

# **Practical Considerations of The Anti-Money Laundering Act of 2020 (AMLA)**

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# With you today



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Cassie utilizes her unique background in financial services regulations and regulatory relationships to strategically analyze and balance risk with business advancement and development.



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Deborah focuses her Chambers-ranked corporate practice on banking, electronic commerce, privacy, anti-money laundering and Office of Foreign Assets Control regulations.



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# I. Anti-Money Laundering Act of 2020

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## A. Background

The AMLA is contained in Division F of the National Defense Authorization Act, which was signed into law on Jan. 1, 2021.

## B. Purpose

The AMLA is intended to clarify and streamline certain AML and Bank Secrecy Act (BSA) obligations and establishes new regulatory requirements to strengthen, modernize, and improve compliance programs by:

1. Improving agency coordination and information sharing;
2. Adapting laws to new and emerging threats;
3. Encouraging technological innovation;
4. Reinforcing the nature of “risk-based” programs;
5. Establishing uniform beneficial ownership and reporting requirements; and
6. Establishing a secure non-public database at FinCEN to house beneficial ownership information.

# I. Anti-Money Laundering Act of 2020 (continued)

## C. Titles of AMLA

**A**

### Title LXI - Strengthening Treasury Financial Intelligence, AML, and Counter-Terrorism Financing (CTF) Programs

1. Requires that regulators establish and periodically update national exam and supervision priorities;
2. Expands the definition of financial institution (FI) to cover entities that deal in virtual currency;
3. Expands BSA application to antiquities dealers and potentially art dealers;
4. Strengthens international cooperation, public/private communications; and
5. Includes measures to enhance AML/BSA knowledge at the federal functional regulators.

**B**

### Title LXII - Modernizing the AML and CTF Reporting System

1. Requires establishment of a rule specifying standards for testing of compliance technology;
2. Requires that SAR process at FIs be governed by the risk assessment process;
3. Permits FIs to share compliance resources;
4. Established mechanisms that promote sharing of information regarding technology;
5. Seeks to streamline reporting requirements and commissions regulatory reports and studies relating to the effectiveness and efficiency of reporting requirements; and
6. Allows law enforcement to share information with FIs relating to value of SARs.

**C**

### Title LXIII - Improving AML and CTF Communication, Oversight, and Processes

1. Increases collaboration and communication between agencies;
2. Commissions study regarding implementation of a no-action letter process;
3. Permits issuance of subpoenas to foreign banks maintaining U.S. correspondent accounts;
4. Increases penalties for AML and BSA violations; and
5. Enhances whistleblower incentives.

**D**

### Title LIV - Establishing Beneficial Ownership Information Reporting Requirements

1. Implements legislation addressing concealment of beneficial ownership to facilitate illicit activity;
2. Establishes beneficial ownership information reporting requirements; and
3. Establishes secure, non-public beneficial ownership database.

