

Davis Polk

Updates on AML compliance and enforcement for financial institutions

Presented by Uzo Asonye | Neil MacBride | Tatiana Martins | Dan Stipano

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Presenters



Uzo Asonye

Uzo is a partner in Davis Polk's Litigation Department, based in Washington, DC. He has spent more than a decade prosecuting complex financial crimes and public corruption. He advises companies and individuals in connection with government, grand jury and internal investigations, and represents clients in criminal and civil trials. He has deep experience in matters involving insider trading, market manipulation, public corruption and other areas of financial fraud. He was previously the Acting Chief of the Financial Crimes and Public Corruption Unit in the U.S. Attorney's Office for the Eastern District of Virginia and served in the Office of Special Counsel Robert Mueller.



Neil MacBride

Neil is chair of our White Collar Defense & Investigations practice. He is one of the nation's leading litigators and has successfully defended dozens of companies, boards and individuals in high-stakes crisis management matters. He focuses on government enforcement actions, complex civil litigation and regulatory matters, trials, and congressional and internal investigations.

Neil returned to Davis Polk in January 2025, after serving as General Counsel of the Treasury Department under Secretary Janet Yellen, where he led the 2,200 lawyer Treasury Legal Division. He was previously a Davis Polk partner from 2014 to 2022, after earlier serving as the United States Attorney for the Eastern District of Virginia, Associate Deputy Attorney General and Chief Counsel on the Senate Judiciary Committee.

Presenters (cont.)



Tatiana Martins

Tatiana represents boards, companies and individuals in white collar defense and regulatory enforcement matters and conducts internal investigations involving bribery, money laundering, financial frauds, criminal antitrust and workplace misconduct. She also advises companies and boards on governance and compliance.

An experienced trial lawyer, Tatiana has tried multiple cases to jury verdict. As an Assistant U.S. Attorney for the SDNY, she tried high-profile cases including that of former N.Y.S. Assembly Speaker Sheldon Silver. As Chief of the SDNY Public Corruption Unit, she oversaw major cases against Michael D. Cohen, NCAA basketball coaches and high-level U.N. officials.

Tatiana is recognized by *Chambers USA*, where sources say she is “phenomenal” and “has excellent judgment.”



Daniel Stipano

Dan is head of Davis Polk’s anti-money laundering / countering the financing of terrorism (AML/CFT) group, practicing in the Washington DC office. His regulatory and enforcement experience includes more than 30 years at the Office of the Comptroller of the Currency (OCC). As Deputy Chief Counsel from 2000 to 2016, Dan played a key role in significant Bank Secrecy Act (BSA) rulemakings and policy issuances and oversaw major OCC enforcement actions. Dan has testified six times before Congress on enforcement and AML/CFT matters.

Agenda

Section		Slide
01	Administration personnel changes	5
02	Update on AML/CFT policy agenda	8
03	Lessons for AML/CFT compliance programs	24

Administration personnel changes

01

New administration: Personnel changes



Department of the Treasury

- **Secretary of the Treasury:** Scott Bessent
- **Undersecretary for Terrorism and Financial Intelligence:** John Hurley
- **Assistant Secretary for Terrorist Financing:** Anna Morris (Acting), Jonathan Burke (Nominated)



FinCEN

- **Director:** Andrea Gacki
- **Deputy Director:** Jimmy Kirby



Office of the Comptroller of the Currency

- **Comptroller:** Jonathan Gould



Federal Reserve

- **Governor and Vice Chair for Supervision:** Michelle Bowman

New administration: Personnel changes (cont.)



Federal Deposit Insurance Corporation

- **Chair:** Travis Hill (acting)



Department of Justice

- **Attorney General:** Pam Bondi
- **Deputy Attorney General:** Todd Blanche
- **Acting Assistant Attorney General for Criminal Division:** Matthew R. Galeotti (Acting), Andrew Duva (Nominated)

Update on AML/CFT policy agenda

02

AML/CFT policy priorities

**Fighting cartels
and transnational
criminal
organizations
(TCOs)**

**Streamlining of
AML/CFT
compliance
obligations**

**Depoliticizing
debanking**

**Rethinking digital
asset regulation**

**Enforcing tariff
compliance**

Fighting cartels and TCOs

Department of Justice (DOJ) prioritizing cartel-related crimes, including those involving money laundering

- February 5, 2025 Memo from AG Bondi:
 - Calls for “total elimination of cartels and transnational criminal organizations (TCOs)”
 - Directs DOJ’s Criminal Division money laundering section to “prioritize investigations, prosecutions, and asset forfeiture actions that target activities of Cartels and TCOs”
- May 12, 2025 Memo from Acting AAG Galeotti establishes Criminal Division stated priorities, which include:
 - “Complex money laundering” with nexus to manufacturing illegal drugs
 - Bribery and associated money laundering that harms U.S. interests
- June 9, 2025 Memo from DAG Blanche:
 - Directs Criminal Division to prioritize Foreign Corrupt Practices Act investigations and prosecutions with a nexus to cartels or TCOs, including those that involve “money launderers or shell companies that engage in money laundering for Cartels or TCOs”

Fighting cartels and TCOs (cont.)

