

The ILLICIT CASH Act

S.2563

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Updates the Bank Secrecy Act to provide financial institutions with clear rules of the road for carrying out a risk-based AML-CFT program.

The current AML-CFT regulatory framework is an amalgamation of statutes and regulations that are grounded in the Bank Secrecy Act (BSA), which Congress passed in 1970 with iterative changes since. This decades old regime has not seen comprehensive changes since its inception in 1970 and is generally built on individual reporting mechanisms (*i.e.* currency transaction reports (CTRs) and suspicious activity reports (SARs)), and ageing decades-old technology, rather than the more technologically advanced world of the 21st century.

The ILLICIT CASH Act comprehensively updates the BSA for the first time in decades and provides a coherent set of risk-based priorities in statute.

Requires routine coordination, communication and feedback between financial institutions, regulators, and law enforcement, for purposes of identifying suspicious financial activities, better focusing bank resources and increasing the likelihood of better outcomes for law enforcement.

Currently, there is no statutory mandate for BSA stakeholders - law enforcement, the financial regulators and financial institutions – provide to provide routine, standardized feedback to one another on the effectiveness of BSA anti-money laundering programs. For example, although financial institutions currently collect vast amounts of suspicious activity information, law enforcement may not always report back to the bank or credit union that the information collected was helpful, not helpful, or otherwise led to the disruption of criminal activity.

The bill establishes a critical feedback loop, and routine reporting requirements, ensuring that resources are being directed effectively and that law enforcement, regulators, and the financial institutions are effectively communicating BSA-AML priorities, collection methods, and outcomes.

Opens avenues for more data sharing between financial institutions, and within financial institutions and their affiliates, so that patterns of suspicious activities can be more easily tracked and identified.

Currently, significant barriers to information sharing are embedded within the BSA system. For example, financial institutions cannot always share critical AML-CFT information with other financial institutions. Nor can they always share that information within their own affiliates, depending on the nature of that information and the location of the affiliate.

The bill provides new options for financial institutions to de-identify SAR information and share that information with other banks, or their own affiliates, under certain circumstances.

Provides a clear mandate for innovation, while providing a regulatory process for financial institutions to innovate and adopt new technologies, such as AI, for tracking, identifying, and reporting suspicious financial activity.

Currently, financial institutions are not always incentivized to adopt the most up-to-date technology for purposes tracking suspicious financial activities.

The bill would provide a clear mandate in support of innovation. Among other things, the legislation authorizes a new regulatory track that allows financial institutions to test new innovative approaches to anti-money laundering programs, providing a clear path for adopting new technologies and programs that are shown to be effective at targeting priority risks. The bill also permits financial institutions to provide “bulk reporting” of low-level risks to law enforcement, which will allow financial institutions to focus more time and effort on high-priority, more sophisticated suspicious activity reporting

In addition, the legislation establishes a new “tech symposium” whereby FinCEN convenes international and domestic regulators, financial institutions, law enforcement and tech companies to periodically demonstrate and test new technology, with the aim of educating AML participants on the latest technology and how it can be effectively incorporated into comprehensive BSA AML-CFT program.

Requires shell companies to report their beneficial owners, preventing exploitation of U.S. companies by rogue nations, terrorists, drug traffickers, weapons smugglers, sex traffickers, and other criminal operations.

Currently, the U.S. is at the bottom of the pack with respect to corporate transparency. In many states, more personal information is needed to obtain a library card than to establish a legal entity that can be used to facilitate tax evasion, money laundering, fraud and corruption. The United States has been identified in several studies as one of the easiest jurisdictions in which to open an anonymous company.

The bill would require shell companies to register their beneficial owners with the Financial Crimes Enforcement Network (FinCEN) upon incorporation, and to update that information within 90 days should a change in beneficial ownership occur, allowing law enforcement to crack down on U.S. shell companies serving as fronts for illegal activities.