

COORDINATING OVERSIGHT, UPGRADING AND INNOVATING TECHNOLOGY, AND EXAMINER REFORM ACT OF 2019

OCTOBER 21, 2019.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Ms. WATERS, from the Committee on Financial Services, submitted the following

R E P O R T

[To accompany H.R. 2514]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 2514) to make reforms to the Federal Bank Secrecy Act and anti-money laundering laws, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

CONTENTS

	Page
Purpose and Summary	18
Background and Need for Legislation	18
Section-by-Section Analysis	23
Hearings	34
Committee Consideration	34
Committee Votes	34
Statement of Oversight Findings and Recommendations of the Committee	36
Statement of Performance Goals and Objectives	36
New Budget Authority and CBO Cost Estimate	36
Committee Cost Estimate	42
Unfunded Mandate Statement	42
Advisory Committee	42
Committee Correspondence	42
Application of Law to the Legislative Branch	42
Earmark Statement	43
Duplication of Federal Programs	43
Changes to Existing Law	43

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019” or the “COUNTER Act of 2019”.

(b) **TABLE OF CONTENTS.**—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Bank Secrecy Act definition.

TITLE I—STRENGTHENING TREASURY

Sec. 101. Improving the definition and purpose of the Bank Secrecy Act.
Sec. 102. Special hiring authority.
Sec. 103. Civil Liberties and Privacy Officer.
Sec. 104. Civil Liberties and Privacy Council.
Sec. 105. International coordination.
Sec. 106. Treasury Attachés Program.
Sec. 107. Increasing technical assistance for international cooperation.
Sec. 108. FinCEN Domestic Liaisons.
Sec. 109. FinCEN Exchange.
Sec. 110. Study and strategy on trade-based money laundering.
Sec. 111. Study and strategy on de-risking.
Sec. 112. AML examination authority delegation study.
Sec. 113. Study and strategy on Chinese money laundering.

TITLE II—IMPROVING AML/CFT OVERSIGHT

Sec. 201. OECD pilot program on sharing of suspicious activity reports within a financial group.
Sec. 202. Training for examiners on AML/CFT.
Sec. 203. Sharing of compliance resources.
Sec. 204. GAO Study on feedback loops.
Sec. 205. FinCEN study on BSA value.
Sec. 206. Sharing of threat pattern and trend information.
Sec. 207. Modernization and upgrading whistleblower protections.
Sec. 208. Certain violators barred from serving on boards of United States financial institutions.
Sec. 209. Additional damages for repeat Bank Secrecy Act violators.
Sec. 210. Justice annual report on deferred and non-prosecution agreements.
Sec. 211. Return of profits and bonuses.
Sec. 212. Prohibition on tax deductions for attorney’s fees related to Bank Secrecy Act settlements and court costs.
Sec. 213. Application of Bank Secrecy Act to dealers in antiquities.
Sec. 214. Geographic targeting order.
Sec. 215. Study and revisions to currency transaction reports and suspicious activity reports.
Sec. 216. Streamlining requirements for currency transaction reports and suspicious activity reports.

TITLE III—MODERNIZING THE AML SYSTEM

Sec. 301. Encouraging innovation in BSA compliance.
Sec. 302. Innovation Labs.
Sec. 303. Innovation Council.
Sec. 304. Parallel runs rulemaking.
Sec. 305. FinCEN study on use of emerging technologies.

SEC. 2. BANK SECRECY ACT DEFINITION.

Section 5312(a) of title 31, United States Code, is amended by adding at the end the following:

“(7) **BANK SECRECY ACT.**—The term ‘Bank Secrecy act’ means—
“(A) section 21 of the Federal Deposit Insurance Act;
“(B) chapter 2 of title I of Public Law 91–508; and
“(C) this subchapter.”

TITLE I—STRENGTHENING TREASURY**SEC. 101. IMPROVING THE DEFINITION AND PURPOSE OF THE BANK SECRECY ACT.**

Section 5311 of title 31, United States Code, is amended—

- (1) by inserting “to protect our national security, to safeguard the integrity of the international financial system, and” before “to require”; and
- (2) by inserting “to law enforcement” before “in criminal”.

SEC. 102. SPECIAL HIRING AUTHORITY.

(a) **IN GENERAL.**—Section 310 of title 31, United States Code, is amended—

- (1) by redesignating subsection (d) as subsection (g); and
- (2) by inserting after subsection (c) the following:

“(d) **SPECIAL HIRING AUTHORITY.**—

“(1) **IN GENERAL.**—The Secretary of the Treasury may appoint, without regard to the provisions of sections 3309 through 3318 of title 5, candidates directly to positions in the competitive service (as defined in section 2102 of that title) in FinCEN.

“(2) **PRIMARY RESPONSIBILITIES.**—The primary responsibility of candidates appointed pursuant to paragraph (1) shall be to provide substantive support in

support of the duties described in subparagraphs (A), (B), (E), and (F) of subsection (b)(2).”.

(b) **REPORT.**—Not later than 360 days after the date of enactment of this Act, and every year thereafter for 7 years, the Director of the Financial Crimes Enforcement Network shall submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

(1) the number of new employees hired since the preceding report through the authorities described under section 310(d) of title 31, United States Code, along with position titles and associated pay grades for such hires; and

(2) a copy of any Federal Government survey of staff perspectives at the Office of Terrorism and Financial Intelligence, including findings regarding the Office and the Financial Crimes Enforcement Network from the most recently administered Federal Employee Viewpoint Survey.

SEC. 103. CIVIL LIBERTIES AND PRIVACY OFFICER.

(a) **APPOINTMENT OF OFFICERS.**—Not later than the end of the 3-month period beginning on the date of enactment of this Act, a Civil Liberties and Privacy Officer shall be appointed, from among individuals who are attorneys with expertise in data privacy laws—

(1) within each Federal functional regulator, by the head of the Federal functional regulator;

(2) within the Financial Crimes Enforcement Network, by the Secretary of the Treasury; and

(3) within the Internal Revenue Service Small Business and Self-Employed Tax Center, by the Secretary of the Treasury.

(b) **DUTIES.**—Each Civil Liberties and Privacy Officer shall, with respect to the applicable regulator, Network, or Center within which the Officer is located—

(1) be consulted each time Bank Secrecy Act or anti-money laundering regulations affecting civil liberties or privacy are developed or reviewed;

(2) be consulted on information-sharing programs, including those that provide access to personally identifiable information;

(3) ensure coordination and clarity between anti-money laundering, civil liberties, and privacy regulations;

(4) contribute to the evaluation and regulation of new technologies that may strengthen data privacy and the protection of personally identifiable information collected by each Federal functional regulator; and

(5) develop metrics of program success.

