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New Law Enhances Reward Program for AML and Sanctions Whistleblowers

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January 30, 2023 – The Anti-Money Laundering (“AML”) whistleblower regime in the United States received significant updates as part of the [Consolidated Appropriations Act, 2023](#) (“CAA”), signed into law by President Biden on December 29, 2022. The new provisions took effect immediately, with further developments expected in regulations yet to be issued by the U.S. Department of the Treasury (“Treasury”). The changes include extending new incentives to whistleblowers in sanctions violations cases, setting a minimum award for whistleblowers, and establishing a new fund to guarantee rewards.

Background

Since 1984, U.S. law has offered rewards to individuals who provide information leading to monetary recoveries for AML violations. The Anti-Money Laundering Act of 2020 (“AMLA”), passed as part of the [National Defense Authorization Act for Fiscal Year 2021](#), updated and expanded these provisions. However, lawmakers subsequently [raised certain concerns](#) regarding the AMLA whistleblower reward regime. For example, AMLA capped whistleblower rewards at 30% of the amount recovered in a law enforcement action, but did not set a minimum recovery amount. The law therefore provided no guarantee that the reward would cover the prospective costs to potential whistleblowers of raising their claims. In some instances, lawyers reportedly declined to represent potential whistleblowers due to uncertainty regarding their ability to recover legal fees under the AMLA regime. In addition, the whistleblower rewards extended only to AML violations, but not to violations of U.S. economic sanctions. In the context of the Russian invasion of Ukraine and new sanctions targeting the Russian state and ruling class of oligarchs, [commentators](#) pointed out that offering rewards to whistleblowers for sanctions violations could promote sanctions policy goals with no cost to taxpayers.

Content of the Statute

Under both AMLA and the CAA amendments, the Secretary of the Treasury shall pay an award to one or more persons qualifying as “whistleblowers” who voluntarily provide original information in certain “covered” judicial or administrative actions that leads to monetary sanctions exceeding \$1,000,000. Although the CAA amendments leave unchanged many of the provisions of AMLA, the new statute modifies the type of actions that are “covered” to include sanctions cases, the mechanism for funding rewards, and the payout structure.

Whistleblower Protections in Sanctions Cases

The CAA amendments extend the whistleblower reward regime previously applicable only to AML violations to violations of the International Emergency Economic Powers Act (“IEEPA”), the Trading with the Enemy Act, and the Foreign Narcotics Kingpin Designation Act. These statutes represent the main authorities under which Treasury’s Office of Foreign Assets Controls (“OFAC”) currently administers U.S. sanctions. As a general rule, whistleblower rewards will extend to violations of sanctions targeting persons on the Specially Designated Nationals and Blocked Persons (“SDN”) List, as well as to violations of more specialized programs administered by OFAC. Notably, however, rewards are not offered to whistleblowers for violations of the Export Control Reform Act (“ECRA”) (*i.e.*, dual-use export controls specified under the Export Administration Regulations administered by the Department of Commerce’s Bureau of Industry and Security), or for violations of the Arms Export Control Act (“AECA”) (*i.e.*, controls on the trade of defense items and services regulated under the International Traffic in Arms Regulations administered by the State Department).

Whistleblowing Reward Fund

The CAA amendments establish a “Financial Integrity Fund” out of which Treasury must pay whistleblower rewards. The fund is made up of fines collected in AML and sanctions enforcement cases. Where the amounts in the fund are not enough to cover an award, amounts equal to the unsatisfied portion of the award must be credited into the fund from any monetary penalties assessed from the enforcement action.

Reward Amounts

The CAA amendments, like AMLA, cap reward amounts at 30% of “what has been collected of the monetary sanctions imposed” in the relevant action. Significantly, they also introduce a minimum payment: whistleblowers will receive not less than 10%, in total, of the amount collected from the penalty in the relevant action. However, rewards may be reduced in instances in which a whistleblower may collect under another whistleblower award program (*e.g.*, an award offered by the Securities and Exchange Commission (“SEC”) pursuant to whistleblower provisions of the Dodd-Frank Act). AMLA and the CAA amendments provide that the Treasury Secretary shall issue regulations governing, among other things, determination of whistleblower reward amounts. Treasury has yet to publish such regulations, however the whistleblower reward regime does not depend on their publication.

Key Takeaways

The CAA amendments provide new opportunities for whistleblowers to draw attention to violations of U.S. AML and sanctions law and to receive rewards for coming forward. Individuals and employers in the relevant industries, particularly but not exclusively the banking industry, should familiarize themselves with the new provisions. Despite the new potential for rewards, the U.S. whistleblower regime remains complex. Determining eligibility for rewards and expected payout requires careful prospective analysis. In addition, analysis may be required where extant whistleblower regimes administered by different agencies (e.g., the Treasury and SEC whistleblower regimes) overlap. Individuals and employers should carefully consider how and whether information in their possession qualifies for rewards and protections under applicable whistleblower laws and ensure that internal compliance reporting mechanisms are adequate to raise and remediate any potential violations within the organization.

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