**E**

### Title LXV - Miscellaneous

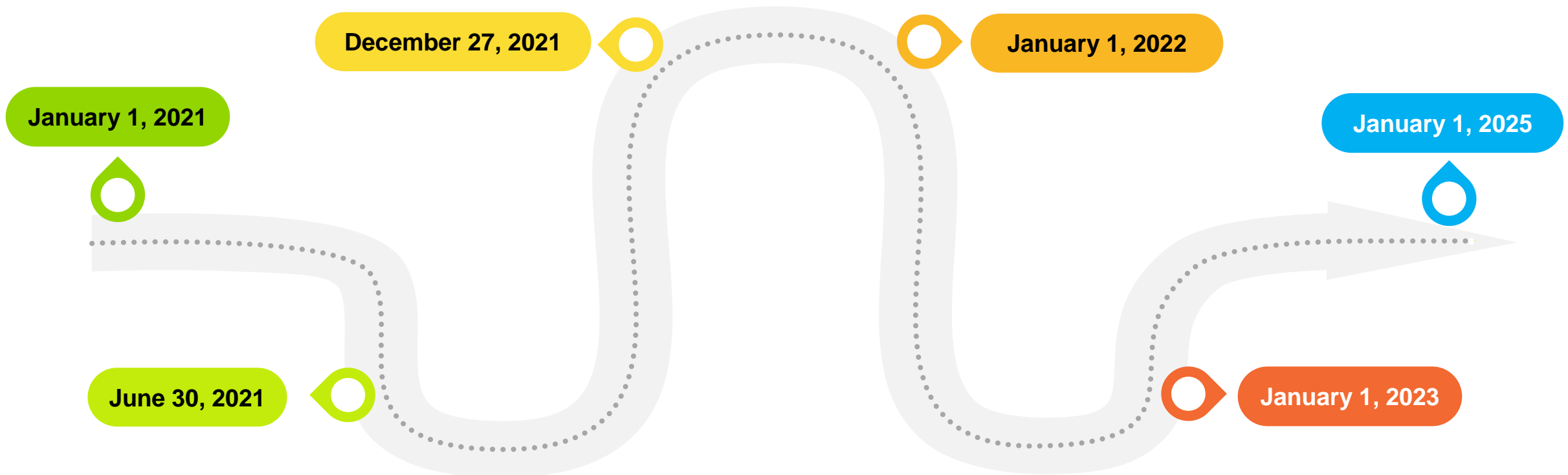
Requires the U.S. Government Accountability Office (GAO) and Treasury to perform various studies on subjects such as:

1. New beneficial ownership reporting requirements;
2. CTRs;
3. Trafficking;
4. Government feedback; and
5. Trade-based money laundering.

# I. Anti-Money Laundering Act of 2020 (continued)

## D. Roadmap of Important Dates\*

Certain provisions of the AMLA became effective on January 1, 2021, with other provisions becoming effective at later dates as new rules are finalized. Additionally, the AMLA commissions a number of regulatory studies and reports, the ultimate effects of which are currently unknown, but may result in the issuance of guidance, new requirements, or amendments to existing requirements.



\* The roadmap identifies effective dates for many of AMLA's provisions. Please note however that these dates are subject to change based on various factors including interdependencies between sections, the dates that required rules are proposed, length of comments period and other factors.

# I. Anti-Money Laundering Act of 2020 (continued)

## E. Provisions Associated with Important Dates

Important Dates	High Level Summary of the Provisions Within Each Important Date Noted on Slide 4*
January 1, 2021	<ol style="list-style-type: none"> <li>1. Expands definition of financial institution;</li> <li>2. Establishes FinCEN Exchange to promote information sharing;</li> <li>3. Promotes additional considerations related to SARs and CTRs;</li> <li>4. Permits FIs to share compliance resources;</li> <li>5. Allows Secretary of Treasury/AG to issue subpoenas;</li> <li>6. Increased penalties for BSA violators; and</li> <li>7. Increased protections for whistleblowers.</li> </ol>
June 30, 2021	<ol style="list-style-type: none"> <li>1. Conduct assessment to establish a formal no-action letter process; and</li> <li>2. Publish a report on establishment of national exam and supervision priorities.</li> </ol>
December 27, 2021	<ol style="list-style-type: none"> <li>1. Expands BSA application to antiquities dealers;</li> <li>2. Requires a study on the facilitation of money laundering and financing terrorism through the art trade; and</li> <li>3. Provide regulations to carry out publication of the updated AML/CTF priorities.</li> </ol>
January 1, 2022	<ol style="list-style-type: none"> <li>1. Establish a rule that issues a pilot program on sharing SAR information with foreign affiliates;</li> <li>2. Publish a report on the effectiveness of the FinCEN Exchange;</li> <li>3. Conduct a review to streamline requirements for CTRs and SARs;</li> <li>4. Conduct analysis and submit a report on de-risking; and</li> <li>5. Promulgate regulations and establish protocols to implement the new beneficial ownership reporting requirements.</li> </ol>
January 1, 2023	<ol style="list-style-type: none"> <li>1. Conduct a review of the new beneficial ownership reporting requirements; and</li> <li>2. Incorporate new rulemakings for beneficial ownership reporting requirements, as applicable.</li> </ol>
January 1, 2025	<ol style="list-style-type: none"> <li>1. Commence a study on the effectiveness of CTR data; and</li> <li>2. Publish a report (by December 31, 2025) based on the findings from the CTR study.</li> </ol>

\* This is a non-exhaustive list.



