

Congress Establishes New Rewards Maximum for Whistleblowers Who Report Bank Secrecy Act Violations

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On January 1 of this year, Congress approved the [2021 National Defense Authorization Act](#) (HR 6395), including approval of a provision to increase prospective awards for whistleblowers and penalties for violators under the Bank Secrecy Act (BSA). The BSA is a federal statute enacted in 1970 and implemented by the United States Department of the Treasury to thwart criminal abuses by financial institutions, such as terrorist financing, tax evasion, and money laundering, [according to the Office of the Comptroller of the Currency](#) (OCC).

Background: The Bank Secrecy Act

As [described by the OCC](#), the BSA seeks to stem criminal abuses by financial institutions, such as failing to file a suspicious activity report (SAR), violating record-keeping mandates, or the absence of a BSA compliance program. Record maintenance and report obligations created by the BSA “have a high degree of usefulness in criminal, tax, and regulatory matters,” and those documents “are heavily used by law enforcement agencies, both domestic and international, to identify, detect and deter money laundering.” See [Bank Secrecy Act](#), Internal Revenue Service (IRS). Several agencies may issue cease and desist orders to correct BSA noncompliance, including the Federal Reserve System (FRS), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC), as indicated by a [BSA Enforcement Policy](#) published on the NCUA website. The [Financial Crimes Enforcement Network \(FinCEN\)](#) indicates that FinCEN is the BSA’s “designated administrator.” However, FinCEN is not the only agency authorized to institute enforcement actions. The OCC has its own “[OCC Enforcement Action Policy](#)” for the BSA. Click [here](#) for BSA enforcement actions initiated by FinCEN.

The BSA establishes various reporting and record-keeping requirements. For [example](#), owners of foreign bank accounts, mutual funds, and brokerage accounts may need to submit a Report of Foreign Bank and Financial Accounts (FBAR) to the IRS. In addition, [according to the IRS](#), the BSA also imposes duties on money service business (MSB), which the [IRS defines as](#) “generally any person offering check cashing; foreign currency exchange services; or selling money orders, travelers’ checks or pre-paid access (formerly stored value) products; for an amount greater than \$1,000 per person, per day, in one or more transactions” as well as anyone “who engages as a business in the transfer of funds.” Under the BSA, the [IRS further explains](#), these entities must, for instance, supply reports to FinCEN; file a FinCEN Form 111 Suspicious Activity Report if the MSB

“know[s], suspect[s], or ha[s] reason to suspect that the transaction or pattern of transactions is suspicious and involves \$2,000 or more”; and must create an anti-money laundering compliance program that “should reasonably prevent individuals from using the MSB to facilitate money laundering or to finance terrorist activities.” Demonstrating the type of activity that FinCEN may seek to penalize, and thus deter, on January 15, 2021 [FinCEN reported](#) that it had levied a \$390,000,000 civil penalty against Capital One “for engaging in both willful and negligent violations of the Bank Secrecy Act (BSA) and its implementing regulations,” precipitated by Capital One’s omission of an “effective Anti-Money Laundering (AML) program,” “willfully fail[ing] to file thousands of suspicious activity reports,” and “negligently fail[ing] to file thousands of Currency Transaction Reports.” For additional discussion of conduct subject to BSA enforcement action, recent policy guidance is available [here](#).

Recent Updates to the Bank Secrecy Act

Under the revamped whistleblower provision ([Title LXIII § 6314](#)), a qualifying whistleblower can receive up to 30% of a penalty obtained through a BSA enforcement action. A whistleblower would qualify for this maximum reward under the BSA if the whistleblower provided “original information” to the Department of Justice (DOJ), Department of the Treasury (USDT), or the whistleblower’s employer and the enforcement action culminated in monetary sanctions above one-million dollars (exclusive of forfeiture, restitution, and victim compensation payment). See [Anti-Money Laundering Act Establishes Whistleblower Reward Program and Protects Whistleblowers from Retaliation](#), National Law Review (NLR), (December 7, 2020). In the article, the NLR explains how this 30% ceiling represents a significant improvement upon incentives previously available for BSA whistleblowers (as the statute’s prior iteration set whistleblower compensation as, at most, the lesser of \$150,000 or 25% of the sanction when a BSA enforcement action yielded a penalty above \$50,000) and how this previous iteration “has failed to encourage whistleblowers to jeopardize their careers by reporting BSA violations.”

Besides increasing the maximum reward for qualifying BSA whistleblowers, Congress also recently updated permissible sanctions for BSA violators. For example, in amending 31 USC § 5321 through [Title LXIII § 6309](#), Congress decided that for a repeat violation, the Secretary of the Treasury can compel payment up to “the greater of . . . three times the profit gained or loss avoided by such person as a result of the violation” or “two times the maximum penalty with respect to the violation.” As another example, pursuant to [Title LXIII § 6312](#), Congress amended 31 USC § 5322 to instruct that convicted individual officers, employees, partners, or directors of financial institutions should repay bonuses obtained in the calendar year of the violation or the subsequent calendar year.

By increasing the maximum rewards for BSA whistleblowers and maximum penalties for violators, as described above, the new statutory scheme will strengthen BSA enforcement capabilities. Litigators should monitor any forthcoming regulations from USDT, which may clarify how the USDT plans to implement these provisions.

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National Law Review, Volume XI, Number 74

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