issued in July 2014, identified the disruption of illicit financial networks related to drug trafficking, including the disruption of bulk cash through seizures, as a priority.
- **Action plans and other steps to address beneficial ownership.** A longstanding issue of contention centers on U.S. policies regarding beneficial ownership

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<sup>44</sup> See 22 U.S.C. 2291 et seq.

<sup>45</sup> U.S. Department of State, International Narcotics and Law Enforcement Affairs Bureau, *International Narcotics Control Strategy Report*, Vol. 2, “Money Laundering and Financial Crimes,” March 2016.

<sup>46</sup> White House (Obama), *National Security Strategy*, February 6, 2015.

<sup>47</sup> Under the priority action to protect the financial system and strategic markets against transnational organized crime, the July 2011 strategy identified ten specific actions to (1) implement a new targeted sanctions programs against transnational organized crime; (2) target criminal activity in emerging and strategic markets; (3) work with the private sector to reduce its role in facilitating transnational organized crime; (4) develop unclassified information sharing on transnational organized crime with the private sector; (5) implement the Administration’s joint strategic plan on intellectual property enforcement; (6) increase domestic and international capabilities to combat cybercrime with transnational organized crime links; (7) invoke USA PATRIOT Act authority to apply special measures against foreign jurisdictions, institutions, or transactions determined to be of primary money laundering concern; (8) target foreign kleptocrats with transnational organized crime links; (9) propose legislation on beneficial ownership; and (10) support FATF.



transparency and shell company formation practices (see also text box, below, on the FATF's 2016 mutual evaluation of the United States). The April 2016 leak of the so-called Panama Papers renewed U.S. attention to the ability of criminals to hide behind shell companies (both offshore and domestically) to hide the proceeds of illegal activity or to shelter funds illegally from home country taxes.<sup>48</sup> In response, the Obama Administration announced in May 2016 additional steps to strengthen financial transparency and to combat money laundering, corruption, and tax evasion—including the issuance of new CDD regulations, discussed in a text box above.<sup>49</sup> These steps built on previous commitments made by the Obama Administration to the G-8 and G-20.<sup>50</sup>

## Agency Roles

Multiple federal agencies play various roles in domestic and international cooperation to combat money laundering, including in the development of AML policy, oversight and regulation of AML requirements, prosecution and enforcement of violators, and provision of international training and technical assistance to foreign countries.

### Offices within the Department of the Treasury

As part of the Secretary of the Treasury's overall stewardship of U.S. economic and financial systems and related policy, the Treasury Department serves as one of the primary executive agencies responsible for administering implementation of BSA/AML and developing regulations and policy to protect the integrity of the U.S. financial system.<sup>51</sup> In 2004, the Treasury Department established the Office of the Undersecretary of Terrorism and Financial Intelligence (TFI), whose mission is to safeguard the financial system against illicit use and combat "rogue nations, terrorist facilitators, weapons of mass destruction (WMD) proliferators, money launderers, drug kingpins, and other national security threats."<sup>52</sup> TFI has diplomatic, policy, and strategy responsibilities. Overseas, TFI serves to implement policy and integrate the following bureaus and offices into the larger policy apparatus:

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<sup>48</sup> The Panama Papers refer to a database released by the International Consortium of Investigative Journalists that exposed documents used by a Panama law firm to set up shell companies for thousands of clients around the world. For more information please see: <https://panamapapers.icij.org/>.

<sup>49</sup> See White House (Obama), fact sheet on "Steps to Strengthen Financial Transparency, and Combat Money Laundering, Corruption, and Tax Evasion," May 5, 2016, <https://www.whitehouse.gov/the-press-office/2016/05/05/fact-sheet-obama-administration-announces-steps-strengthen-financial>.

<sup>50</sup> See *U.S. National Action Plan on Preventing the Misuse of Companies and Legal Arrangements*, a key deliverable of the June 2013 G-8 summit, <https://www.whitehouse.gov/the-press-office/2013/06/18/fact-sheet-us-national-action-plan-preventing-misuse-companies-and-legal>. See also the *U.S. Action Plan to Implement the G-20 High Level Principles on Beneficial Ownership*, October 2015, <https://www.whitehouse.gov/blog/2015/10/16/us-action-plan-implement-g-20-high-level-principles-beneficial-ownership>.

<sup>51</sup> In addition to the Treasury Department, the Departments of Justice, Homeland Security, and Health and Human Services, as well as the U.S. Postal Service, all play key roles in AML investigations, enforcement actions, and prosecutions. The Department of State plays a role in foreign policy aspects of AML efforts and in supporting foreign capacity building for AML purposes. To the extent that financial intelligence contributes to national security objectives, the Department of Defense and the intelligence community also contribute specialized expertise and capabilities to AML efforts.

<sup>52</sup> U.S. Department of the Treasury, *Terrorism and Financial Intelligence*, <https://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Terrorism-and-Financial-Intelligence.aspx>. Congress mandated the establishment of TFI in P.L. 108-447.

- Office of Terrorist Financing and Financial Crimes (TFFC)
- Office of Intelligence and Analysis (OIA)
- Office of Foreign Assets Control (OFAC)
- Treasury Executive Office for Asset Forfeiture (TEOAF)
- Financial Crimes Enforcement Network (FinCEN)

TFFC is the policy and outreach office within TFI. It represents the United States at relevant international bodies, including heading the U.S. delegation to the FATF and FATF-style regional bodies (FSRBs). It works closely with the Office of International Affairs, which houses the Office of Technical Assistance (OTA, discussed below) and Office of Domestic Finance on the formulation of AML-related policies and strategies.