FinCEN designations of Mexico-based financial institutions

- First exercise of designation authority under FEND Off Fentanyl Act
- Found “reasonable grounds exist for concluding” that the three designated banks were of primary money laundering concern in connection with illegal opioid trafficking
- As a result, transmittals to and from the three Mexican banks are prohibited, effectively blocking the banks’ access to the U.S. financial system
- U.S. Banks in turn need to update their screening and compliance tools to ensure compliance with FinCEN’s orders

FinCEN designations of Mexico-based gambling establishments

- Designated a class of transactions under Section 311 of the PATRIOT Act as being of primary money laundering concern in connection
- As a result, U.S. covered financial institutions are:
 - Prohibited from opening or maintaining a correspondent account for any foreign banking institution if the account is used to process transactions involving any of the gambling establishments
 - Required to apply special due diligence to their correspondent accounts that is reasonably designed to guard against the use of correspondent accounts to process transactions involving any of the gambling establishments

Fighting cartels and TCOs (cont.)

Geographic Targeted Order issued to combat money laundering

- For money services businesses located near the U.S. southwest border, Currency Transaction Report (**CTR**) thresholds reduced from \$10,000 to \$1,000

Designation of cartels

- EO 14157 designated cartels as foreign terrorist organizations (**FTOs**) and specially designated global terrorists (**SDGTs**)

Application of material support statute

- Broad prohibitions on assisting designated groups or individuals
- Expansive jurisdiction over conduct, so long as some nexus to the United States (e.g., involvement of USD)
- Potential for significant financial penalties
- Civil suits also available under Anti-Terrorism Act

Streamlining of AML/CFT compliance obligations

“[T]here is an urgent need to modernize the AML/CFT regime in the United States so that it is effective, risk-based and focused on the greatest threats to financial institutions and national security.”

– FinCEN Director Andrea Gacki,
September 9, 2025 Remarks

“[AML/CFT programs should deliver better outcomes by providing those customers with the most useful information, not by overwhelming the system with noise. And finally, compliance takes real resources. That's why prioritization matters. Limited resources should be allocated to the most pressing threats.

– Under Secretary for Terrorism and Financial Intelligence, Jonathan Hurley
September 17, 2025 Remarks

Streamlining of AML/CFT compliance obligations (cont.)

Pause or rescission of Biden-era rules

- Beneficial Ownership Information (BOI) Reporting Rule – *rescinded for U.S. persons and companies*
 - Would have required certain U.S. companies and foreign companies to report beneficial owners and related information to FinCEN
 - Revised the BOI Reporting Rule to only apply to foreign companies and persons
- AML/CFT compliance obligations for certain investment advisers – *paused*
 - Investment Adviser Rule: Would have required implementation of AML/CFT compliance programs and compliance with BSA reporting requirements (e.g., SARs)
 - Proposed Investment Adviser CIP Rule (SEC/FinCEN): Would have required establishment of risk-based Customer Identification Programs
- Residential Real Estate Rule – *postponed to March 2026*
 - Will add reporting requirements for parties involved in “non-financed” transfers of an ownership interest in residential real estate to a legal entity or a trust
- Proposed AML/CFT Program Rule – *under review and likely to change*
 - Intended to require financial institutions to establish and maintain *effective* risk-based AML/CFT programs, incorporate risk assessments as an AML/CFT program pillar, and integration of national AML/CFT priorities into AML/CFT programs

Streamlining of AML/CFT compliance obligations (cont.)

Focus on efficiency

— Changes to CIP Rule procedures

- Banks regulated by OCC, Federal Deposit Insurance Corporation (**FDIC**), National Credit Union Administration, and the Federal Reserve permitted to obtain Taxpayer Identification Numbers from third parties rather than customers, so long as banks comply with CIP Rule
- FDIC similarly clarified that banks can collect customer identifying information from other sources, so long as customer has the ability to update/validate the information and account opening process is risk-based
- Will provide flexibility for banks that maintain bank-fintech partnerships and/or offer online or mobile banking activities, allowing them to leverage digital identity verification services and tools

Streamlining of AML/CFT compliance obligations (cont.)

