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## New AML law will help banks deter illicit finance. But there's a catch.

By Daniel P. Stipano | April 27, 2021

**T**he Anti-Money Laundering Act of 2020 is the most significant anti-money-laundering legislation to be passed by Congress since the USA Patriot Act was enacted 20 years ago.

It contains important provisions that are designed to make the Bank Secrecy Act regime more risk-focused, while promoting information sharing, encouraging use of technology and streamlining reporting requirements. The AMLA represents a much-needed and long-overdue update of the BSA framework that is now more than 50 years old.

Because the Financial Crimes Enforcement Network must issue a host of regulations to implement the AMLA, most of the new law's major provisions won't become applicable anytime soon. However, one exception is the requirement that the Secretary of the Treasury issue national AML and counter-terrorist-financing priorities within 180 days of the law's enactment. The AMLA became law on Jan. 1, when Congress overrode then-President Trump's veto of the National Defense Authorization Act, so Treasury Secretary Janet Yellen must issue the national priorities by around June 30, though she has an additional 180 days after that to issue an implementing rule.

A primary purpose behind the issuance of the national priorities is to better align financial institutions' AML compliance programs with Treasury's and law enforcement's policy goals. Another purpose is to make the BSA regime more risk-focused and alleviate some of the burdens associated with AML compliance, by giving financial institutions wider latitude to redirect scarce compliance resources into higher-risk areas.

At this time, it is not clear what Treasury's priorities will be, but it seems likely that, in addition to longstanding areas of focus such as narcotics trafficking and international terrorist financing, the priorities could include human trafficking, elder abuse and cyberfraud, as well emerging areas such as COVID-19 scams, unemployment insurance fraud, and domestic terrorism.

Once Treasury has issued the national priorities, financial institutions will be required to incorporate them into their AML compliance programs. This requirement is no ministerial change; potentially, the priorities could affect most if not all program elements.

For example, an institution will need to ensure that its risk assessment and internal controls specifically address the priorities. It will also need to adjust its customer onboarding processes, identification and due diligence procedures, and risk profiles. Additionally, the priorities should be reflected in training and suspicious activity monitoring and reporting.

All of this will require a substantial dedication of resources. Since the priorities are not static and must be updated no less than every four years, this will be an ongoing process.

Not all institutions will be equally impacted by the priorities. For example, a small community bank in a rural area may be an unlikely target for international terrorist financing. An institution that believes its program is not affected by a particular priority should carefully document its rationale for reaching that conclusion.

Financial institutions will be assessed during examinations on how well they incorporate the priorities into their AML compliance programs. This is a new set of evaluative criteria that may better reflect the effectiveness of their programs. However, there is nothing in the AMLA that would make the existing evaluative criteria inapplicable. Rather, the new criteria are layered onto the existing criteria. In other words, financial institutions will now be evaluated on how well they have incorporated the priorities into their programs, on top of everything else on which they are currently evaluated.

The issuance of the national priorities will be a positive step toward enhancing the effectiveness of the BSA regime and will better position financial institutions to deter illicit finance. But, absent a rollback of existing requirements, it is hard to see this new requirement as anything besides an additive change.

In conjunction with issuing the priorities, regulators should adjust their examination procedures and conduct examiner training to ensure that program effectiveness will be assessed on a risk basis, with particular emphasis on the national priorities, and not on lower-risk areas. They should also consider revising customer identification, customer due diligence, suspicious activity reporting and other requirements to reduce unnecessary regulatory burden.