As a member of the broader U.S. intelligence community, OIA is responsible for TFI's intelligence functions, provides support to Treasury leadership, and also integrates the Treasury Department's financial intelligence tools across the intelligence community. OIA was established by the Intelligence Authorization Act for Fiscal Year 2004.<sup>53</sup>

OFAC administers and enforces U.S. economic sanctions programs, which include the blocking of transactions and freezing of assets under U.S. jurisdiction of specified foreign terrorist, criminal, and political entities, including specially designated individuals and nation states. Authorities for OFAC to designate such entities are derived from executive order and legislative statutes, which include the International Emergency Economic Powers Act (IEEPA), National Emergencies Act, United Nations Participation Act of 1945, Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), and Foreign Narcotics Kingpin Designation Act.

FinCEN is responsible for administering the BSA and conducting certain other regulatory functions. It issues guidance, advisories, and rules on BSA implementation and maintains the federal government's database on required reporting by financial institutions and regulated industries, including suspicious activity reports (SARs) and currency transaction reports (CTRs). FinCEN also serves as the U.S. Financial Intelligence Unit (FIU) and interfaces with the private sector, federal regulators and investigators, as well as the international community on AML matters.<sup>54</sup> While FinCEN has no criminal investigative or arrest authority, it uses its data analysis to support investigations and prosecutions of financial crimes, and refers possible cases to law enforcement authorities when warranted. It also submits requests for information to financial institutions from law enforcement agencies conducting criminal investigations. FinCEN has the authority to issue civil money penalties.

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<sup>53</sup> Section 105 of P.L. 108-177; 31 U.S.C. 311.

<sup>54</sup> "A financial intelligence unit" (FIU) is a central, national agency responsible for receiving, (and as permitted, requesting), analyzing and disseminating to the competent authorities, disclosures of financial information: (i) concerning suspected proceeds of crime and potential financing of terrorism, or (ii) required by national legislation or regulation, in order to combat money laundering and terrorism financing." See the UNODC and the Egmont Group, [https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2011-August-25-26/Presentations/Boudewijn\\_Verhelst\\_Egmont\\_Group.pdf](https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2011-August-25-26/Presentations/Boudewijn_Verhelst_Egmont_Group.pdf).

### Interagency Financial Intelligence Coordination

In line with the recognition that financial information can reveal valuable insights for law enforcement, FinCEN's BSA database of reports, regulations, and guidance are regularly accessed by federal, state, and local law enforcement agencies, either directly through a secure web connection or on request. Law enforcement agencies and interagency entities combine BSA data with other information to gain further insight into illicit financial networks and major money laundering targets. Interagency entities with financial crime-fighting missions include the Organized Crime Drug Enforcement Task Force Fusion Center, International Organized Crime Intelligence and Operations Center, and Bulk Cash Smuggling Center and El Paso Intelligence Center.

The Internal Revenue Service (IRS) is the largest bureau of the Treasury Department, with responsibility for determining, assessing, and collecting internal revenue for the United States. It also has responsibility for enforcing compliance with BSA requirements, particularly for nonbanking financial institutions not regulated by another federal agency, including money service businesses (MSBs), casinos, and charities. The IRS criminal investigation division (IRS-CI) investigates a wide range of financial crimes, including tax evasion, as well as violations of AML and financial reporting statutes.

### Federal Regulators and Oversight Bodies

Federal functional regulators of financial institutions conduct oversight and examine entities in industries under their supervision for compliance with BSA/AML requirements.<sup>55</sup> Generally, banking regulators examine “institutions for compliance with a broad range of laws, regulations, and other legal requirements to ensure their safe and sound functioning. Further, [the regulators] supervise for compliance with laws and regulations on focused topics, such as anti-money laundering and consumer protection.”<sup>56</sup> When a regulator finds BSA violations or deficiencies in AML compliance programs it may take informal or formal enforcement action.<sup>57</sup> Federal banking agencies include the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC). Other federal agencies with AML regulatory responsibilities include the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC). The primary regulators for depository financial institutions are participants in the Federal Financial Institutions Examination Council (FFIEC). The FFIEC is an interagency body created in 1979 to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions by the prudential regulators, and to promote uniformity in the supervision of financial institutions.<sup>58</sup> Non-depository regulators are also members of the National Anti-Money Laundering Group (NAMLG).

<sup>55</sup> These regulators are already responsible for the safety and soundness examinations of the institutions they supervise, and generally conduct BSA examinations concurrently with those routine inspections. When there is cause do so, however, any of the regulators may carry out a special BSA examination.

<sup>56</sup> Board of Governors of the Federal Reserve System, *The Federal Reserve System: Purposes & Functions*. At: [https://www.federalreserve.gov/pf/pdf/pf\\_complete.pdf](https://www.federalreserve.gov/pf/pdf/pf_complete.pdf).

<sup>57</sup> Informal actions, typically not made public, may include commitment letters signed by institution management, memoranda of understanding, or matters flagged for board attention in the examination reports. Formal actions are made public and may include cease and desist orders; formal agreements requiring the institution to take certain actions to correct deficiencies; actions taken against specific officers, directors, or other individuals, including removal and prohibition from participating in the banking industry; and civil fines.

<sup>58</sup> These prudential regulators include the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (CFPB).

