Yesterday, the whistleblower provisions of the Anti-Money Laundering Act (“AML Act”) became law. The AML Act was included as a major section of the National Defense Authorization Act (“NDAA”), and became law pursuant to Congress’ override of President Trump’s veto.

The AML Act’s whistleblower provision was modelled on the Dodd-Frank Act, and permits individuals with information on money laundering and violations of the Bank Secrecy Act to file anonymous and confidential reports to the Secretary of Treasury and qualify for monetary rewards “up to 30%” of the sanctions obtained from the U.S. government. The law also prohibits retaliation against some employees who report AML violations, but excludes a majority of employees working in banks or credit
unions.

“The AML whistleblower law is a step in the right direction, but will not work as currently approved,” said Stephen M. Kohn, a whistleblower attorney. “The law breaks with standard practices and requires Congress to make annual appropriations to pay whistleblowers, a process that is doomed to fail. The $741 Billion in federal spending approved in the NDAA does not include any money to compensate whistleblowers,” Kohn added.

“The Dodd-Frank Act, consistent with other whistleblower reward laws, established a fund to pay whistleblowers directly from the sanctions obtained from wrongdoers. In this manner taxpayers never paid for rewards, and the rewards were directly earned by the whistleblowers based completely on the quality of the information they provided, the risks they took in becoming whistleblowers, and the ability of the United States to use their evidence to obtain a conviction or settlement. The AML Act is the only modern whistleblower law ignore this process, and require Congress to make special appropriations. Such special appropriations are highly unlikely,” Kohn said.

“Unlike other reward laws, such as the False Claims Act, the IRS reward law, the Auto Safety whistleblower law, and the Dodd-Frank Act, the AML Act does not require the Secretary of Treasury to make any minimum award. The decision to grant awards is discretionary and the Secretary can effectively deny any whistleblower a meaningful award, for any reason whatsoever. An award as low as one penny cannot be appealed in court,” Kohn said.

“Because the law does not provide any realistic right for a whistleblower to obtain a reward the law will not work in practice, but may mislead employees who think the rights contained in the AML Act are similar to the rights contained in all of the other modern reward laws. It is incumbent attorney whistleblower attorneys and other anti-corruption activists to warn whistleblowers of the problems with the AML Act, and work together to have Congress fix these issues,” Kohn said.

“AML whistleblowers are not without other protections,” Kohn explained. “The IRS whistleblower law guarantees a minimum award of no less then 15% of all sanctions obtained by the IRS in AML cases investigated by the IRS criminal division. Additionally, the largest AML violators are large banks, most of which are publicly traded. These banks can be held accountable under the Dodd-Frank Act’s whistleblower law, that guarantees qualified whistleblowers a minimum award of 10% of all sanctions obtained. Finally, money laundering violations often implicate other federal laws, such as foreign bribery, tax evasion, and the lack of proper corporate controls, which are covered under effective reward laws,” Kohn said.

Kohn urged all whistleblowers with information on AML violations to carefully review the various laws that may cover disclosures, and try to file their claims under laws that will work.

Ben Kostyack also contributed to this article.

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