# Poll Question #1

Which of the following AMLA provisions do you think your institution will benefit the most from?

# II. Practical Considerations

## II. Practical Considerations

Some of the practical considerations for financial institutions include how the AMLA will (1) address new regulatory requirements and guidance; and (2) be proactive in terms of potential future changes based on the various provisions in the AMLA, such as the findings from conducting various studies and reports.



## II. Practical Considerations

<b>A.</b>	<b>Regulatory and Industry Communication</b>	Incorporate patterns, trends and national exam and supervision authorities to enhance BSA/AML compliance programs.
<b>B.</b>	<b>Emphasis on Technology: Artificial Intelligence and Machine Learning</b>	Consider proofs of concept for risk mitigation through technology applications related to customer information and risk rating, transaction monitoring, and sanctions.
<b>C.</b>	<b>Beneficial Ownership Information</b>	<ol style="list-style-type: none"><li>1. Ensure that current processes are consistent with possible revisions to the CDD Rule; and</li><li>2. Create processes and controls to request information from the FinCEN Beneficial Ownership Database.</li></ol>
<b>D.</b>	<b>SAR and CTR Reporting</b>	Identify ways to improve and expedite CTRs and SARs for filing.
<b>E.</b>	<b>Penalties and Whistleblowers</b>	<ol style="list-style-type: none"><li>1. Reinforce training and tone from the top to emphasize the importance of compliance;</li><li>2. Maintain effective quality assurance; and</li><li>3. Consider enhanced policies and procedures relating to whistleblowers.</li></ol>
<b>F.</b>	<b>Compliance Enhancements</b>	Understand risk exposure and apply appropriate mitigation based on customers, geography, products, and channels.

# II. Practical Considerations

## A. Regulatory and Industry Communications



### 1. AMLA enhancements:

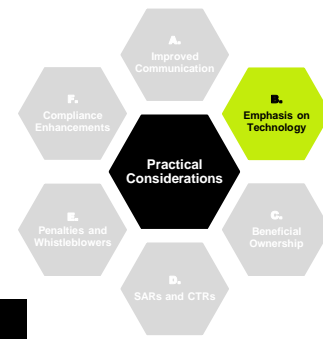
- a. Requires FinCEN to share feedback solicited from FIs with state and federal functional regulators (s. 6203);
- b. Publication of Supervisory and Exam Priorities (s. 6101) and Sharing of patterns, trends, and threat information (s. 6203);
- c. No-action letter process (s. 6305);
- d. Financial institutions sharing compliance resources (s. 6213);
- e. Establishment of domestic and foreign liaisons (s. 6106-6112); and
- f. FinCEN Exchange facilitating public-private voluntary information sharing (s. 6103).

### 2. Financial Institutions should consider:

- a. Establishing processes to incorporate supervision and exam priorities and semiannual reports on threat patterns and trends to enhance AML/CTF technology rules, policies and procedures;
- b. Establishing processes, with adequate internal controls, to potentially participate in FinCEN Exchange voluntary information sharing partnership; and
- c. Creating a technology environment that can identify patterns, trends, and threat information and ensure it is sophisticated enough to generate high quality alerts to reduce the likelihood of overloading the investigation staff.

# II. Practical Considerations

## B. Emphasis on Technology: AI and ML



### 1. AMLA enhancements:

- a. Establishment of the BSAAG Subcommittee on Innovation and Technology and appointment of Innovation Officers (s. 6207-6208);
- b. Issue a rule specifying standards for FI's testing methods to reflect the rulemaking (s. 6209);
- c. Financial technology assessment on financial crimes compliance (s. 6210); and
- d. National Artificial Intelligence Initiative (Div. E. sec 5001 – 5501).