- The Federal Reserve System supervises state-chartered commercial banks that are members of the Federal Reserve System and bank holding companies, including those that are financial holding companies. It also has authority with respect to foreign bank branches and agencies operating in the United States and Edge Act corporations.<sup>59</sup> The Federal Reserve conducts examinations which include BSA compliance, along with other banking functions.
- The FDIC regulates state-chartered commercial banks and state-chartered savings associations that are not members of the Federal Reserve System and examines them for AML compliance along with other requirements.
- The OCC, which is a bureau of the Treasury Department, regulates and supervises nationally-chartered banks and federal savings associations, as well as U.S. branches and offices of foreign banks. The OCC conducts examinations, which cover, among other banking functions, BSA compliance.
- The NCUA regulates federally chartered credit unions and federally insured, state-chartered credit unions. Most credit unions are small and considered to have limited exposure to money laundering activities. However, in December 2016 FinCEN imposed a civil monetary penalty against a New York-based credit union providing money-business services without updating its anti-money laundering program.<sup>60</sup>
- The SEC protects investors against fraud and deceptive practices in securities markets. It also has authority to examine institutions it supervises for BSA compliance, including securities exchanges, securities issuers, investment advisers, investment companies, broker-dealers and various industry professionals. The SEC also carries out joint examinations with self-regulatory organizations (SROs), including the Financial Industry Regulatory Authority (FINRA) and the New York Stock Exchange.
- The CFTC protects market users and the public from fraud and abusive practices in markets for most derivatives (e.g., commodity and financial futures, options, and swaps). It delegates BSA examination to its designated SROs, including the National Futures Association (NFA). Covered businesses include all registered futures commission merchants, “introducing brokers,” commodity pool operators, and commodity trading advisors. Designated SROs monitor business practices and, as appropriate, take formal disciplinary actions, including prohibiting firms from conducting further business.

## **Federal Prosecution and Enforcement**

Views on whether the U.S. government sufficiently enforces AML laws to deter future violators vary. Some policymakers argue that certain major financial institutions are insufficiently punished for AML violations, while others warn that further regulatory costs imposed on financial institutions for AML compliance could be viewed as untenable.<sup>61</sup> Strong enforcement of AML laws and the effectiveness of money laundering deterrence have long been issues for Congress.

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<sup>59</sup> See Federal Reserve, *Supervising and Regulating Financial Institutions and Activities*, [https://www.federalreserve.gov/pf/pdf/pf\\_5.pdf](https://www.federalreserve.gov/pf/pdf/pf_5.pdf).

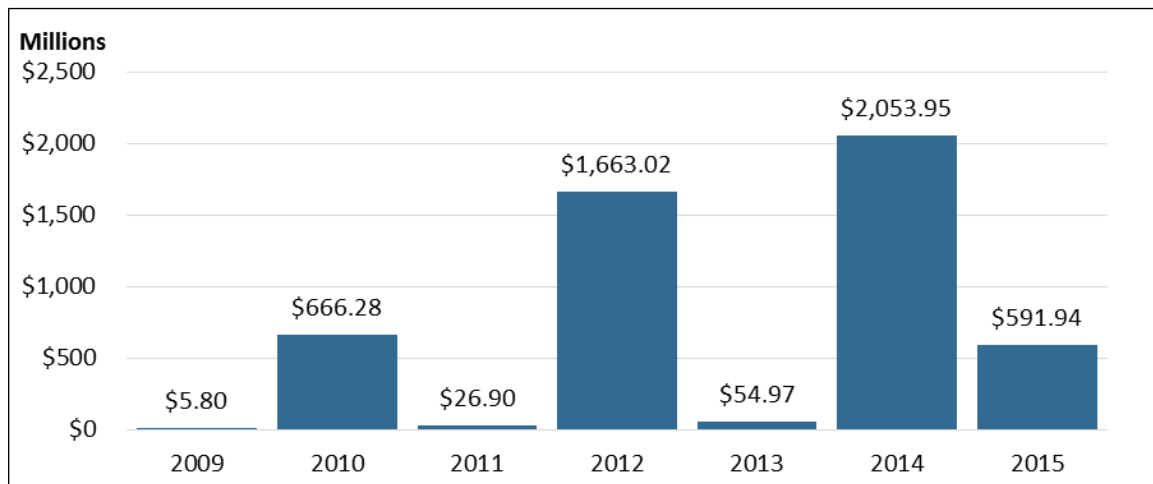
<sup>60</sup> FinCEN, “FinCEN Penalizes Bronx Credit Union for Failures to Manage High-Risk International Financial Activity,” press release, December 15, 2016.

<sup>61</sup> See U.S. House Financial Services Committee, *Too Big to Jail: Inside the Obama Justice Department’s Decision Not* (continued...)

A 2016 report by the U.S. Government Accountability Office (GAO) found that from January 2009 to December 2015, federal agencies assessed roughly \$5.1 billion in fines, forfeitures, and penalties (see **Figure 2**) for BSA/AML requirements.<sup>62</sup> A separate 2016 analysis of AML enforcement found that penalties and fines for BSA violations had increased markedly since the 2008 financial crisis, and concluded that regulators had become more aggressive in pursuing BSA violations in the wake of the crisis.<sup>63</sup> The report found that the number and size of BSA/AML penalties had grown, particularly after 2012: “Nearly 90% of BSA/AML enforcement actions from 2012 through 2015 included monetary penalties, compared to less than half from 2002 through 2011. Penalties have grown substantially in both absolute terms and as a proportion of firm capital.”<sup>64</sup>

**Figure 2. Fines, Forfeitures, and Penalties Collected from Financial Institutions for BSA/AML Violations**

assessed January 2009 to December 2015



Source: GAO-16-297.

Recent trends also highlight authorities' use of Deferred Prosecution Agreements (DPAs) and Non-Prosecution Agreements (NPAs) along with these fines and penalties. DPAs and NPAs have been used, often in conjunction with monetary penalties, as alternative enforcement tools that provide an agreement by authorities to defer criminal prosecution in exchange for an acceptance of tighter ongoing scrutiny by regulators for those institutions found to be lacking in compliance with the law. According to one study, the number of DPAs and NPAs in 2015 more than doubled as compared to the annual average since 2000.<sup>65</sup>

(...continued)

to *Hold Wall Street Accountable*, majority staff report, July 11, 2016; letter from Judith C. Appelbaum, Principal Deputy Assistant Attorney General, to Senator Sherrod Brown, Feb. 27, 2014.

<sup>62</sup> U.S. Government Accountability Office (GAO), *Financial Institutions: Fines, Penalties, and Forfeitures for Violations of Financial Crimes and Sanctions Requirements*, GAO 16-297, March 2016.