(c) **DEFINITIONS.**—For purposes of this section:

(1) **BANK SECRECY ACT.**—The term “Bank Secrecy Act” has the meaning given that term under section 5312 of title 31, United States Code.

(2) **FEDERAL FUNCTIONAL REGULATOR.**—The term “Federal functional regulator” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

SEC. 104. CIVIL LIBERTIES AND PRIVACY COUNCIL.

(a) **ESTABLISHMENT.**—There is established the Civil Liberties and Privacy Council (hereinafter in this section referred to as the “Council”), which shall consist of the Civil Liberties and Privacy Officers appointed pursuant to section 103.

(b) **CHAIR.**—The Director of the Financial Crimes Enforcement Network shall serve as the Chair of the Council.

(c) **DUTY.**—The members of the Council shall coordinate on activities related to their duties as Civil Liberties Privacy Officers, but may not supplant the individual agency determinations on civil liberties and privacy.

(d) **MEETINGS.**—The meetings of the Council—

(1) shall be at the call of the Chair, but in no case may the Council meet less than quarterly;

(2) may include open and partially closed sessions, as determined necessary by the Council; and

(3) shall include participation by public and private entities and law enforcement agencies.

(e) **REPORT.**—The Chair of the Council shall issue an annual report to the Congress on the program and policy activities, including the success of programs as measured by metrics of program success developed pursuant to section 103(b)(5), of the Council during the previous year and any legislative recommendations that the Council may have.

(f) **NONAPPLICABILITY OF FACA.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Council.

SEC. 105. INTERNATIONAL COORDINATION.

(a) **IN GENERAL.**—The Secretary of the Treasury shall work with the Secretary's foreign counterparts, including through the Financial Action Task Force, the International Monetary Fund, the World Bank, the Egmont Group of Financial Intelligence Units, the Organisation for Economic Co-operation and Development, and the United Nations, to promote stronger anti-money laundering frameworks and enforcement of anti-money laundering laws.

(b) **COOPERATION GOAL.**—In carrying out subsection (a), the Secretary of the Treasury may work directly with foreign counterparts and other organizations where the goal of cooperation can best be met.

(c) **INTERNATIONAL MONETARY FUND.**—

(1) **SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.**—Title XVI of the International Financial Institutions Act (22 U.S.C. 262p et seq.) is amended by adding at the end the following:

“SEC. 1629. SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.

“The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to support the increased use of the administrative budget of the Fund for technical assistance that strengthens the capacity of Fund members to prevent money laundering and the financing of terrorism.”

(2) **NATIONAL ADVISORY COUNCIL REPORT TO CONGRESS.**—The Chairman of the National Advisory Council on International Monetary and Financial Policies shall include in the report required by section 1701 of the International Financial Institutions Act (22 U.S.C. 262r) a description of—

(A) the activities of the International Monetary Fund in the most recently completed fiscal year to provide technical assistance that strengthens the capacity of Fund members to prevent money laundering and the financing of terrorism, and the effectiveness of the assistance; and

(B) the efficacy of efforts by the United States to support such technical assistance through the use of the Fund's administrative budget, and the level of such support.

(3) **SUNSET.**—Effective on the date that is the end of the 4-year period beginning on the date of enactment of this Act, section 1629 of the International Financial Institutions Act, as added by paragraph (1), is repealed.

SEC. 106. TREASURY ATTACHÉS PROGRAM.

(a) **IN GENERAL.**—Title 31, United States Code, is amended by inserting after section 315 the following:

“§ 316. Treasury Attachés Program

“(a) **IN GENERAL.**—There is established the Treasury Attachés Program, under which the Secretary of the Treasury shall appoint employees of the Department of the Treasury, after nomination by the Director of the Financial Crimes Enforcement Network (‘FinCEN’), as a Treasury attaché, who shall—

“(1) be knowledgeable about the Bank Secrecy Act and anti-money laundering issues;

“(2) be co-located in a United States embassy;

“(3) perform outreach with respect to Bank Secrecy Act and anti-money laundering issues;

“(4) establish and maintain relationships with foreign counterparts, including employees of ministries of finance, central banks, and other relevant official entities;

“(5) conduct outreach to local and foreign financial institutions and other commercial actors, including—

“(A) information exchanges through FinCEN and FinCEN programs; and

“(B) soliciting buy-in and cooperation for the implementation of—

“(i) United States and multilateral sanctions; and

“(ii) international standards on anti-money laundering and the countering of the financing of terrorism; and

“(6) perform such other actions as the Secretary determines appropriate.

(b) **NUMBER OF ATTACHÉS.**—The number of Treasury attachés appointed under this section at any one time shall be not fewer than 6 more employees than the number of employees of the Department of the Treasury serving as Treasury attachés on March 1, 2019.

(c) **COMPENSATION.**—Each Treasury attaché appointed under this section and located at a United States embassy shall receive compensation at the higher of—

“(1) the rate of compensation provided to a Foreign Service officer at a comparable career level serving at the same embassy; or

“(2) the rate of compensation the Treasury attaché would otherwise have received, absent the application of this subsection.

“(d) BANK SECRECY ACT DEFINED.—In this section, the term ‘Bank Secrecy Act’ has the meaning given that term under section 5312.”

(b) CLERICAL AMENDMENT.—The table of contents for chapter 3 of title 31, United States Code, is amended by inserting after the item relating to section 315 the following:

“316. Treasury Attachés Program.”

SEC. 107. INCREASING TECHNICAL ASSISTANCE FOR INTERNATIONAL COOPERATION.

(a) IN GENERAL.—There is authorized to be appropriated for each of fiscal years 2020 through 2024 to the Secretary of the Treasury for purposes of providing technical assistance that promotes compliance with international standards and best practices, including in particular those aimed at the establishment of effective anti-money laundering and countering the financing of terrorism regimes, in an amount equal to twice the amount authorized for such purpose for fiscal year 2019.

(b) ACTIVITY AND EVALUATION REPORT.—Not later than 360 days after enactment of this Act, and every year thereafter for five years, the Secretary of the Treasury shall issue a report to the Congress on the assistance (as described under subsection (a)) of the Office of Technical Assistance of the Department of the Treasury containing—

(1) a narrative detailing the strategic goals of the Office in the previous year, with an explanation of how technical assistance provided in the previous year advances the goals;

(2) a description of technical assistance provided by the Office in the previous year, including the objectives and delivery methods of the assistance;

(3) a list of beneficiaries and providers (other than Office staff) of the technical assistance;

(4) a description of how technical assistance provided by the Office complements, duplicates, or otherwise affects or is affected by technical assistance provided by the international financial institutions (as defined under section 1701(c) of the International Financial Institutions Act); and

(5) a copy of any Federal Government survey of staff perspectives at the Office of Technical Assistance, including any findings regarding the Office from the most recently administered Federal Employee Viewpoint Survey.

