

IMPROVING STRATEGIES TO COUNTER WEAPONS
PROLIFERATION ACT

—————
AUGUST 24, 2018.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed
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Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 6332]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 6332) to require the Director of the Financial Crimes Enforcement Network to submit a report to Congress on the way in which data collected pursuant to title 31 is being used, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

On July 12, 2018, Representative Scott Tipton introduced H.R. 6332, the “Improving Strategies to Counter Weapons Proliferation Act.” The legislation would require the Financial Crime Enforcement Network (FinCEN) to report to Congress annually for five years on the intelligence products it generates from Bank Secrecy Act (BSA) filings on proliferation finance transactions moving through the U.S. financial system; its collaboration with law enforcement agencies, the Intelligence Community, and foreign financial intelligence units; and on its advisory reports issued to financial institutions to make maximum use of BSA data.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 6332 amends Section 310 of title 31, United States Code, to require the Director of the Financial Crime Enforcement Network (FinCEN) to report to Congress annually for five years on the financing of weapons proliferation and to provide guidance to financial institutions on how to best identify procurement patterns and

implement these identifiers into their anti-money laundering and “Know Your Customer” processes like they do with other illicit and terror finance.

Countering the financing of weapons proliferation is a key foundation of U.S. counter-proliferation efforts. The Financial Action Task Force (FATF) encourages financial entities to check customers against sanctions lists to avoid any assistance in the financing of weapons proliferation activities. As the U.S. assumed the presidency of FATF in July 2018, there is an opportunity to provide more leadership to the financial industry to help identify and counter the financing of weapons proliferation.

Proliferation finance generally receives less attention than other illicit finance threats such as money laundering and terror financing. It is often difficult for government authorities or financial institutions to identify the financing of weapons proliferation. The networks of procurement agents involved may be complex and often involve “front” companies which operate in a number of different jurisdictions. The goods and materials involved are, for the most part, standard industrial or occasionally dual-use items. The latter, although subject to export controls, still may be hard to identify. For due diligence, most financial institutions rely on screening both transactions and customers against lists of sanctioned individuals or entities. Governments and regulators generally require nothing more of financial institutions.

Publicly available material about the characteristics of the financing of weapons proliferation, or documented methodologies, has also been relatively sparse. The most comprehensive study of typologies of the financing of proliferation to date was published by the FATF in 2008, which included case studies and a list of 20 possible indicators, including, for example, transactions connected with designated individuals or entities or with countries of proliferation concern. These case studies involve classic and established financial mechanisms—wire transfers, trade finance products, cash, checks, and, in a few cases, credit cards.

Financing schemes fund illicit weapons proliferation. These operations cannot continue if the Federal government can frustrate or more importantly end these financing opportunities. H.R. 6332 will help to further these goals by studying what specific activities may indicate engagement in proliferation financing and deny bad actors with the ability to take advantage of the global financial system.

HEARINGS

The Committee on Financial Services Subcommittee on Terrorism and Illicit Finance held a hearing examining matters relating to H.R. 6332 on July 12, 2018.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 24, 2018 and ordered H.R. 6332 to be reported favorably to the House without amendment by a recorded vote of 56 yeas to 0 nays (recorded vote no. FC-198), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without. The motion was agreed to by a recorded vote of 56 yeas to 0 nays (Record vote no. FC-198), a quorum being present.

Record vote no. FC-198

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)	X		
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY) ..	X		
Mr. King	X			Ms. Velázquez			
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks	X		
Mr. Pearce	X			Mr. Capuano	X		
Mr. Posey	X			Mr. Clay	X		
Mr. Luetkemeyer	X			Mr. Lynch	X		
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)	X		
Mr. Stivers	X			Mr. Cleaver	X		
Mr. Hultgren	X			Ms. Moore			
Mr. Ross	X			Mr. Ellison			
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes	X		
Mr. Barr	X			Mr. Foster	X		
Mr. Rothfus	X			Mr. Kildee	X		
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty	X		
Mr. Poliquin	X			Mr. Heck	X		
Mrs. Love	X			Mr. Vargas	X		
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist	X		
Mr. Trott	X			Mr. Kihuen			
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 6332 will provide a focus on the financing of weapons proliferation by providing for a report to Congress on FinCEN's intelligence products relating to the financing of proliferation financing, how FinCEN collaborates with other agencies and foreign partners, and FinCEN's advisory notices to financial institutions.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, August 2, 2018.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 6332, the Improving Strategies to Counter Weapons Proliferation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Mark Grabowicz.