<sup>63</sup> Sharon Brown-Hruska, *Developments in Bank Secrecy Act and Anti-Money Laundering Enforcement and Litigation*, NERA Economic Consulting, June 2016.

<sup>64</sup> *Ibid.*

<sup>65</sup> Cindy R. Alexander and Mark A. Cohen, *Trends in the Use of Non-Prosecution, and Plea Agreements in the Settlement of Alleged Corporate Criminal Wrongdoing*, George Mason University School of Law, Law and Economics Center, April 2015.

Although the number of such agreements increased, the study found that certain federal judges had begun challenging the practice. Since the financial crisis, FinCEN and other regulators have reportedly increased their focus on individual and corporate responsibility for AML compliance.<sup>66</sup> For instance, in announcing the December 2012 then-record monetary penalty on HSBC for BSA/AML compliance failures, the DOJ stated that HSBC had waived federal indictment and had accepted responsibility for its criminal conduct and that of its employees.<sup>67</sup>

## **International Training and Technical Assistance**

Several U.S. federal departments, agencies, and offices provide bilateral technical assistance and training on AML/CFT topics to foreign counterparts. The U.S. government also supports multilateral organizations that provide AML/CFT assistance, whether in the form of direct U.S. participation or funding. According to the Department of State, the U.S. government provided AML/CFT support to more than 100 countries in 2015, both bilaterally and with other donor nations and international organizations, in the form of training, mentoring, and other support for the full range of AML/CFT stakeholders.<sup>68</sup> Such stakeholders included supervisory, law enforcement, prosecutorial, customs, and financial intelligence unit government personnel, as well as private sector entities. U.S. agencies involved in implementing such international AML/CFT support include the following.

- **U.S. Department of Homeland Security (DHS).** Includes Customs and Border Protection (CBP) and the Immigration and Customs Enforcement’s Homeland Security Investigations (ICE-HSI).
- **U.S. Department of Justice (DOJ).** Includes the Drug Enforcement Administration (DEA), Offices within the Criminal Division (including the Office of Overseas Prosecutorial Development, Assistance, and Training (OPDAT), and the Asset Forfeiture and Money Laundering Section (AFMLS)), and the National Security Division (NSD).
- **U.S. Department of State.** Includes the International Narcotics and Law Enforcement Affairs Bureau (INL) and Counterterrorism Bureau (CT).
- **U.S. Department of the Treasury.** Includes the Financial Crimes Enforcement Network (FinCEN), International Revenue Service-Criminal Investigations (IRS-CI), Office of the Comptroller of the Currency (OCC), and Office of Technical Assistance (OTA).
- **Board of Governors of the Federal Reserve System (FRB).** Among other initiatives, the Board of Governors and the Reserve Banks of the Federal Reserve System offer training and assistance for supervisors and staff of foreign central banks and foreign bank supervisory authorities, which includes courses on

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<sup>66</sup> See Brown-Hruska, which stated that “Historically, financial institutions that were the subject of FinCEN or other regulators’ enforcement actions could typically consent to a penalty without admitting or denying the alleged facts.... By 2012, some regulators began to press firms to admit to allegations as part of settlements resolving enforcement actions.”

<sup>67</sup> See U.S. Department of Justice, “HSBC Holdings Plc. and HSBC Bank USA N.A. Admit to Anti-Money Laundering and Sanctions Violations, Forfeit \$1.256 Billion in Deferred Prosecution Agreement,” December 11, 2012.

<sup>68</sup> U.S. Department of State, International Narcotics and Law Enforcement Affairs Bureau, *International Narcotics Control Strategy Report*, Vol. 2, “Money Laundering and Financial Crimes,” March 2016.



AML/CFT compliance and supervisions through the Fed’s International Training and Assistance (ITA) programs.<sup>69</sup>

These U.S. federal entities provide an array of international programming that spans the full range of AML/CFT matters. Illustrative programming includes DHS-CBP training workshops in detecting bulk cash smuggling, ICE-HSI cross-border financial investigation training (CBFIT), DOJ-OPDAT and DOJ-AFMLS training on financial investigations and asset recovery, State Department-managed trainings through its five International Law Enforcement Academies (ILEAs), and Treasury-OTA’s comprehensive support to develop internationally compliant AML/CFT regimes through its Economic Crimes Team (ECT).

DHS special agents have also been placed on temporary assignment overseas as cross-border financial investigations advisors (CBFIAs), and federal prosecutors have been placed overseas on long-term assignments funded by the State Department and managed by DOJ-OPDAT, as resident legal advisors (RLAs). RLAs are located in Algeria, Bangladesh, Iraq, Kenya, Panama, Senegal, Turkey, and the United Arab Emirates (UAE, with regional responsibility for UAE, Bahrain, Jordan, Kuwait, Oman, Qatar, Saudi Arabia, and Yemen). They focus on supporting host nations with the development and implementation of AML/CFT legal regimes; partially supported by counterterrorism funds, additional RLAs are located in the Philippines, Indonesia, and Malaysia. The State Department also funds Intermittent Legal Advisors (ILAs) in Colombia and Paraguay. In addition, the Treasury Department assigns attaches to U.S. overseas posts, including in UAE, Turkey, Iraq, China, Belgium, Egypt, Qatar, Pakistan, Afghanistan, Ukraine, Mexico, Russia, India, Saudi Arabia, Brazil, Singapore, and Japan.