SEC. 108. FINCEN DOMESTIC LIAISONS.

Section 310 of title 31, United States Code, as amended by section 102, is further amended by inserting after subsection (d) the following:

“(e) FINCEN DOMESTIC LIAISONS.—

“(1) IN GENERAL.—The Director of FinCEN shall appoint at least 6 senior FinCEN employees as FinCEN Domestic Liaisons, who shall—

“(A) each be assigned to focus on a specific region of the United States;

“(B) be located at an office in such region (or co-located at an office of the Board of Governors of the Federal Reserve System in such region); and

“(C) perform outreach to BSA officers at financial institutions (including non-bank financial institutions) and persons who are not financial institutions, especially with respect to actions taken by FinCEN that require specific actions by, or have specific effects on, such institutions or persons, as determined by the Director.

“(2) DEFINITIONS.—In this subsection:

“(A) BSA OFFICER.—The term ‘BSA officer’ means an employee of a financial institution whose primary job responsibility involves compliance with the Bank Secrecy Act, as such term is defined under section 5312.

“(B) FINANCIAL INSTITUTION.—The term ‘financial institution’ has the meaning given that term under section 5312.”

SEC. 109. FINCEN EXCHANGE.

Section 310 of title 31, United States Code, as amended by section 108, is further amended by inserting after subsection (e) the following:

“(f) FINCEN EXCHANGE.—

“(1) ESTABLISHMENT.—The FinCEN Exchange is hereby established within FinCEN, which shall consist of the FinCEN Exchange program of FinCEN in existence on the day before the date of enactment of this paragraph.

“(2) PURPOSE.—The FinCEN Exchange shall facilitate a voluntary public-private information sharing partnership among law enforcement, financial institutions, and FinCEN to—

“(A) effectively and efficiently combat money laundering, terrorism financing, organized crime, and other financial crimes;

“(B) protect the financial system from illicit use; and

- “(C) promote national security.
- “(3) REPORT.—
- “(A) IN GENERAL.—Not later than one year after the date of enactment of this subsection, and annually thereafter for the next five years, the Secretary of the Treasury 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 containing—
- “(i) an analysis of the efforts undertaken by the FinCEN Exchange and the results of such efforts;
- “(ii) an analysis of the extent and effectiveness of the FinCEN Exchange, including any benefits realized by law enforcement from partnership with financial institutions; and
- “(iii) any legislative, administrative, or other recommendations the Secretary may have to strengthen FinCEN Exchange efforts.
- “(B) CLASSIFIED ANNEX.—Each report under subparagraph (A) may include a classified annex.
- “(4) INFORMATION SHARING REQUIREMENT.—Information shared pursuant to this subsection shall be shared in compliance with all other applicable Federal laws and regulations.
- “(5) RULE OF CONSTRUCTION.—Nothing under this subsection may be construed to create new information sharing authorities related to the Bank Secrecy Act (as such term is defined under section 5312 of title 31, United States Code).
- “(6) FINANCIAL INSTITUTION DEFINED.—In this subsection, the term ‘financial institution’ has the meaning given that term under section 5312.”.

SEC. 110. STUDY AND STRATEGY ON TRADE-BASED MONEY LAUNDERING.

- (a) STUDY.—The Secretary of the Treasury shall carry out a study, in consultation with appropriate private sector stakeholders and Federal departments and agencies, on trade-based money laundering.
- (b) REPORT.—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary shall issue a report to the Congress containing—
- (1) all findings and determinations made in carrying out the study required under subsection (a); and
- (2) proposed strategies to combat trade-based money laundering.
- (c) CLASSIFIED ANNEX.—The report required under this section may include a classified annex.
- (d) CONTRACTING AUTHORITY.—The Secretary may contract with a private third party to carry out the study required under this section.

SEC. 111. STUDY AND STRATEGY ON DE-RISKING.

- (a) REVIEW.—The Secretary of the Treasury, in consultation with appropriate private sector stakeholders, examiners, and the Federal functional regulators (as defined under section 103) and other relevant stakeholders, shall undertake a formal review of—
- (1) any adverse consequences of financial institutions de-risking entire categories of relationships, including charities, embassy accounts, money services businesses (as defined under section 1010.100(ff) of title 31, Code of Federal Regulations) and their agents, countries, international and domestic regions, and respondent banks;
- (2) the reasons why financial institutions are engaging in de-risking;
- (3) the association with and effects of de-risking on money laundering and financial crime actors and activities;
- (4) the most appropriate ways to promote financial inclusion, particularly with respect to developing countries, while maintaining compliance with the Bank Secrecy Act, including an assessment of policy options to—
- (A) more effectively tailor Federal actions and penalties to the size of foreign financial institutions and any capacity limitations of foreign governments; and
- (B) reduce compliance costs that may lead to the adverse consequences described in paragraph (1);
- (5) formal and informal feedback provided by examiners that may have led to de-risking; and
- (6) the relationship between resources dedicated to compliance and overall sophistication of compliance efforts at entities that may be experiencing de-risking versus those that have not experienced de-risking.
- (b) DE-RISKING STRATEGY.—The Secretary shall develop a strategy to reduce de-risking and adverse consequences related to de-risking.

(c) **REPORT.**—Not later than the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary, in consultation with the Federal functional regulators and other relevant stakeholders, shall issue a report to the Congress containing—

- (1) all findings and determinations made in carrying out the study required under subsection (a); and
- (2) the strategy developed pursuant to subsection (b).

(d) **DEFINITIONS.**—In this section:

- (1) **DE-RISKING.**—The term “de-risking” means the wholesale closing of accounts or limiting of financial services for a category of customer due to unsubstantiated risk as it relates to compliance with the Bank Secrecy Act.
- (2) **BSA TERMS.**—The terms “Bank Secrecy Act” and “financial institution” have the meaning given those terms, respectively, under section 5312 off title 31, United States Code.

SEC. 112. AML EXAMINATION AUTHORITY DELEGATION STUDY.

(a) **STUDY.**—The Secretary of the Treasury shall carry out a study on the Secretary’s delegation of examination authority under the Bank Secrecy Act, including—

- (1) an evaluation of the efficacy of the delegation, especially with respect to the mission of the Bank Secrecy Act;
- (2) whether the delegated agencies have appropriate resources to perform their delegated responsibilities; and
- (3) whether the examiners in delegated agencies have sufficient training and support to perform their responsibilities.