### 2. Financial Institutions should consider:

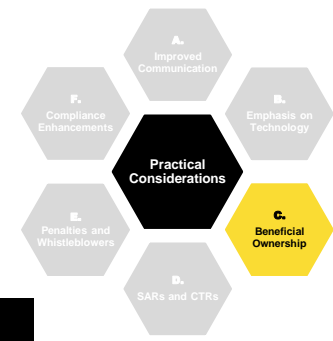
- a. Determining specific standards for a risk governance framework providing oversight and evaluation of financial crime compliance (FCC) technology;
- b. Implementing robust technology that meets existing expectations, including further exploring of the use of advanced technology such as AI and ML; and
- c. Assessing the efficacy of a FI's technology environment in supporting financial crimes compliance.

# Poll Question #2

Do you believe that your institution currently has the appropriate systems and technology to take advantage of the AMLA's focus on increased automation and emphasis on innovation?

# II. Practical Considerations

## C. Beneficial Ownership Information Reporting Requirements



### 1. AMLA enhancements:

- a. Implements legislation addressing concealment of beneficial ownership to facilitate illicit activity (s. 6402);
- b. Establishes beneficial ownership information reporting requirements (s. 6403); and
- c. GAO and Treasury studies on beneficial ownership information reporting requirements (s. 6403 and 6502).

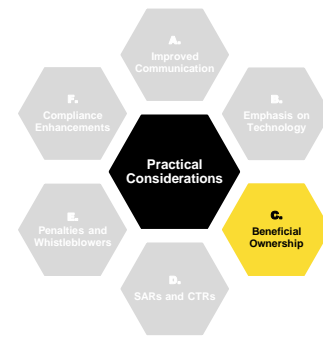
### 2. Financial Institutions should consider:

- a. Creating and implementing a process, procedures, and internal controls to request beneficial ownership information from FinCEN; and
- b. Implementing a system capable of automatically reconciling beneficial ownership information to FinCEN's registry and generating alerts on identified inconsistencies, for further review by the KYC/ enhanced due diligence (EDD) team.



# II. Practical Considerations

## C. Beneficial Ownership Information Reporting Requirements (cont'd)



### 3. Exemptions and Limitations:

- a. Certain investment vehicles, including hedge funds and private equity firms are exempt from reporting requirements;
- b. Companies with revenues >\$5m and 20 employees with offices in the U.S. are exempt from reporting requirements;
- c. Certain types of trusts are exempt from reporting requirements;
- d. Access to FinCEN's beneficial ownership database is available to federal functional regulators and law enforcement, national security and intelligence agencies;
- e. Registry access for state and local law enforcement is limited;
- f. Financial institutions can only access the database with customer permission and need to demonstrate the information is needed for due diligence purposes; and
- g. The penalty for leaking ownership information is harsher than for not reporting it to the government in the first place.

# Poll Question #3

What do you think will be the most difficult issue to potentially overcome, related to the new beneficial ownership reporting requirements, for your institution?

# II. Practical Considerations

## D. SAR and CTR Reporting



### 1. AMLA enhancements:

- a. Streamlining of SAR and CTR requirements and filings (s. 6202 & 6204); and
- b. Evaluate SAR and CTR thresholds (s.6205).

### 2. Financial Institutions should consider:

- a. Evaluating CTR and SAR filing systems to prepare for requirement changes;
- b. Improving governance and guidelines around SARs; and

# II. Practical Considerations

## E. Penalties and Whistleblowers



### 1. AMLA enhancements:

- a. Increased penalties for repeat BSA violators (s. 6309);
- b. Certain BSA violators are barred from serving on FI boards (s. 6310); and
- c. Enhanced whistleblower incentives and protection against retaliation (s. 6314).