AML/CFT technical assistance projects, including bilateral and multilateral efforts, have primarily been funded with foreign assistance accounts administered by the Departments of State and Treasury. Projects are also funded by the U.S. Agency for International Development (USAID), U.S. Embassies, and the U.S. government foreign aid agency Millennium Challenge Corporation, among others. U.S. funding for AML/CFT technical assistance across all government stakeholders is not comprehensively presented in an interagency format to Congress as part of the President’s annual budget plans, but some illustrative trends in funding are available for some specific accounts, including technical assistance funded by Treasury’s OTA (see **Table 1**). In the case of the State Department, although foreign assistance funding for combating terrorist financing is available, funding estimates for programming that addresses potentially broader AML objectives are not regularly reported to Congress (see **Table 2**). Rough estimates indicate that AML-related programming likely ranged between \$10 million and \$20 million annually between FY2010 and FY2015.<sup>70</sup>

**Table 1. Treasury’s OTA: Technical Assistance Funding, FY2010-present**  
(in US \$ current millions)

FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016 (est.)	FY2017 Request
25	25.4	27	23.6	23.5	23.5	23.5	33.5

<sup>69</sup> See *Anti-Money Laundering Examination Seminar*, Federal Reserve System Courses, <https://www.federalreserve.gov/bankinfo/ita/amle.htm>.

<sup>70</sup> U.S. Department of State response to CRS, based on a non-budget quality review of AML-related programming funded through International Narcotics Control and Law Enforcement (INCLE), Economic Support Funds (ESF), and Assistance for Europe, Eurasia, and Central Asia (AEECA).

**Source:** U.S. Department of the Treasury, International Programs, Congressional Justification for Appropriations, FY2012-FY2017.

**Table 2. State Department’s Foreign Assistance to Combat Terrorist Financing**  
(in US \$ current millions)

FY2010	FY2011	FY2012	FY2013	FY2014	FY2015	FY2016 (est.)	FY2017 Request
21	20.7	17	16.1	7.1	15	15	10

**Source:** U.S. Department of State, response to CRS.

**Notes:** This programming category specifically includes only State Department foreign assistance for combating terrorist financing that is exclusively budgeted out of the Nonproliferation, Anti-Terrorism, Demining and Related Programs (NADR) foreign assistance account. Other State Department funding for technical assistance for anti-money laundering and capacity building for financial institutions, more broadly defined, is not included here.

## International Framework

Given the global nature of the international financial system and the transnational criminal activity that attempts to exploit it, the United States and other countries have engaged in a variety of international efforts designed to improve global AML responses and build international coordination and cooperation on AML issues, including through formal bilateral requests for mutual legal assistance on financial crime investigative matters. In addition, multiple international organizations contribute to international AML cooperation through global standard setting, cross-border information sharing, AML assessment and monitoring, and capacity building through technical assistance.

Some entities, such as the Financial Action Task Force (FATF) and the Basel Committee on Banking Supervision provide standard-setting guidance relevant to AML matters. Others, such as the Egmont Group of Financial Intelligence Units and the International Criminal Police Organization (INTERPOL), contribute to the implementation of such standards through information sharing. The U.N. Office of Drugs and Crime (UNODC), the World Bank, and the IMF also maintain capabilities to variously monitor and assess the status of national AML policies, as well as provide technical assistance on AML capacity building priorities. Other international and regional organizations, including the Organization for Economic Cooperation and Development (OECD), the G-20, and the Organization of American States (OAS), have working groups and initiatives focused on various AML matters.

## United Nations

The first U.N. treaty to require states parties to criminalize the laundering of illicit drug profits was the 1988 U.N. Convention Against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances. The 1988 U.N. drug trafficking convention also committed states parties to “the widest measure of mutual legal assistance” for the investigation and prosecution of criminal offenses laid out by the treaty, including drug-related money laundering.

Building on these foundations, the 2000 U.N. Convention Against Transnational Organized Crime (UNTOC) broadened the scope of prohibited money laundering to cover the proceeds of all serious crime involving organized criminal groups. The UNTOC further requires all states parties to implement a comprehensive domestic regulatory and supervisory system for banks and nonbank financial institutions—with particular emphasis on requirements, akin to the BSA, on customer identification, recordkeeping, and the reporting of suspicious transactions. The UNTOC



also recommends the domestic implementation of measures to detect and monitor the cross-border movement of cash and other negotiable instruments. The treaty also encourages bilateral, regional, and global cooperation for AML to include training and technical assistance on AML matters, as well as extradition, mutual legal assistance, criminalization of corruption and asset seizure and confiscation.

The basic premise of the 2000 U.N. Convention Against Corruption (UNCAC) is to develop policies aimed at preventing public sector corruption and to require states parties to criminalize money laundering and implement a comprehensive domestic regulatory AML system. The UNCAC goes beyond the UNTOC to require that AML regimes also cover persons providing formal or informal value transfer services (e.g., money remitters). UNCAC also requires states parties to verify customer identities, including efforts to verify the identity of beneficial owners of funds, and to prohibit the establishment of high risk banks, particularly those that have no physical presence and that are not affiliated with a regulated financial group.

The United States has ratified the 1988 U.N. drug trafficking convention (1990), the UNTOC (2005), and the UNCAC (2006). It also ratified the International Convention for the Suppression of the Financing of Terrorism in 2002.