(b) **REPORT.**—Not later than one year after the date of enactment of this Act, the Secretary of the Treasury 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 containing—

- (1) all findings and determinations made in carrying out the study required under subsection (a); and
- (2) recommendations to improve the efficacy of delegation authority, including the potential for de-delegation of any or all such authority where it may be appropriate.

(c) **BANK SECRECY ACT DEFINED.**—The term “Bank Secrecy Act” has the meaning given that term under section 5312 off title 31, United States Code.

SEC. 113. STUDY AND STRATEGY ON CHINESE MONEY LAUNDERING.

(a) **STUDY.**—The Secretary of the Treasury shall carry out a study on the extent and effect of Chinese money laundering activities in the United States and worldwide.

(b) **STRATEGY TO COMBAT CHINESE MONEY LAUNDERING.**—Upon the completion of the study required under subsection (a), the Secretary shall, in consultation with such other Federal departments and agencies as the Secretary determines appropriate, develop a strategy to combat Chinese money laundering activities.

(c) **REPORT.**—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Secretary of the Treasury shall issue a report to Congress containing—

- (1) all findings and determinations made in carrying out the study required under subsection (a); and
- (2) the strategy developed under subsection (b).

TITLE II—IMPROVING AML/CFT OVERSIGHT

SEC. 201. OECD PILOT PROGRAM ON SHARING OF SUSPICIOUS ACTIVITY REPORTS WITHIN A FINANCIAL GROUP.

(a) **IN GENERAL.**—

- (1) **SHARING WITH FOREIGN BRANCHES AND AFFILIATES.**—Section 5318(g) of title 31, United States Code, is amended by adding at the end the following:

“(5) **OECD PILOT PROGRAM ON SHARING WITH FOREIGN BRANCHES, SUBSIDIARIES, AND AFFILIATES.**—

“(A) **IN GENERAL.**—Not later than 180 days after the date of the enactment of this paragraph, the Secretary of the Treasury shall issue rules, subject to such controls and restrictions as the Director of the Financial Crimes Enforcement Network determines appropriate, establishing the pilot program described under subparagraph (B). In prescribing such rules, the Secretary shall ensure that the sharing of information described under such subparagraph (B) is subject to appropriate standards and requirements re-

garding data security and the confidentiality of personally identifiable information.

“(B) PILOT PROGRAM DESCRIBED.—The pilot program required under this paragraph shall—

“(i) permit any financial institution with a reporting obligation under this subsection to share reports (and information on such reports) under this subsection with the institution’s foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks, notwithstanding any other provision of law except subparagraph (C), but only if such foreign branch, subsidiary, or affiliate is located in a jurisdiction that is a member of the Organisation for Economic Co-operation and Development;

“(ii) terminate on the date that is five years after the date of enactment of this paragraph, except that the Secretary may extend the pilot program for up to two years upon submitting a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

“(I) a certification that the extension is in the national interest of the United States, with a detailed explanation of the reasons therefor;

“(II) an evaluation of the usefulness of the pilot program, including a detailed analysis of any illicit activity identified or prevented as a result of the program; and

“(III) a detailed legislative proposal providing for a long-term extension of the pilot program activities, including expected budgetary resources for the activities, if the Secretary determines that a long-term extension is appropriate.

“(C) PROHIBITION INVOLVING CERTAIN JURISDICTIONS.—In issuing the regulations required under subparagraph (A), the Secretary may not permit a financial institution to share information on reports under this subsection with a foreign branch, subsidiary, or affiliate located in a jurisdiction that—

“(i) is subject to countermeasures imposed by the Federal Government; or

“(ii) the Secretary has determined cannot reasonably protect the privacy and confidentiality of such information.

“(D) IMPLEMENTATION UPDATES.—Not later than 360 days after the date rules are issued under subparagraph (A), and annually thereafter for three years, the Secretary, or the Secretary’s designee, shall brief the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on—

“(i) the degree of any information sharing permitted under the pilot program, and a description of criteria used by the Secretary to evaluate the appropriateness of the information sharing;

“(ii) the effectiveness of the pilot program in identifying or preventing the violation of a United States law or regulation, and mechanisms that may improve such effectiveness; and

“(iii) any recommendations to amend the design of the pilot program, or to include specific non-OECD jurisdictions in the program.

“(6) TREATMENT OF FOREIGN JURISDICTION-ORIGINATED REPORTS.—A report received by a financial institution from a foreign affiliate with respect to a suspicious transaction relevant to a possible violation of law or regulation shall be subject to the same confidentiality requirements provided under this subsection for a report of a suspicious transaction described under paragraph (1).”

(2) NOTIFICATION PROHIBITIONS.—Section 5318(g)(2)(A) of title 31, United States Code, is amended—

(A) in clause (i), by inserting after “transaction has been reported” the following: “or otherwise reveal any information that would reveal that the transaction has been reported, including materials prepared or used by the financial institution for the purpose of identifying and detecting potentially suspicious activity”; and

(B) in clause (ii), by inserting after “transaction has been reported,” the following: “or otherwise reveal any information that would reveal that the transaction has been reported, including materials prepared or used by the financial institution for the purpose of identifying and detecting potentially suspicious activity,”.

(b) RULEMAKING.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Secretary of the Treasury shall issue regulations to carry out the amendments made by this section.

SEC. 202. TRAINING FOR EXAMINERS ON AML/CFT.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“§ 5333. AML/CFT Training

“(a) TRAINING REQUIREMENT.—Each Federal examiner reviewing compliance with the Bank Secrecy Act shall attend at least 10 hours of annual training on anti-money laundering (AML) and the countering of the financing of terrorism (CFT), including—

“(1) potential risk profiles and red flags that may be encountered during examinations;

“(2) financial crime patterns and trends;

“(3) the high-level context for why AML and CFT programs are necessary for law enforcement agencies and other national security agencies, and what risks the programs seek to mitigate; and

“(4) de-risking and its effect on the provision of financial services.

“(b) TRAINING MATERIALS AND STANDARDS.—The Secretary of the Treasury shall, in consultation with the Financial Institutions Examination Council, the Financial Crimes Enforcement Network, and State, Federal, and Tribal law enforcement agencies, establish appropriate training materials and standards for use in the training required under subsection (a).”

(b) CLERICAL AMENDMENT.—The table of contents for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5332 the following:

“5333. AML/CFT Training.”

SEC. 203. SHARING OF COMPLIANCE RESOURCES.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended by adding at the end the following:

“(c) SHARING OF COMPLIANCE RESOURCES.—

“(1) SHARING PERMITTED.—Two or more financial institutions may enter into collaborative arrangements in order to more efficiently comply with the requirements of this subchapter.

“(2) OUTREACH.—The Secretary of the Treasury and the appropriate supervising agencies shall carry out an outreach program to provide financial institutions with information, including best practices, with respect to the sharing of resources described under paragraph (1).”

