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New AML Whistleblower Law: Making it Worth It?

The AML Whistleblower Improvement Act was just that—an upgrade designed to “improve”¹ and purportedly fix the deficiencies inherent in the whistleblower program established by the Anti-Money Laundering (AML) Act of 2020.²

Proponents of the Act expect the enhanced whistleblower provisions to finally encourage those who witness violations of U.S. sanctions laws³ to come forward, resulting in increased enforcement of the financial restrictions placed on Russian oligarchs and sanctioned entities after the invasion of Ukraine. The potential reach of the enhanced whistleblower programs stretches as far as the expansive U.S. sanctions regime, thus putting individuals, multinational corporations, and state-entities all at increased risk.

MINIMUM PAYOUTS

The new legislation, which updates the existing whistleblower program originally created in the 2020 Act, dictates that whistleblowers receive a minimum of ten percent of the value of any monetary sanction resulting from their disclosures. This enhances the 2020 legislation which did not establish a minimum award for whistleblowers and only provided compensation on those violations that resulted in fines exceeding \$1 million. The maximum whistleblower award remains at thirty percent of the monetary sanction.

The prior absence of a guaranteed payout likely inhibited the program’s growth. The whistleblower process is often time- and resource-intensive with risks to purported whistleblowers themselves. Without a minimum monetary award, aspiring claimants were less likely to petition authorities and lawyers were less likely to take on such cases. The minimum payout enhances the attraction of this program.

AWARD CONSIDERATIONS

Notwithstanding the minimum payout, there are still award conditions. In other words, payouts are not automatic; the whistleblower’s information must advance the ball.



The Treasury Department weighs a number of factors to determine where an award falls within the designated range. Those include the importance of the information in proving the violation, the degree of assistance provided by the whistleblower, and the deterrent effect of such an award. In practice, the Act grants wide latitude to authorities in making their payout determination, broadly allowing consideration of factors deemed relevant.

COMPENSATION FUND

The 2022 fix ensures the distribution of award payments via a permanent Financial Integrity Fund of up to \$300 million drawn from penalties collected by the Treasury and Justice Departments.

NO NATIONALITY RESTRICTION

The Act provides that whistleblowers from any country can report AML violations to Treasury or Justice.

TAKEAWAYS

Co-sponsor of the bill, Senator Chuck Grassley of Iowa, expects the revised whistleblower incentives to yield the same results as similarly modeled programs. In a press release, he exhorted the “False Claims Act saving taxpayers \$70 billion, the SEC whistleblower program saving over \$4.8 billion and the IRS whistleblower program saving over \$6 billion.”⁴

Those programs have indeed proven effective. During the 2022 Fiscal Year, the SEC received 12,3000 tips from whistleblowers, awarding roughly \$229 million in 103 awards.⁵ While it remains to be seen how effective the AML whistleblower program will be, the minimum payout threshold—which is analogous to the SEC’s—should get whistles blowing.

Indeed, the Act increases the likelihood of individuals coming forward to report alleged hidden assets of sanctioned individuals as well as the financial institutions that purportedly enabled them. Given this increased risk, organizations should ensure their AML and sanctions compliance measures are up to date and working as intended.

Organizations should also review their internal hotline and whistleblower mechanisms, so that employees feel like there is a viable route to affect change without running to the government.

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¹ Press Release, Senator Chuck Grassley, Grassley-Led Legislation Supporting Whistleblowers, Combatting Money Launderers And Sanctions Violators Passes Senate (Dec. 12, 2022), available at <https://www.grassley.senate.gov/news/news-releases/grassley-led-legislation-supporting-whistleblowers-combatting-money-launderers-and-sanctions-violators-passes-senate>.

² In December 2020, we wrote about the sweeping changes to the BSA/AML regime; see Anti-Money Laundering Act of 2020, H.R. Res. 6395, 116th Cong. § 6003 (2020).

³ The sanctions under which such violations emerge are found primarily in the International Emergency Economic Powers Act, the Foreign Narcotics Kingpin Designation Act and the Trading with the Enemy Act.

⁴ See Press Release, *supra* n.2

⁵ United States Securities and Exchange Commission, SEC Whistleblower Office Announces Results for FY 2022 (November 15, 2022), available at https://www.sec.gov/files/2022_ow_ar.pdf.