### U.N. Office on Drugs and Crime

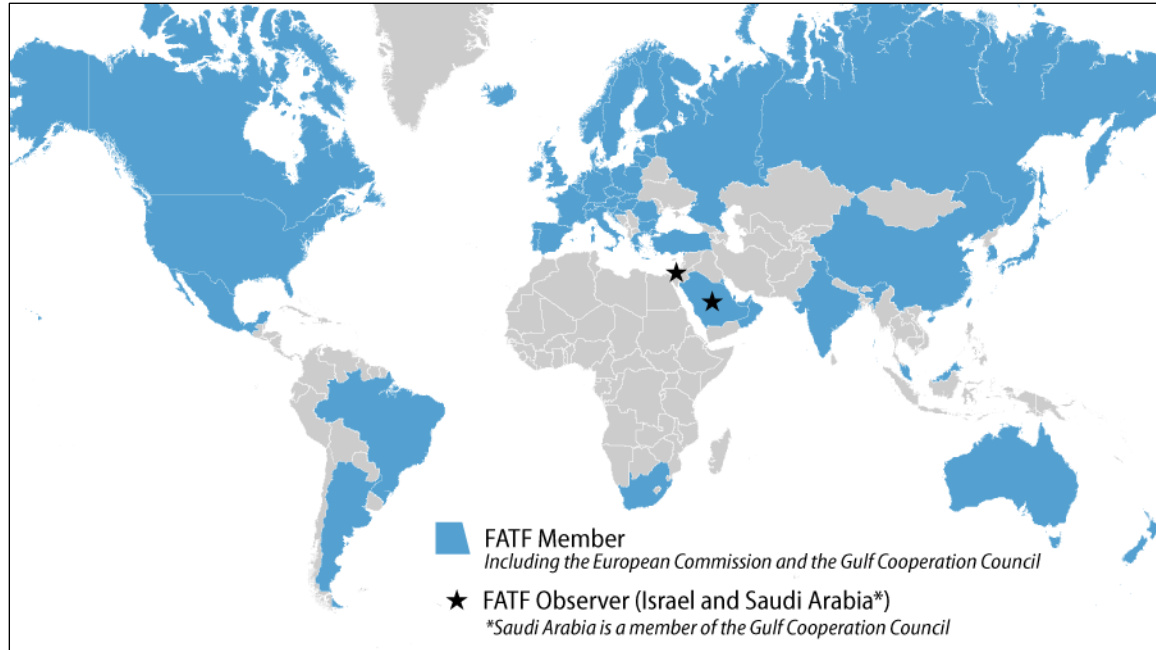
Established in 1997, the UNODC is mandated to provide technical assistance to Member States in their struggle to combat drugs, crime, and terrorism consistent with their obligations pursuant to relevant U.N. treaties, including treaty provisions pertaining to money laundering. Central to the UNODC's effort to address AML/CFT is the Global Programme Against Money Laundering, Proceeds of Crime and the Financing of Terrorism (GPML). GPML is a key player within the U.N. system on AML matters and has developed model legislation, consistent with international legal instruments and FATF recommendations; GPML also maintains a database on national AML/CFT laws and relevant contact information for inter-country assistance called the International Money Laundering Information Network (IMoLIN)/Anti-Money Laundering International Database (AMLID). Through GPML, UNODC supports Member States with AML/CFT technical assistance in the form of advisory services, workshops, seminars, other training platforms, as well as in-country mentoring. Various national and international organizations, including the United States, partner with UNODC on AML/CFT technical assistance.

## Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an intergovernmental body, established in 1989, whose current mandate (2012-2020) focuses on setting global standards for the implementation of legal, regulatory, and operational measures for AML and other threats to the integrity of the international financial system, including terrorist financing.<sup>71</sup> As **Figure 3** shows, FATF is composed of a secretariat based in Paris at the headquarters of the OECD, and 37 member states or jurisdictions and other observers.<sup>72</sup>

<sup>71</sup> FATF, *Mandate (2012-2020)*, April 20, 2012. According to its website, The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions (which now total 37 members and observers). The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. See: <http://www.fatf-gafi.org/about/>.

<sup>72</sup> FATF members include 35 countries or jurisdictions and two regional organizations, including in alphabetical order: Argentina, Australia, Belgium, Brazil, Canada, China, Denmark, European Commission, Finland, France, Germany, Greece, Gulf Cooperation Council, Hong Kong (China), Iceland, India, Ireland, Italy, Japan, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Portugal, Russia, Singapore, South Africa, South Korea, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. FATF country observers include Israel and Saudi Arabia. (continued...)

**Figure 3. Map of FATF Members and Observer Countries**

**Source:** Graphic prepared by CRS, based on FATF data.

FATF issued a set of 40 recommendations on international standards for AML and combating the financing of terrorism, most recently adopted in 2012 and updated in 2016. It collaborates with other international stakeholders to identify and follow up on national-level financial vulnerabilities, particularly through periodic mutual evaluations that review participating country AML/CFT legal, financial, and regulatory systems. As of October 2016, FATF had identified 10 “high risk and non-cooperative jurisdictions.”<sup>73</sup> FATF’s mandate document also notes that the IMF and the World Bank are providers of technical assistance and capacity building on combating money laundering, terrorist financing, and other related threats.

FATF’s work is complemented by nine FATF-style regional bodies (FSRBs), whose primary purpose is to promote the implementation of FATF standards (see **Figure 4**). They play a key role in facilitating country requests for technical assistance and training and for gathering country-level information on money laundering typologies. The nine FSRBs are:

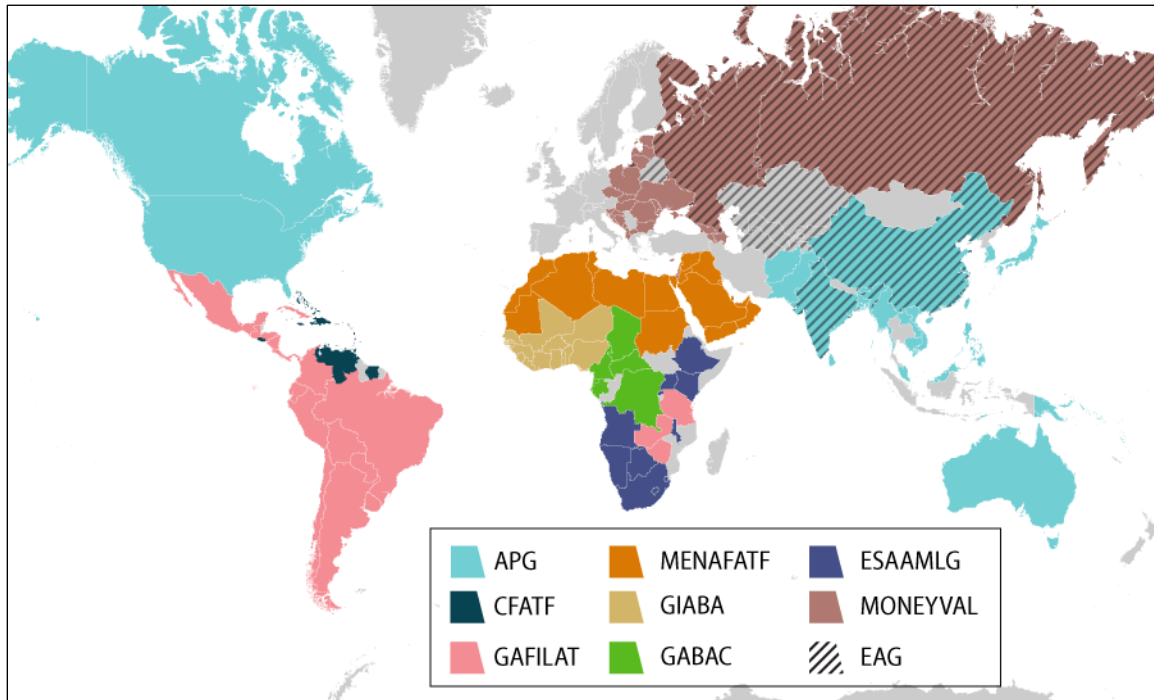
(...continued)