(b) RULE OF CONSTRUCTION.—The amendment made by subsection (a) may not be construed to require financial institutions to share resources.

SEC. 204. GAO STUDY ON FEEDBACK LOOPS.

(a) STUDY.—The Comptroller General of the United States shall carry out a study on—

(1) best practices within the United States Government for providing feedback (“feedback loop”) to relevant parties (including regulated private entities) on the usage and usefulness of personally identifiable information (“PII”), sensitive-but-unclassified (“SBU”) data, or similar information provided by such parties to Government users of such information and data (including law enforcement or regulators); and

(2) any practices or standards inside or outside the United States for providing feedback through sensitive information and public-private partnership information sharing efforts, specifically related to efforts to combat money laundering and other forms of illicit finance.

(b) REPORT.—Not later than the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall issue a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing—

(1) all findings and determinations made in carrying out the study required under subsection (a);

(2) with respect to each of paragraphs (1) and (2) of subsection (a), any best practices or significant concerns identified by the Comptroller General, and their applicability to public-private partnerships and feedback loops with respect to U.S. efforts to combat money laundering and other forms of illicit finance; and

(3) recommendations to reduce or eliminate any unnecessary Government collection of the information described under subsection (a)(1).

SEC. 205. FINCEN STUDY ON BSA VALUE.

(a) STUDY.—The Director of the Financial Crimes Enforcement Network shall carry out a study on Bank Secrecy Act value.

(b) REPORT.—Not later than the end of the 30-day period beginning on the date the study under subsection (a) is completed, the Director shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing all findings and determinations made in carrying out the study required under this section.

(c) CLASSIFIED ANNEX.—The report required under this section may include a classified annex, if the Director determines it appropriate.

(d) BANK SECRECY ACT DEFINED.—For purposes of this section, the term “Bank Secrecy Act” has the meaning given that term under section 5312 of title 31, United States Code.

SEC. 206. SHARING OF THREAT PATTERN AND TREND INFORMATION.

Section 5318(g) of title 31, United States Code, as amended by section 201(a)(1), is further amended by adding at the end the following:

“(7) SHARING OF THREAT PATTERN AND TREND INFORMATION.—

“(A) SAR ACTIVITY REVIEW.—The Director of the Financial Crimes Enforcement Network shall restart publication of the ‘SAR Activity Review – Trends, Tips & Issues’, on not less than a semi-annual basis, to provide meaningful information about the preparation, use, and value of reports filed under this subsection by financial institutions, as well as other reports filed by financial institutions under the Bank Secrecy Act.

“(B) INCLUSION OF TYPOLOGIES.—In each publication described under subparagraph (A), the Director shall provide financial institutions with typologies, including data that can be adapted in algorithms (including for artificial intelligence and machine learning programs) where appropriate, on emerging money laundering and counter terror financing threat patterns and trends.

“(C) TYPOLOGY DEFINED.—For purposes of this paragraph, the term ‘typology’ means the various techniques used to launder money or finance terrorism.”.

SEC. 207. MODERNIZATION AND UPGRADING WHISTLEBLOWER PROTECTIONS.

(a) REWARDS.—Section 5323(d) of title 31, United States Code, is amended to read as follows:

“(d) SOURCE OF REWARDS.—For the purposes of paying a reward under this section, the Secretary may use, without further appropriation, criminal fine, civil penalty, or forfeiture amounts recovered based on the original information with respect to which the reward is being paid.”.

(b) WHISTLEBLOWER INCENTIVES.—

Chapter 53 of title 31, United States Code, is amended—

(1) by inserting after section 5323 the following:

“§ 5323A. Whistleblower incentives

“(a) DEFINITIONS.—In this section:

“(1) COVERED JUDICIAL OR ADMINISTRATIVE ACTION.—The term ‘covered judicial or administrative action’ means any judicial or administrative action brought by FinCEN under the Bank Secrecy Act that results in monetary sanctions exceeding \$1,000,000.

“(2) FINCEN.—The term ‘FinCEN’ means the Financial Crimes Enforcement Network.

“(3) MONETARY SANCTIONS.—The term ‘monetary sanctions’, when used with respect to any judicial or administrative action, means—

“(A) any monies, including penalties, disgorgement, and interest, ordered to be paid; and

“(B) any monies deposited into a disgorgement fund as a result of such action or any settlement of such action.

“(4) ORIGINAL INFORMATION.—The term ‘original information’ means information that—

“(A) is derived from the independent knowledge or analysis of a whistleblower;

“(B) is not known to FinCEN from any other source, unless the whistleblower is the original source of the information; and

“(C) is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.

“(5) RELATED ACTION.—The term ‘related action’, when used with respect to any judicial or administrative action brought by FinCEN, means any judicial or administrative action that is based upon original information provided by a whistleblower that led to the successful enforcement of the action.

“(6) SECRETARY.—The term ‘Secretary’ means the Secretary of the Treasury.

“(7) WHISTLEBLOWER.—The term ‘whistleblower’ means any individual who provides, or 2 or more individuals acting jointly who provide, information relating to a violation of laws enforced by FinCEN, in a manner established, by rule or regulation, by FinCEN.

“(b) AWARDS.—

“(1) IN GENERAL.—In any covered judicial or administrative action, or related action, the Secretary, under such rules as the Secretary may issue and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to FinCEN that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action.

“(2) SOURCE OF AWARDS.—For the purposes of paying any award under paragraph (1), the Secretary may use, without further appropriation, monetary sanction amounts recovered based on the original information with respect to which the award is being paid.

“(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

“(1) DETERMINATION OF AMOUNT OF AWARD.—

“(A) DISCRETION.—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Secretary.

“(B) CRITERIA.—In responding to a disclosure and determining the amount of an award made, FinCEN staff shall meet with the whistleblower to discuss evidence disclosed and rebuttals to the disclosure, and shall take into consideration—

“(i) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

“(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

“(iii) the mission of FinCEN in deterring violations of the law by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

“(iv) such additional relevant factors as the Secretary may establish by rule.

“(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

“(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to FinCEN, a member, officer, or employee of—

“(i) an appropriate regulatory agency;

“(ii) the Department of Justice;

“(iii) a self-regulatory organization; or

“(iv) a law enforcement organization;

“(B) to any whistleblower who is convicted of a criminal violation, or who the Secretary has a reasonable basis to believe committed a criminal violation, related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

“(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the Bank Secrecy Act and for whom such submission would be contrary to its requirements; or

“(D) to any whistleblower who fails to submit information to FinCEN in such form as the Secretary may, by rule, require.