Sincerely,

KEITH HALL,
Director.

Enclosure.

H.R. 6332—Improving Strategies to Counter Weapons Proliferation Act

H.R. 6332 would require the Financial Crimes Enforcement Network (FinCEN) in the Department of the Treasury to submit an annual report to the Congress on FinCEN products and other agency activities that address the financing of weapons production and

distribution. Based on the cost of similar reports, CBO estimates that implementing the bill would cost less than \$500,000 annually; such spending would be subject to the availability of appropriated funds.

Enacting H.R. 6332 would not affect direct spending or revenues; therefore, pay-as-you-go procedures do not apply.

CBO estimates that enacting H.R. 6332 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2029.

H.R. 6332 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Mark Grabowicz. The estimate was reviewed by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111-139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95-220, as amended by Pub. L. No. 98-169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rule makings: The Committee estimates that the bill requires no directed rule makings within the meaning of such section.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Section cites H.R. 6332 as the “Improving Strategies to Counter Weapons Proliferation Act.”

Section 2. Financial crimes enforcement network reporting requirement

Section 310 of title 31, United States Code, is amended by adding at the end the following:

“(e) REPORTS RELATING TO USE OF COLLECTED DATA.”

Not later than 1 year after the date of enactment of this subsection and every year thereafter, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on intelligence products created by FinCEN on finance transactions for the proliferation of weapons from filings submitted pursuant to subchapter II of chapter 53; FinCEN’s efforts to collaborate with law enforcement agencies, the intelligence community, and foreign financial intelligence units to maximize the use of data that is collected pursuant to subchapter II of chapter 53; and advisory notices issued to financial institutions (as defined under section 5312(a)) on financial activity related to the proliferation of weapons.

Any part of the report that involves information that is properly classified under criteria established by the President shall be submitted to the Congress separately in a classified annex.

No report is required after the end of the 5-year period beginning on the date of enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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SUBTITLE I—GENERAL

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CHAPTER 3—DEPARTMENT OF THE TREASURY

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SUBCHAPTER I—ORGANIZATION

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§ 310. Financial Crimes Enforcement Network

(a) **IN GENERAL.**—The Financial Crimes Enforcement Network established by order of the Secretary of the Treasury (Treasury Order Numbered 105-08, in this section referred to as “FinCEN”) on April 25, 1990, shall be a bureau in the Department of the Treasury.

(b) **DIRECTOR.**—

(1) **APPOINTMENT.**—The head of FinCEN shall be the Director, who shall be appointed by the Secretary of the Treasury.

(2) **DUTIES AND POWERS.**—The duties and powers of the Director are as follows:

(A) Advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary of the Treasury for Enforcement.

(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

(i) Information collected by the Department of the Treasury, including report information filed under subchapter II of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities), chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act.

(ii) Information regarding national and international currency flows.

(iii) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases.

(iv) Other privately and publicly available information.

(C) Analyze and disseminate the available data in accordance with applicable legal requirements and policies and guidelines established by the Secretary of the Treasury and the Under Secretary of the Treasury for Enforcement to—

(i) identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies;

(ii) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;

(iii) identify possible instances of noncompliance with subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act to Federal agencies with statutory responsibility for enforcing compliance with such provisions and other appropriate Federal regulatory agencies;

(iv) evaluate and recommend possible uses of special currency reporting requirements under section 5326;

(v) determine emerging trends and methods in money laundering and other financial crimes;

(vi) support the conduct of intelligence or counter-intelligence activities, including analysis, to protect against international terrorism; and

(vii) support government initiatives against money laundering.

(D) Establish and maintain a financial crimes communications center to furnish law enforcement authorities with intelligence information related to emerging or ongoing investigations and undercover operations.

(E) Furnish research, analytical, and informational services to financial institutions, appropriate Federal regulatory agencies with regard to financial institutions, and appropriate Federal, State, local, and foreign law enforcement authorities, in accordance with policies and guidelines established by the Secretary of the Treasury or the Under Secretary of the Treasury for Enforcement, in the interest of detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes.

