

## Businesses Must Prepare For Expansive AML Reporting of Beneficial Ownership Interests

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As covered in our earlier advisory, [“AML Enforcement Continues to Trend in 2021,”](#) the recently passed National Defense Authorization Act for fiscal year 2021 included the Anti-Money Laundering Act of 2020 (AML Act), which expanded the reach of AML regulations and the tools available to law enforcement to investigate and penalize violators. Of particular interest for private businesses, however, is the fact that the AML Act also provides federal regulators, law enforcement and financial institutions with greater transparency into their business structures and financial dealings.

It is important to note, the AML Act requires corporations, limited liability companies and “similar entities” to report beneficial ownership information. The AML Act does not define “similar entities,” but the Financial Crimes Enforcement Network (FinCEN) has suggested that this term could apply to a variety of business structures such as state-chartered trust companies and special purpose vehicles. While FinCEN is only now drafting the regulations that will implement the AML Act, FinCEN’s recent Advance Notice of Proposed Rulemaking demonstrates how far-reaching those regulations will likely be.

One of the most critical issues on which FinCEN is seeking comments is determining the scope of information a business must report about its beneficial owners. The AML Act requires a business to provide a beneficial owners’ full legal name, their date of birth, address and a unique identifying number from an accepted identification document. However, in its advanced notice of proposed rulemaking, FinCEN has suggested that it may require a company to go far beyond that basic information and report corporate affiliates, parents, and subsidiaries. More alarming, it also may require a business to provide information about the nature of the company’s relationship to the beneficial owner, such as requiring the company to describe – or perhaps even to provide – contracts governing that relationship. Under the AML Act, this information will not only be available to law enforcement and regulators, but also to financial institutions when carrying out due diligence on their customers. As a result, confidential partnership agreements, investment contracts and other governing documents may be in the hands of regulators, law enforcement and financial institutions as a matter of course. This also leaves open the possibility that such material could be subpoenaed by or provided to private individuals in civil litigation.

While FinCEN will take some time to fully implement the AML Act, businesses should now consider what effects the AML Act will have on their operations in 2022 and what information will newly be available to government agencies and private financial institutions. Whatever the formulation of the final regulations, it is clear that law enforcement and banks will have enhanced insight into a business’s structures and finances.

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## CONTACTS

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