### 2. Financial Institutions should consider

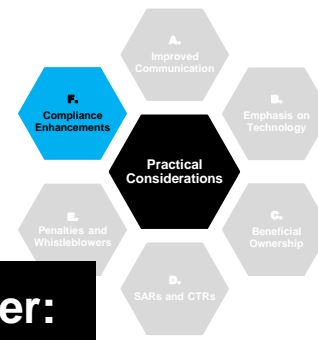
- a. Increased training;
- b. Ensuring policies and procedures for reporting and handling of complaints;
- c. Strengthening quality assurance (QA) and quality control (QC); and
- d. Enhancing candidate due diligence screening.

# Poll Question #4

What will be the most important for your institution to implement, given the increased penalties for BSA violators and whistleblower incentives?

# II. Practical Considerations

## F. Compliance Enhancements



### 1. AMLA enhancements:

- a. Financial services de-risking (s. 6215);
- b. Review of the regulations and guidance related to the BSA (s. 6216);
- c. Prohibition of concealment of source of assets in risky transactions (s. 6313);
- d. Law enforcement agencies notify FinCEN of intent to request FIs keep an account open and provide them with safe harbor (s. 6306); and
- e. Virtual currency companies and antiquities dealers are now covered by the BSA (s. 6110).

### 2. Financial Institutions should consider:

- a. Opining on regulations and guidance and enhancing the program based on the studies' findings, once published;
- b. Placing an emphasis on identifying and understanding politically exposed persons (PEPs), client evasion responses, and inconsistent transaction activity; and
- c. Updating their compliance program to address potential risks associated with these customers.

# Poll Question #5

Which topic are you most interested in hearing more about in a future webinar or podcast?

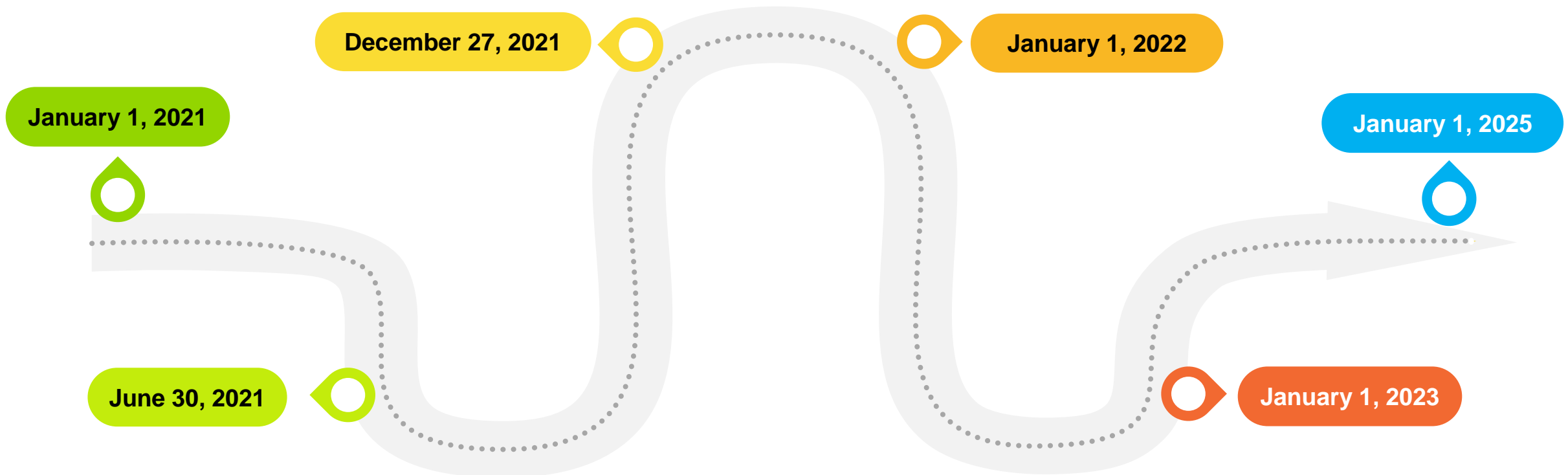
# Appendix Roadmap of Dates and Associated Provisions



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