

FINAL BILL REPORT

ESJM 8005

Brief Description: Addressing "de-risking" by financial institutions.

Sponsors: Senators Hasegawa and Wilson, C..

Senate Committee on Business, Financial Services, Gaming & Trade
House Committee on Consumer Protection & Business

Background: De-risking is the practice by banks of limiting certain services or ending relationships with customers to, among other things, avoid regulatory concerns about facilitating money laundering and fraud. These regulatory concerns come from certain federal laws and rules, such as the Bank Secrecy Act and Anti-Money Laundering rules (BSA/AML), that were written with the intent of identifying potential money laundering or other suspicious activities. Because of the concern in potentially breaking these federal rules and laws, there has been an increase in denying and restricting services to certain customers.

De-risking is especially prevalent with money services businesses (MSBs), who use banks to transfer money across the world, in addition to other services. When MSBs, and other entities, are unable to obtain and maintain bank accounts, they must then find alternative methods outside the banking system.

The Department of Financial Institutions (DFI) provides regulatory oversight to MSBs, banks, and credit unions in Washington State. DFI, the federal Government Accountability Office (GAO), and others, have studied and provided guidance and recommendations on de-risking.

The National Defense Authorization Act (NDAA) is the federal law that specifies the annual budget and expenditures of the United States Department of Defense. In 2020, under the NDAA for fiscal year 2021, the Anti-Money Laundering Act of 2020 made changes to AML rules. In December of 2021 the GAO issued a report on de-risking, as directed by the NDAA. The NDAA also directed the United States Treasury (Treasury) to publish a report on de-risking and provide policy recommendations.

On April 25, 2023, the report was published and recommended promoting consistent supervisory expectations that consider the impacts of derisking, regulations that require

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financial institutions to have reasonably designed and risk-based AML and combating the financing of terrorism (CFT) programs, and building upon the Treasury’s work to modernize the United States' sanctions to mitigate unintended impacts.

Summary: The Legislature asks Congress, and the President of the United States, to enact legislation implementing the strategies and recommendations resulting from directives to the GAO and the Treasury under the NDAA, and review DFI's guidance for depository institutions. The legislation should also include:

- a directive to federal financial agencies to develop regulations that require financial institutions to have risk-based AML programs supervised on a risk basis, taking into consideration the effects of financial inclusion;
- provisions that give federal banking regulators clarity on how to improve the ability of examiners to evaluate banks' BSA/AML compliance as applied to money transmitter accounts;
- a requirement that financial institutions disclose a specific reason when denying or closing an account; and
- assistance for financial institutions to mitigate the cost of due diligence required to comply with BSA/AML provisions impacting money transmitters.

The Legislature also requests that the President direct federal regulators to work with DFI and stakeholders to support efforts to develop new and creative solutions to improve banking access for local and community-based money transmitters.

Votes on Final Passage:

2023 Regular Session

Senate 39 8

2024 Regular Session

Senate 45 4

House 59 37

Effective: Ninety days after adjournment of session in which bill is passed.