SAR Reform

- Administration's stated view is that SAR reporting requirements have veered from core law enforcement purpose
- New FAQs clarify:
 - SARs not required for transactions at or near the \$10,000 CTR threshold unless reason to suspect evasion of BSA
 - Continuing activity reviews can be risk based
 - Continuing activity SARs can be filed as needed (versus every 90 days)
 - No requirement to document no-file SAR decisions
- To be seen how guidance will be implemented by bank examiners

“AML/CFT programs should deliver better outcomes by providing [law enforcement and the national security establishment] with the most useful information, not by overwhelming the system with noise . . . [C]ompliance takes real resources. That’s why prioritization matters. Limited resources should be allocated to the most pressing threats . . . Every hour spent documenting a non-SAR is an hour not spent protecting Americans, and that trade-off is unacceptable.”

– Under Secretary for Terrorism and Financial Intelligence John Hurley, September 17, 2025 Remarks

“Depoliticizing” debanking

Trump Administration is focused on reducing debanking due to political and religious differences, or “controversial” businesses.

- Administration released an executive order directing Federal banking regulators to:
 - remove reputational risk and similar concepts from guidance, exam manuals, and other materials;
 - review and revise policies to ensure that debanking is not encouraged; and
 - review financial institutions for past or current policies encouraging debanking (and to take remedial actions, when warranted, which could include fines or consent orders)
- Small Business Administration (**SBA**) and the OCC have already announced actions they are taking to enforce the executive order
 - SBA released a letter to its lenders outlining actions they must take to identify and potentially remediate past debanking actions
 - OCC will now consider banks’ records of current policies and procedures designed to avoid engaging in politicized or unlawful debanking as part of licensing applications and CRA evaluations.
 - OCC also requested information regarding the debanking activities of its nine largest regulated institutions and is reviewing consumer complaint data

“Depoliticizing” debanking (cont.)

On the State level, multiple states have laws and regulations to promote fair access to banking.

— Fair Access Laws

- Florida, Tennessee and Idaho have codified fair access laws that are generally aligned with the Administration’s “depoliticizing” debanking agenda, though each state has taken a slightly different approach to the scope of the laws
 - **Florida:** Applies to financial institutions license or chartered in Florida, and federal banks, saving associations, trust companies and credit unions that conduct business in the state that do not hold status as Florida “qualified public depositories”
 - **Tennessee:** Applies to financial institutions with assets over \$100 billion and insurers
 - **Idaho:** Applies to financial institutions with assets over \$100 billion and payment processors that process \$100 billion in annual payments

— Alternative Approaches

- Texas and West Virginia restrict state government business with financial institutions that deny services to certain sectors

“Depoliticizing” debanking (cont.)

Potential Issues

- Banks may be forced to provide accounts for customers that they would not ordinarily bank with due to the customer exceeding the bank’s risk appetite or reputational risk, which could lead to increased compliance cost
- Conflicts with actions the Trump Administration is taking in other areas, such as:
 - Administration designated Antifa as a “domestic terrorist organization” and has directed executive branches and agencies to “investigate, disrupt and dismantle” illegal operations conducted by Antifa and supporters
 - In the past, this may have lead financial institutions to debank groups and individuals found to be remotely associated with Antifa; however, this may be difficult now given the effort to eliminate debanking for political, religious, and reputational risk reasons

Rethinking digital asset regulation

Move away from digital asset “regulation by enforcement”

- “Strengthening American Leadership in Digital Financial Technology” executive order outlines the Trump Administration’s policy to support the growth and use of digital assets, blockchain technology, and related technologies in the U.S.
- Key objectives include:
 - Promoting dollar-backed stablecoins;
 - Ensuring fair banking access; and
 - Providing regulatory clarity
- Administration is also encouraging a more tailored approach to enforcement, focusing more on specific individuals involved in illicit activities that harm the U.S. and its interests

Rethinking digital asset regulation (cont.)

Interpretive Letter 1183

- In March 2025, the OCC issued Interpretive Letter 1183, rescinding a previous Biden-era letter that required banks to demonstrate, to the satisfaction of supervisors, that they have controls in place to conduct crypto-asset custody, distributed ledger, and stablecoin activities in a safe and sound manner
- Interpretive Letter 1183 reaffirms that these activities are permissible for national banks, and removes the additional procedures for banks seeking to engage in permissible crypto-related activities
- In addition, Interpretive Letter 1183 withdraws the OCC's participation in the interagency statements issued by Federal banking agencies on:
 - crypto-asset risks to banking organizations
 - liquidity risks to banking organizations resulting from crypto-asset market vulnerabilities
- FDIC and FRB have joined the OCC in withdrawing from interagency statements

Rethinking digital asset regulation (cont.)

