

# Strengthened Whistleblower Provisions in the Anti-Money Laundering Act of 2020

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On January 1, 2021, the U.S. Senate voted to override President Trump's veto of the William M. Thornberry [National Defense Authorization Act](#) ("NDAA") for Fiscal Year 2021. The NDAA, which authorizes FY2021 appropriations and sets forth policies for Department of Defense programs and activities, contains the Anti-Money Laundering Act of 2020 ("AMLA") as Division F. The AMLA, which amends the Bank Secrecy Act of 1970 ("BSA"), 31 USC 5311 *et seq.*, provides a comprehensive set of reforms to the anti-money laundering laws in the United States, and notably, includes greatly expanded whistleblowers provisions.

Among the stated purposes of the AMLA is "to improve coordination and information sharing" among the federal agencies tasked with investigating and enforcing anti-money laundering requirements. AMLA, § 6002. To facilitate this improved coordination and to encourage information sharing, the AMLA offers greater rewards to individuals who blow the whistle on violations of anti-money laundering law, as well as protections from whistleblower retaliation.

## **Expanded Anti-Money Laundering Whistleblower Awards Program**

Under the AMLA, when an anti-money laundering enforcement action brought by the Department of Justice ("DOJ") or the U.S. Treasury Department results in monetary sanctions over \$1 million, the Secretary of the Treasury "shall" pay an award to whistleblowers who voluntarily report original information that helps lead to a successful enforcement action. A successful whistleblower may report information about violations of anti-money laundering laws, rules, or regulations to the DOJ, the Treasury Department, or to his or her employer. The report may qualify under the AMLA even if it is part of the whistleblower's job duties to report on such matters. AMLA, § 6314(a).

If these criteria are met, then the Secretary of the Treasury "shall" pay an award to the whistleblower(s). The word "shall" is notable, as it replaces language that the Secretary "may" issue such an award. 31 U.S.C. § 5323(a). It is no longer within the Department's discretion to award, or not award, a whistleblower whose original reporting leads to successful enforcement actions resulting in significant monetary sanctions. This new mandate that such reports will always be rewarded will likely encourage more whistleblowers to come forward.

Potential whistleblowers will also be encouraged by the increased value of potential awards. Under the AMLA, a whistleblower award may equal up to 30 percent of the total resulting monetary sanctions. The previous whistleblower award program limited awards in most cases to \$150,000. 31 U.S.C. § 5323(b). The AMLA, however, contains no upper limits.

## **Protection from Whistleblower Retaliation**

The AMLA prohibits employers from discriminating against employees in the terms and conditions of employment or post-employment because the employee blew the whistle on violations of U.S. money laundering laws. A whistleblower engages in **protected activity** by reporting conduct that he or she “reasonably believes” constitutes a violation of anti-money laundering laws, rules, or regulations, so long as the report is made to any of the following:

- the whistleblower’s supervisor;
- such other person working for the employer who has the authority—or who the whistleblower reasonably believes has the authority—to investigate, discover, or take any action to address the misconduct;
- the Secretary of the Treasury;
- the Attorney General;
- a Federal regulatory or law enforcement agency; or
- any Member of Congress or any committee of Congress.

Assisting in any investigation or judicial or administrative action of the Treasury or the DOJ relating to violations of U.S. money laundering laws is also protected activity under the AMLA.

AMLA whistleblowers who experience retaliation may file a complaint with the Department of Labor. If the Department of Labor does not issue a decision within 180 days of the filing, then the whistleblower can bring an action against his or her employer in federal district court. A successful whistleblower may be entitled to reinstatement, double backpay, compensatory damages (including litigation costs and attorneys’ fees), and “any other appropriate remedy.”

## **Conclusion**

Whistleblowers are arguably the most important resource to federal agencies seeking to locate and address violations of U.S. money-laundering laws. These individuals—who work at corporations and organizations that engage in unlawful acts—can help the agencies charged with enforcing money-laundering laws to identify, investigate, and respond to violations of law. However, employees who blow the whistle on their employers do so at great risk to their careers, reputations, and livelihoods. These increased rewards, combined with protections from retaliation, will lead more whistleblowers to come forward, and in turn, will lead to better enforcement of and compliance with federal law.