“(3) STATEMENT OF REASONS.—For any decision granting or denying an award, the Secretary shall provide to the whistleblower a statement of reasons that includes findings of fact and conclusions of law for all material issues.

“(d) REPRESENTATION.—

“(1) PERMITTED REPRESENTATION.—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

“(2) REQUIRED REPRESENTATION.—

“(A) IN GENERAL.—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

“(B) DISCLOSURE OF IDENTITY.—Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the Secretary may require, directly or through counsel for the whistleblower.

“(e) APPEALS.—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Secretary. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Secretary. The court shall review the determination made by the Secretary in accordance with section 706 of title 5.

“(f) EMPLOYEE PROTECTIONS.—The Secretary of the Treasury shall issue regulations protecting a whistleblower from retaliation, which shall be as close as practicable to the employee protections provided for under section 1057 of the Consumer Financial Protection Act of 2010.”; and

(2) in the table of contents for such chapter, by inserting after the item relating to section 5323 the following new item:

“5323A. Whistleblower incentives.”.

SEC. 208. CERTAIN VIOLATORS BARRED FROM SERVING ON BOARDS OF UNITED STATES FINANCIAL INSTITUTIONS.

Section 5321 of title 31, United States Code, is amended by adding at the end the following:

“(f) CERTAIN VIOLATORS BARRED FROM SERVING ON BOARDS OF UNITED STATES FINANCIAL INSTITUTIONS.—

“(1) IN GENERAL.—An individual found to have committed an egregious violation of a provision of (or rule issued under) the Bank Secrecy Act shall be barred from serving on the board of directors of a United States financial institution for a 10-year period beginning on the date of such finding.

“(2) EGREGIOUS VIOLATION DEFINED.—With respect to an individual, the term ‘egregious violation’ means—

“(A) a felony criminal violation for which the individual was convicted; and

“(B) a civil violation where the individual willfully committed such violation and the violation facilitated money laundering or the financing of terrorism.”.

SEC. 209. ADDITIONAL DAMAGES FOR REPEAT BANK SECRECY ACT VIOLATORS.

(a) IN GENERAL.—Section 5321 of title 31, United States Code, as amended by section 208, is further amended by adding at the end the following:

“(g) ADDITIONAL DAMAGES FOR REPEAT VIOLATORS.—In addition to any other fines permitted by this section and section 5322, with respect to a person who has previously been convicted of a criminal provision of (or rule issued under) the Bank Secrecy Act or who has admitted, as part of a deferred- or non-prosecution agreement, to having previously committed a violation of a criminal provision of (or rule issued under) the Bank Secrecy Act, the Secretary may impose an additional civil penalty against such person for each additional such violation in an amount equal to up three times the profit gained or loss avoided by such person as a result of the violation.”.

(b) PROSPECTIVE APPLICATION OF AMENDMENT.—For purposes of determining whether a person has committed a previous violation under section 5321(g) of title 31, United States Code, such determination shall only include violations occurring after the date of enactment of this Act.

SEC. 210. JUSTICE ANNUAL REPORT ON DEFERRED AND NON-PROSECUTION AGREEMENTS.

(a) ANNUAL REPORT.—The Attorney General shall issue an annual report, every year for the five years beginning on the date of enactment of this Act, to the Committees on Financial Services and the Judiciary of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and the Judiciary of the Senate containing—

(1) a list of deferred prosecution agreements and non-prosecution agreements that the Attorney General has entered into during the previous year with any person with respect to a violation or suspected violation of the Bank Secrecy Act;

(2) the justification for entering into each such agreement;

(3) the list of factors that were taken into account in determining that the Attorney General should enter into each such agreement; and

(4) the extent of coordination the Attorney General conducted with the Financial Crimes Enforcement Network prior to entering into each such agreement.

(b) CLASSIFIED ANNEX.—Each report under subsection (a) may include a classified annex.

(c) BANK SECRECY ACT DEFINED.—For purposes of this section, the term “Bank Secrecy Act” has the meaning given that term under section 5312 of title 31, United States Code.

SEC. 211. RETURN OF PROFITS AND BONUSES.

(a) IN GENERAL.—Section 5322 of title 31, United States Code, is amended by adding at the end the following:

“(e) RETURN OF PROFITS AND BONUSES.—A person convicted of violating a provision of (or rule issued under) the Bank Secrecy Act shall—

“(1) in addition to any other fine under this section, be fined in an amount equal to the profit gained by such person by reason of such violation, as determined by the court; and

“(2) if such person is an individual who was a partner, director, officer, or employee of a financial institution at the time the violation occurred, repay to such financial institution any bonus paid to such individual during the Federal fiscal year in which the violation occurred or the Federal fiscal year after which the violation occurred.”.

(b) RULE OF CONSTRUCTION.—The amendment made by subsection (a) may not be construed to prohibit a financial institution from requiring the repayment of a bonus paid to a partner, director, officer, or employee if the financial institution determines that the partner, director, officer, or employee engaged in unethical, but non-criminal, activities.

SEC. 212. PROHIBITION ON TAX DEDUCTIONS FOR ATTORNEY'S FEES RELATED TO BANK SECRECY ACT SETTLEMENTS AND COURT COSTS.

Section 162(f) of the Internal Revenue Code of 1986 is amended by adding at the end the following:

“(7) VIOLATIONS OF THE BANK SECRECY ACT.—In the case of a payment described in paragraph (1) that is in relation to any violation of the Bank Secrecy Act (as defined under section 5312 of title 31, United States Code), no deduction shall be allowed under this chapter for attorney’s fees related to such payment.”.

SEC. 213. APPLICATION OF BANK SECRECY ACT TO DEALERS IN ANTIQUITIES.

(a) IN GENERAL.—Section 5312(a)(2) of title 31, United States Code, is amended—

- (1) in subparagraph (Y), by striking “or” at the end;
- (2) by redesignating subparagraph (Z) as subparagraph (AA); and
- (3) by inserting after subsection (Y) the following:

“(Z) a person trading or acting as an intermediary in the trade of antiquities, including an advisor, consultant or any other person who engages as a business in the solicitation of the sale of antiquities; or”.

(b) STUDY ON THE FACILITATION OF MONEY LAUNDERING AND TERROR FINANCE THROUGH THE TRADE OF WORKS OF ART OR ANTIQUITIES.—

(1) STUDY.—The Secretary of the Treasury, in coordination with Federal Bureau of Investigation, the Attorney General, and Homeland Security Investigations, shall perform a study on the facilitation of money laundering and terror finance through the trade of works of art or antiquities, including an analysis of—

(A) the extent to which the facilitation of money laundering and terror finance through the trade of works of art or antiquities may enter or affect the financial system of the United States, including any qualitative data or statistics;

(B) whether thresholds should apply in determining which entities to regulate;

(C) an evaluation of which markets, by size, domestic or international geographical locations, or otherwise, should be subject to regulations;

(D) an evaluation of whether certain exemptions should apply; and

(E) any other points of study or analysis the Secretary determines necessary or appropriate.