FATF observer organizations include the African Development Bank, Anti-Money Laundering Liaison Committee of the Franc Zone, Asian Development Bank, Basel Committee on Banking Supervision, Egmont Group of Financial Intelligence Units, European Bank for Reconstruction and Development, European Central Bank, Eurojust, Europol, Group of International Finance Centre Supervisors, Inter-American Development Bank, International Association of Insurance Supervisors, International Monetary Fund, International Organization of Securities Commissions, Interpol, Organization of American States, Organization for Economic Cooperation and Development, Organization for Security and Cooperation in Europe, United Nations, World Bank, and World Custom Organization.

<sup>73</sup> Against North Korea, FATF calls on its members and other jurisdictions to apply AML/CFT “counter-measures” intended to insulate the international financial system from North Korean money laundering and terrorist financing risks. Against Iran, FATF calls on its members and other jurisdictions to apply enhanced due diligence measures. The remaining eight countries are categorized as “other monitored jurisdictions:” Afghanistan, Bosnia and Herzegovina, Iraq, Laos, Syria, Uganda, Vanuatu, and Yemen.

- Asia/Pacific Group on Money Laundering (APG).<sup>74</sup>
- Caribbean Financial Action Task Force (CFATF).
- Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).
- Eurasian Group (EAG).
- Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG).
- Financial Action Task Force of Latin America (GAFILAT).
- Inter-Governmental Action Group against Money Laundering in West Africa (GIABA).
- Middle East and North Africa Financial Action Task Force (MENAFATF).
- Task Force on Money Laundering in Central Africa (GABAC).

**Figure 4. Map of FATF-Style Regional Bodies (FSRBs)**



Source: Graphic prepared by CRS, based on FATF data.

### 2016 Mutual Evaluation of the United States

In 2016, FATF, in conjunction with the APG, reviewed the effectiveness of the U.S. AML/CFT system and its compliance with FATF's 40 recommendations.<sup>75</sup> The review included a three-week on-site visit in early 2016 and included scoresheet ratings for 11 measures of effectiveness and 40 measures of technical compliance. Overall, the mutual evaluation described the U.S. AML/CFT framework as "well developed and robust" and as having significantly progressed since the previous mutual evaluation of the United States a decade ago. Of the 11 effectiveness measures, the United States received the highest marks in the areas of asset confiscation, combating terrorist financing, and the

<sup>74</sup> The United States is a member of the APG.

<sup>75</sup> FATF, *Mutual Evaluation of the United States*, December 2016. Sourcing for the context of the text box is attributed entirely to FATF's 2016 U.S. mutual evaluation.

application of sanctions for proliferation finance. The United States scored lowest with respect to its effectiveness in addressing AML/CFT issues concerning legal persons and arrangements. Of the 40 measures of technical compliance, aligned with FATF's 40 recommendations, the United States was rated "compliant" with nine recommendations, "largely compliant" with 21, "partially compliant" with six, and "non-compliant" with four.

The four non-compliant marks were related to three recommendations for AML/CFT controls on designated non-financial businesses and professions (DNFBPs) (recommendations 22, 23, and 28), and one on the transparency and beneficial ownership of legal persons (recommendation 24). Noted AML gaps focused on:

- Minimal regulatory coverage of investment advisors, lawyers, accountants, real estate agents, and certain trust and company service providers, which is short of comprehensive AML/CFT supervision. The Residential Mortgage Lenders and Originators (RMLOs) sector in particular is identified as lacking a recognition of money laundering vulnerabilities in the real estate sector and their importance in addressing such vulnerabilities.
- Lack of timely law enforcement access to beneficial ownership information. Although authorities have reportedly demonstrated their ability to acquire some beneficial ownership information they "most often resort to resource-intensive and time-consuming investigative and surveillance techniques." Moreover, the lack of readily available beneficial ownership information could have implications with respect to U.S. international cooperation. According to FATF, "U.S. authorities are unlikely to undertake a resource-intensive investigation to cover BO [beneficial ownership] information on behalf of a foreign counterpart unless the case is of significant high priority."
- The existence of "exemptions, gaps and thresholds" in the AML/CFT regulatory framework that "do not appear to be justified or in line with the vulnerabilities identified through the risk assessment," limit the availability of financial intelligence information to relevant authorities and "collectively soften the deterrent value of preventive measures" applied by financial institutions in general.
- Lack of a uniform approach to and prioritization of AML efforts at the state level.

Noted areas of current change involve AML/CFT supervision of money service businesses (MSBs), which FATF identified as "evolving" through greater coordination at the state level. The mutual evaluation also reported that, as part of a modernization plan, the United States is seeking to increase its staff for processing mutual legal assistance and extradition requests and to improve capabilities to collect statistics on the length of time such processes take.

