

Client Alert

February 2020

The New Treasury Department 2020 National Strategy for Combating Terrorist and Other Illicit Financing

What Happened: On Thursday, February 6, 2020, the US Department of the Treasury (Treasury) [announced the release](#) of its 2020 National Strategy for Combating Terrorist and Other Illicit Financing (2020 Strategy). The 2020 Strategy identifies the US government's three top anti-money laundering and countering the financing of terrorism (AML/CFT) priorities and serves as a roadmap of Treasury's plan to stay ahead of evolving illicit finance threats. Additionally, the 2020 Strategy provides private sector financial institutions a window into upcoming legislative efforts and enforcement trends, which should in turn inform compliance efforts through the coming years.

Background: Treasury's inaugural guidance relating to AML/CFT priorities, the 2018 National Strategy for Combating Terrorist and Other Illicit Financing (2018 Strategy), was primarily focused on identifying avenues for interagency cooperation and evaluating the government's existing AML/CFT efforts. In contrast, Treasury views the new 2020 Strategy as a forward-looking plan designed to close gaps in the legal AML/CFT framework. Presenting to the Association of Certified Anti-Money Laundering Specialists (ACAMS) the day of the 2020 Strategy's release, Treasury's deputy assistant secretary for strategic policy, Scott Rembrandt, described the 2020 Strategy as an improvement upon the 2018 Strategy, intended "to address real and evolving risks" related to illicit finance. Treasury prepared the 2020 Strategy in consultation with the Departments of Justice, State and Homeland Security; the Office of the Director of National Intelligence; the Office of Management and Budget; and the staffs of federal functional regulators.

Analysis:

The 2020 Strategy identifies Treasury's three priorities for combatting terrorist and other illicit financing:

- (1) Increasing transparency and closing legal framework gaps;
- (2) Continuing to improve the efficiency and effectiveness of the regulatory framework for US financial institutions; and
- (3) Enhancing the current AML/CFT operational framework in the US.

Each priority is accompanied by various "supporting actions," including proposed legislative and regulatory changes. Other supporting actions include coordinated efforts across US government agencies as well as between the public and private sector to make the US AML/CFT regime more effective and efficient.

The priorities and supporting actions all address vulnerabilities that Treasury has identified within the US AML/CFT system. Some of the most significant vulnerabilities include the present lack of any requirement to collect beneficial ownership information at the time of company formation and after any changes to company ownership; the lack of comprehensive AML/CFT requirements on some financial institutions and entities that provide financial services but are not presently subject to AML obligations under the Bank Secrecy Act (BSA); and the inability of an outdated oversight framework to effectively regulate emerging digital assets. These vulnerabilities—and others—will allow illicit actors to exploit the US financial system until they are addressed.

Treasury recognizes that successfully addressing these vulnerabilities requires collaboration between the public and private sector. Importantly, the 2020 Strategy acknowledges that “[t]he US Government must address weaknesses and gaps in our laws and regulations rather than continuing to ask more of [the] regulated sectors.” In this spirit, the 2020 Strategy seeks legislation that would require the disclosure of beneficial ownership information for legal entities and enable the government to criminally charge individuals who conceal the beneficial ownership of any such entities. Treasury’s goal is to see Congress pass such legislation before the end of 2020.

To close another AML/CFT regulatory gap, the 2020 Strategy announces a focus on bringing banks and financial institutions that currently operate outside of federal regulation within the greater AML framework. The 2020 Strategy advocates for removing an existing AML exemption for private banks, non-federally insured credit unions, certain state-chartered trust companies and other bank-like entities without a federal functional regulator. According to the 2020 Strategy, the Financial Crimes Enforcement Network (FinCEN) is currently working with the US Office of Management and Budget to propose a final rule to this effect.

One element of the 2020 Strategy with perhaps the greatest potential impact on day-to-day operations for regulated financial institutions is Treasury’s expressed openness to revisiting financial reporting obligations. The 2020 Strategy suggests a possible reworking of Suspicious Activity Report (SAR) and Currency Transaction Report (CTR) filing requirements, with a focus on collecting usable, quality data. An ongoing FinCEN project to quantify the value of data collected pursuant to the reporting requirements of the BSA is set to conclude in 2020, the results of which could lead to changes in the existing reporting framework.

Conclusion:

Amid all the identified vulnerabilities, trends in compliance weaknesses and proposed changes, the 2020 Strategy does contain some words of comfort for regulated entities. Specifically, it recognizes that “[t]he expectation for AML/CFT compliance is not perfection and the approach of supervisors is not ‘zero tolerance.’ ” Financial institutions and financial services businesses looking for lessons or direction from the 2020 Strategy should continue to apply a risk-based approach to compliance in order to minimize risk related to illicit finance. Meanwhile, they can monitor the progress of Treasury’s proposed beneficial ownership legislation and potential SAR/CTR revisions. Finally, entities should take advantage of Treasury’s expressed interest in expanded public-private engagement and dialogue, as both sectors work together to address and adapt to the evolving—and increasingly digital—nature of illicit finance in the 21st century.

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