(2) REPORT.—Not later than the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall issue a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing all findings and determinations made in carrying out the study required under paragraph (1).

(c) RULEMAKING.—Not later than the end of the 180-day period beginning on the date the Secretary issues the report required under subsection (b)(2), the Secretary shall issue regulations to carry out the amendments made by subsection (a).

SEC. 214. GEOGRAPHIC TARGETING ORDER.

The Secretary of the Treasury shall issue a geographic targeting order, similar to the order issued by the Financial Crimes Enforcement Network on November 15, 2018, that—

- (1) applies to commercial real estate to the same extent, with the exception of having the same thresholds, as the order issued by FinCEN on November 15, 2018, applies to residential real estate; and
- (2) establishes a specific threshold for commercial real estate.

SEC. 215. STUDY AND REVISIONS TO CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITY REPORTS.

(a) CURRENCY TRANSACTION REPORTS.—

(1) CTR INDEXED FOR INFLATION.—

(A) IN GENERAL.—Every 5 years after the date of enactment of this Act, the Secretary of the Treasury shall revise regulations issued with respect to section 5313 of title 31, United States Code, to update each \$10,000 threshold amount in such regulation to reflect the change in the Consumer Price Index for All Urban Consumers published by the Department of Labor, rounded to the nearest \$100. For purposes of calculating the change described in the previous sentence, the Secretary shall use \$10,000 as the base amount and the date of enactment of this Act as the base date.

(B) EXCEPTION.—Notwithstanding subparagraph (A), the Secretary may make appropriate adjustments to the threshold amounts described under subparagraph (A) in high-risk areas (e.g., High Intensity Financial Crime Areas or HIFCAs), if the Secretary has demonstrable evidence that shows a threshold raise would increase serious crimes, such as trafficking, or endanger national security.

(2) GAO CTR STUDY.—

(A) STUDY.—The Comptroller General of the United States shall carry out a study of currency transaction reports. Such study shall include—

- (i) a review (carried out in consultation with the Secretary of the Treasury, the Financial Crimes Enforcement Network, the United States Attorney General, the State Attorneys General, and State, Tribal, and local law enforcement) of the effectiveness of the current currency transaction reporting regime;
- (ii) an analysis of the importance of currency transaction reports to law enforcement; and
- (iii) an analysis of the effects of raising the currency transaction report threshold.

(B) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Comptroller General shall issue a report to the Secretary of the Treasury and the Congress containing—

- (i) all findings and determinations made in carrying out the study required under subparagraph (A); and
- (ii) recommendations for improving the current currency transaction reporting regime.

(b) MODIFIED SARs STUDY AND DESIGN.—

(1) STUDY.—The Director of the Financial Crimes Enforcement Network shall carry out a study, in consultation with industry stakeholders (including community banks and credit unions), regulators, and law enforcement, of the design of a modified suspicious activity report form for certain customers and activities. Such study shall include—

(A) an examination of appropriate optimal SARs thresholds to determine the level at which a modified SARs form could be employed;

(B) an evaluation of which customers or transactions would be appropriate for a modified SAR, including—

- (i) seasoned business customers;
- (ii) financial technology (Fintech) firms;
- (iii) structuring transactions; and
- (iv) any other customer or transaction that may be appropriate for a modified SAR; and

(C) an analysis of the most effective methods to reduce the regulatory burden imposed on financial institutions in complying with the Bank Secrecy Act, including an analysis of the effect of—

- (i) modifying thresholds;
- (ii) shortening forms;
- (iii) combining Bank Secrecy Act forms;
- (iv) filing reports in periodic batches; and
- (v) any other method that may reduce the regulatory burden.

(2) STUDY CONSIDERATIONS.—In carrying out the study required under paragraph (1), the Director shall seek to balance law enforcement priorities, regulatory burdens experienced by financial institutions, and the requirement for reports to have a “high degree of usefulness to law enforcement” under the Bank Secrecy Act.

(3) REPORT.—Not later than the end of the 1-year period beginning on the date of enactment of this Act, the Director shall issue a report to Congress containing—

(A) all findings and determinations made in carrying out the study required under subsection (a); and

(B) sample designs of modified SARs forms based on the study results.

(4) CONTRACTING AUTHORITY.—The Director may contract with a private third-party to carry out the study required under this subsection.

(c) DEFINITIONS.—For purposes of this section:

(1) BANK SECRECY ACT.—The term “Bank Secrecy Act” has the meaning given that term under section 5312 of title 31, United States Code.

(2) REGULATORY BURDEN.—The term “regulatory burden” means the man-hours to complete filings, cost of data collection and analysis, and other considerations of chapter 35 of title 44, United States Code (commonly referred to as the Paperwork Reduction Act).

(3) SAR; SUSPICIOUS ACTIVITY REPORT.—The term “SAR” and “suspicious activity report” mean a report of a suspicious transaction under section 5318(g) of title 31, United States Code.

(4) SEASONED BUSINESS CUSTOMER.—The term “seasoned business customer”, shall have such meaning as the Secretary of the Treasury shall prescribe, which shall include any person that—

(A) is incorporated or organized under the laws of the United States or any State, or is registered as, licensed by, or otherwise eligible to do business within the United States, a State, or political subdivision of a State;

(B) has maintained an account with a financial institution for a length of time as determined by the Secretary; and

(C) meet such other requirements as the Secretary may determine necessary or appropriate.

SEC. 216. STREAMLINING REQUIREMENTS FOR CURRENCY TRANSACTION REPORTS AND SUSPICIOUS ACTIVITY REPORTS.

(a) REVIEW.—The Secretary of the Treasury (in consultation with Federal law enforcement agencies, the Director of National Intelligence, and the Federal functional regulators and in consultation with other relevant stakeholders) shall undertake a formal review of the current financial institution reporting requirements under the Bank Secrecy Act and its implementing regulations and propose changes to further reduce regulatory burdens, and ensure that the information provided is of a “high degree of usefulness” to law enforcement, as set forth under section 5311 of title 31, United States Code.

(b) CONTENTS.—The review required under subsection (a) shall include a study of—

(1) whether the timeframe for filing a suspicious activity report should be increased from 30 days;

(2) whether or not currency transaction report and suspicious activity report thresholds should be tied to inflation or otherwise periodically be adjusted;

(3) whether the circumstances under which a financial institution determines whether to file a “continuing suspicious activity report”, or the processes followed by a financial institution in determining whether to file a “continuing suspicious activity report” (or both) can be narrowed;

(4) analyzing the fields designated as “critical” on the suspicious activity report form and whether the number of fields should be reduced;

(5) the increased use of exemption provisions to reduce currency transaction reports that are of little or no value to law enforcement efforts;

(6) the current financial institution reporting requirements under the Bank Secrecy Act and its implementing regulations and guidance; and

(7) such other items as the Secretary determines appropriate.