FATF also recommended that the U.S. AML/CFT regime would benefit from incorporating a range of tax crimes as predicate offenses for money laundering and that the United States consider "legislating to introduce a general power to seize/freeze property of corresponding/equivalent value which may become subject to a value-based forfeiture order, and to ensure that all predicate offenses include the power to forfeit instrumentalities."

Other international entities that establish global standards and best practices for financial institutions, including banking regulatory and supervisory institutions, incorporate FATF's AML/CFT standards. Such entities include the Basel Committee, the global standard-setter for prudential regulation of banks and a forum for international cooperation on banking supervisory matters; its global standards include guidance on risk management and customer due diligence.

Another standard-setting body, the Egmont Group, has established guidance for national financial intelligence units (FIUs). Through its member network of 151 FIUs, including FinCEN, the Egmont Group facilitates information sharing and international cooperation on financial intelligence matters; its guidance documents are interlinked with the FATF standards. The Egmont Group also facilitates collaboration through personnel exchanges and training and technical assistance.

## **World Bank and International Monetary Fund**

Both the World Bank and IMF contribute to international AML efforts. The World Bank supports such activities through research projects on illicit financial flows and national risk assessments for money laundering and terrorist financing. The World Bank's advisory package of guidance for conducting national risk assessments has been used in more than 40 countries since 2007. The World Bank and IMF also provide AML technical assistance and training. As part of the IMF's surveillance responsibilities of the international monetary system and its monitoring of member countries' economic and financial policies, the IMF has integrated evaluations, consistent with

FATF, on AML/CFT matters. IMF technical assistance on AML/CFT matters has been funded, since 2009, through a multi-donor trust fund. The IMF's AML/CFT trust fund was renewed for a five-year term in May 2014. Donors (France, Japan, Luxembourg, the Netherlands, Norway, Qatar, Saudi Arabia, Switzerland, and the United Kingdom) have pledged more than \$20 million through 2019—which has afforded the IMF to provide over \$6.5 million annually in AML/CFT technical assistance and training. In a limited number of cases, AML/CFT measures have been incorporated into conditionality under Fund-supported programs.

## **Outlook for the 115<sup>th</sup> Congress**

The 114<sup>th</sup> Congress introduced or passed several bills pertaining to AML, and funded ongoing executive branch efforts, as well as holding a number of hearings exploring AML issues.<sup>76</sup> Many of these efforts pertained to combating terrorist financing, sanctions, the disclosure of beneficial ownership, and corruption—issues that will likely persist during the 115<sup>th</sup> Congress. As the 115<sup>th</sup> Congress develops its legislative agenda, a number of AML policy questions remain—including the status of efforts to address the critiques of the December 2016 FATF mutual evaluation of the United States, particularly with respect to beneficial ownership transparency, and the implementation of enacted legislation from the 114<sup>th</sup> Congress, particularly with respect to the application of new sanctions, including secondary sanctions, against designated foreign persons, entities, and jurisdictions. Drawing from past legislative activity, the 115<sup>th</sup> Congress may also revisit proposals to require the Executive Branch to develop a roadmap for identifying key AML policy challenges and balancing AML priorities in a national strategy.

Although the national and international consequences of money laundering have the potential to be economically and politically significant, and despite robust AML efforts in the United States, challenges, both new (e.g., cyber-enabled financial crimes and emerging payment methods) and old (e.g., exploitation of cash and international trade for money laundering), remain. Over time, the scale of global money laundering and the diversity of illicit methods to move and store ill-gotten proceeds through the international financial system has not diminished. Gaps in legal, regulatory, and enforcement regimes, including uneven availability of international training and technical assistance for AML purposes, continue to limit the application of a globally consistent policy approach to AML. Ultimately, the crafting of AML policy involves an ongoing balance of implementation costs, relative to the risks and consequences of money laundering—a balance affected by statutory requirements, regulatory implementation, financial institution compliance, enforcement actions, international cooperation, and changing perceptions of the risk environment.

Some see the beginning of the 115<sup>th</sup> Congress as an opportunity to revisit the existing AML policy framework, assess its effectiveness, and propose regulatory and statutory changes. In February 2017, for example, the financial services industry association The Clearing House offered multiple proposals to significantly modify the BSA/AML regime, including proposals to reshape the relationship between FinCEN and other federal regulators and oversight bodies, enact

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<sup>76</sup> See H.R. 2297, the Hizballah International Financing Prevention Act of 2015 (HIFPA), which was signed into law as P.L. 114-102 on December 18, 2015; H.R. 757, the North Korea Sanctions and Policy Enhancement Act of 2016, which was signed into law as P.L. 114-122 on February 18, 2016; S. 2943, the National Defense Authorization Act for Fiscal Year 2017, which was signed into law as P.L. 114-328 on December 23, 2016. Two bills in the 114<sup>th</sup> Congress, H.R. 5602 and H.R. 5594, included provisions to extend and amend prior statutory requirements for a national strategy pertaining to AML/CFT. The risk of terrorists, criminals, and corrupt actors exploiting beneficial ownership disclosure gaps in the United States to create and use shell companies to disguise and finance their illicit activities has long been recognized as a policy issue for Congress; bills have been introduced, seeking to address such risks, in successive Congresses since 2008 (the 110<sup>th</sup> Congress).

beneficial ownership legislation, modify SAR filing and disclosure requirements, and, ultimately, rebalance the distribution of financial and resource costs associated with preventing, identifying, and reporting on illicit financial activity.<sup>77</sup> Other proposals may emerge as the 115<sup>th</sup> Congress continues to tackle AML policy issues.

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<sup>77</sup> The Clearing House, *A New Paradigm: Redesigning the U.S. AML/CFT Framework to Protect National Security and Aid Law Enforcement*, February 2017.