(F) Assist Federal, State, local, and foreign law enforcement and regulatory authorities in combatting the use of informal, nonbank networks and payment and barter system mechanisms that permit the transfer of funds or the equivalent of funds without records and without compliance with criminal and tax laws.

(G) Provide computer and data support and data analysis to the Secretary of the Treasury for tracking and controlling foreign assets.

(H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.

(I) Administer the requirements of subchapter II of chapter 53 of this title, chapter 2 of title I of Public Law 91-508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary of the Treasury.

(J) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.

(c) REQUIREMENTS RELATING TO MAINTENANCE AND USE OF DATA BANKS.—The Secretary of the Treasury shall establish and maintain operating procedures with respect to the government-wide

data access service and the financial crimes communications center maintained by FinCEN which provide—

(1) for the coordinated and efficient transmittal of information to, entry of information into, and withdrawal of information from, the data maintenance system maintained by FinCEN, including—

(A) the submission of reports through the Internet or other secure network, whenever possible;

(B) the cataloguing of information in a manner that facilitates rapid retrieval by law enforcement personnel of meaningful data; and

(C) a procedure that provides for a prompt initial review of suspicious activity reports and other reports, or such other means as the Secretary may provide, to identify information that warrants immediate action; and

(2) in accordance with section 552a of title 5 and the Right to Financial Privacy Act of 1978, appropriate standards and guidelines for determining—

(A) who is to be given access to the information maintained by FinCEN;

(B) what limits are to be imposed on the use of such information; and

(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the data maintenance system.

(d) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—There are authorized to be appropriated for FinCEN \$100,419,000 for fiscal year 2011 and such sums as may be necessary for each of the fiscal years 2012 and 2013.

(2) AUTHORIZATION FOR FUNDING KEY TECHNOLOGICAL IMPROVEMENTS IN MISSION-CRITICAL FINCEN SYSTEMS.—There are authorized to be appropriated for fiscal year 2005 the following amounts, which are authorized to remain available until expended:

(A) BSA DIRECT.—For technological improvements to provide authorized law enforcement and financial regulatory agencies with Web-based access to FinCEN data, to fully develop and implement the highly secure network required under section 362 of Public Law 107-56 to expedite the filing of, and reduce the filing costs for, financial institution reports, including suspicious activity reports, collected by FinCEN under chapter 53 and related provisions of law, and enable FinCEN to immediately alert financial institutions about suspicious activities that warrant immediate and enhanced scrutiny, and to provide and upgrade advanced information-sharing technologies to materially improve the Government's ability to exploit the information in the FinCEN data banks, \$16,500,000.

(B) ADVANCED ANALYTICAL TECHNOLOGIES.—To provide advanced analytical tools needed to ensure that the data collected by FinCEN under chapter 53 and related provisions of law are utilized fully and appropriately in safeguarding financial institutions and supporting the war on terrorism, \$5,000,000.

(C) DATA NETWORKING MODERNIZATION.—To improve the telecommunications infrastructure to support the improved capabilities of the FinCEN systems, \$3,000,000.

(D) ENHANCED COMPLIANCE CAPABILITY.—To improve the effectiveness of the Office of Compliance in FinCEN, \$3,000,000.

(E) DETECTION AND PREVENTION OF FINANCIAL CRIMES AND TERRORISM.—To provide development of, and training in the use of, technology to detect and prevent financial crimes and terrorism within and without the United States, \$8,000,000.

(e) REPORTS RELATING TO USE OF COLLECTED DATA.—

(1) IN GENERAL.—Not later than 1 year after the date of enactment of this subsection and every year thereafter, the Director shall submit to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on—

(A) intelligence products created by FinCEN on finance transactions for the proliferation of weapons from filings submitted pursuant to subchapter II of chapter 53;

(B) FinCEN's efforts to collaborate with law enforcement agencies, the intelligence community, and foreign financial intelligence units to maximize the use of data that is collected pursuant to subchapter II of chapter 53; and

(C) advisory notices issued to financial institutions (as defined under section 5312(a)) on financial activity related to the proliferation of weapons.

(2) SEPARATE PRESENTATION OF CLASSIFIED MATERIAL.—Any part of the report under paragraph (1) that involves information that is properly classified under criteria established by the President shall be submitted to the Congress separately in a classified annex.

(3) SUNSET.—No report is required under this subsection after the end of the 5-year period beginning on the date of enactment of this subsection.

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