GENIUS Act

- Signed into law in July 2025, the GENIUS Act establishes a regulatory framework for payment stablecoin issuers, including AML/CFT and sanctions compliance obligations
- GENIUS Act requires:
 - federal banking agencies and Treasury to issue implementing regulations;
 - Treasury to seek public comment to identify innovative or novel methods, techniques, or strategies that regulated financial institutions use, or have potential to use, to detect illicit activities, such as money laundering, involving digital assets; and
 - FinCEN to issue public guidance on a rule based on public comments within three years
- So far, Treasury has met the requirement for public comment through its Request for Comment on August 18, and has issued an ANPRM seeking public comment related to implementation of the GENIUS Act

Enforcing tariff compliance

Tariff evasion has not yet started to overlap with AML enforcement, but there have been developments that could suggest that is changing

- New DOJ cross-agency Trade Fraud Task Force formed to investigate parties who seek to evade tariffs and other duties
- DOJ Criminal Division's Market Integrity and Major Fraud Unit to shift focus to trade fraud and tariff evasion and will significantly increase personnel
- False Claims Act investigations to focus on customs and tariff evasion, and there have been cases brought against companies this year for alleged tariff violations
- To be seen what this means for banks who unknowingly process transactions connected to tariff evasion

Lessons for AML/CFT compliance programs

03

Cross-border transactions

- Additional scrutiny on cross-border transactions, particularly where administration priorities implicated
 - FinCEN issued guidance regarding Chinese money laundering networks
 - FinCEN designation of three Mexican banks allegedly connected to cartel activity
 - Emphasis on tariff compliance
- Need to monitor for changes in regulations, given dynamic environment, and as needed incorporate, into AML compliance programs
- Expect DOJ to assert broad jurisdictional powers
 - Material support statutes allow for expansive jurisdictional enforcement
- Need to monitor correspondent banking relationships, particularly in higher-risk geographies
- Consider potential implications on cross-border information sharing

Crypto risks

Risk management and AML/CFT compliance programs need to be commensurate to crypto risks

- Interagency guidance on crypto-asset safekeeping
- Guidance regarding third-party management risks

Compliance with GENIUS Act

- GENIUS Act states that payment stablecoin issuers will be “treated” as financial institutions for purposes of the BSA, and so will be subject to requirements applicable to financial institutions relating to sanctions, AML, customer identification, and due diligence, including:
 - An “effective” AML/CFT compliance program, including appropriate risk assessments and a designated officer to supervise;
 - Appropriate record retention;
 - Suspicious activity monitoring and reporting; and
 - Technical capabilities, policies, and procedures to block, freeze, and reject specific or impermissible transactions that violate Federal or state laws, rules, or regulations
- GENIUS Act does not amend the BSA and thus, the AML/CFT compliance framework is not self-executing

AI compliance risks

Government is encouraging use of AI in compliance programs

- Treasury promoting the use of AI and other technology into compliance programs
- Proposed legislation would establish regulatory sandboxes

Incorporating AI into compliance programs has benefits...

- Transaction monitoring systems and negative news monitoring
- Monitoring for new compliance obligations
- Flagging potential internal compliance violations
- Customer risk ratings

... and risks

- AI models raise their own risks (e.g., data privacy, cybersecurity)
- Require oversight and governance
- Increasing number of state-level regulations on AI
- Investment in the risk management of AI to be balanced with the investment in AI for business growth

Updates to DOJ compliance-related guidance

Changes to DOJ's Corporate Enforcement and Voluntary Self-Disclosure Policy (CEP)

- Meeting CEP requirements relating to self-disclosure, cooperation, and remediation absent aggravating circumstances requires declination
- If aggravating circumstances are present, prosecutors have discretion to recommend declination
- “Near miss” situations (self-reporting that does not qualify as voluntary self-disclosure or presence of certain aggravating factors) specifically contemplated for specified resolutions.

DOJ Whistleblower Pilot Program

- Rewards whistleblowers (as defined by the program) who provide “original information” to DOJ that leads to criminal or civil forfeiture exceeding \$1 million in net proceeds
- Pilot Program applies to specific crimes, including violations by financial institutions involving money laundering and by corporations related to international cartels or transnational criminal organizations, including money laundering, narcotics, Controlled Substances Act, and other violations

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