(c) REPORT.—Not later than the end of the one year period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with law enforcement and persons subject to Bank Secrecy Act requirements, shall issue a report to the Congress containing all findings and determinations made in carrying out the review required under subsection (a).

(d) DEFINITIONS.—For purposes of this section:

(1) FEDERAL FUNCTIONAL REGULATOR.—The term “Federal functional regulator” has the meaning given that term under section 103.

(2) OTHER TERMS.—The terms “Bank Secrecy Act” and “financial institution” have the meaning given those terms, respectively, under section 5312 of title 31, United States Code.

TITLE III—MODERNIZING THE AML SYSTEM

SEC. 301. ENCOURAGING INNOVATION IN BSA COMPLIANCE.

Section 5318 of title 31, United States Code, as amended by section 203, is further amended by adding at the end the following:

“(p) ENCOURAGING INNOVATION IN COMPLIANCE.—

“(1) IN GENERAL.—The Federal functional regulators shall encourage financial institutions to consider, evaluate, and, where appropriate, responsibly implement innovative approaches to meet the requirements of this subchapter, including through the use of innovation pilot programs.

“(2) EXEMPTIVE RELIEF.—The Secretary, pursuant to subsection (a), may provide exemptions from the requirements of this subchapter if the Secretary determines such exemptions are necessary to facilitate the testing and potential use of new technologies and other innovations.

“(3) RULE OF CONSTRUCTION.—This subsection may not be construed to require financial institutions to consider, evaluate, or implement innovative approaches to meet the requirements of the Bank Secrecy Act.

“(4) FEDERAL FUNCTIONAL REGULATOR DEFINED.—In this subsection, the term ‘Federal functional regulator’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.”.

SEC. 302. INNOVATION LABS.

(a) IN GENERAL.—The table of contents for subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“§ 5334. Innovation Labs

“(a) ESTABLISHMENT.—There is established within the Department of the Treasury and each Federal functional regulator an Innovation Lab.

“(b) DIRECTOR.—The head of each Innovation Lab shall be a Director, to be appointed by the Secretary of the Treasury or the head of the Federal functional regulator, as applicable.

“(c) DUTIES.—The duties of the Innovation Lab shall be—

“(1) to provide outreach to law enforcement agencies, financial institutions, and other persons (including vendors and technology companies) with respect to innovation and new technologies that may be used to comply with the requirements of the Bank Secrecy Act;

“(2) to support the implementation of responsible innovation and new technology, in a manner that complies with the requirements of the Bank Secrecy Act;

“(3) to explore opportunities for public-private partnerships; and

“(4) to develop metrics of success.

“(d) FINCEN LAB.—The Innovation Lab established under subsection (a) within the Department of the Treasury shall be a lab within the Financial Crimes Enforcement Network.

“(e) FEDERAL FUNCTIONAL REGULATOR DEFINED.—In this subsection, the term ‘Federal functional regulator’ means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.”.

(b) CLERICAL AMENDMENT.—The table of contents for subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“5334. Innovation Labs.”.

SEC. 303. INNOVATION COUNCIL.

(a) IN GENERAL.—Subchapter II of chapter 53 of Title 31, United States Code, as amended by section 302, is further amended by adding at the end the following:

“§ 5335. Innovation Council

“(a) ESTABLISHMENT.—There is established the Innovation Council (hereinafter in this section referred to as the ‘Council’), which shall consist of each Director of an Innovation Lab established under section 5334 and the Director of the Financial Crimes Enforcement Network.

“(b) CHAIR.—The Director of the Innovation Lab of the Department of the Treasury shall serve as the Chair of the Council.

“(c) DUTY.—The members of the Council shall coordinate on activities related to innovation under the Bank Secrecy Act, but may not supplant individual agency determinations on innovation.

“(d) MEETINGS.—The meetings of the Council—

“(1) shall be at the call of the Chair, but in no case may the Council meet less than semi-annually;

“(2) may include open and closed sessions, as determined necessary by the Council; and

“(3) shall include participation by public and private entities and law enforcement agencies.

“(e) REPORT.—The Council shall issue an annual report, for each of the 7 years beginning on the date of enactment of this section, to the Secretary of the Treasury on the activities of the Council during the previous year, including the success of programs as measured by metrics of success developed pursuant to section 5334(c)(4), and any regulatory or legislative recommendations that the Council may have.”.

(b) CLERICAL AMENDMENT.—The table of contents for subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

“5335. Innovation Council.”.

SEC. 304. PARALLEL RUNS RULEMAKING.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, as amended by section 301, is further amended by adding at the end the following:

“(q) PARALLEL RUNS RULEMAKING.—

“(1) IN GENERAL.—The Secretary of the Treasury, in consultation with the head of each agency to which the Secretary has delegated duties or powers under subsection (a), shall issue a rule to specify—

“(A) with respect to technology and processes designed to facilitate compliance with the Bank Secrecy Act requirements, under what circumstances it is necessary for a financial institution to test new technology and processes alongside legacy technology and processes (‘parallel runs’);

“(B) if parallel runs are required, what standards must be met; and

“(C) in what instances or under what circumstance and criteria a financial institution may replace or terminate such legacy technology and processes for any examinable technology or process without the replacement or termination being determined an examination deficiency.

“(2) STANDARDS.—The standards described under paragraph (1)(B) may include—

“(A) an emphasis on using innovative approaches, such as machine learning, rather than rules-based systems;

“(B) risk-based back-testing of the regime to facilitate calibration of relevant systems;

“(C) requirements for appropriate data privacy and security; and

“(D) a requirement that the algorithms used by the regime be disclosed to the Financial Crimes Enforcement Network.

“(3) CONFIDENTIALITY OF ALGORITHMS.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this subsection or any other authority, discloses the institution’s algorithms to a Government agency, such algorithms and any materials associated with the creation of such algorithms shall be considered confidential and not subject to public disclosure.”.

(b) UPDATE OF MANUAL.—The Financial Institutions Examination Council shall ensure—

(1) that any manual prepared by the Council is updated to reflect the rulemaking required by the amendment made by subsection (a); and

(2) that financial institutions are not penalized for the decisions based on such rulemaking to replace or terminate technology used for compliance with the Bank Secrecy Act (as defined under section 5312 of title 31, United States Code) or other anti-money laundering laws.

SEC. 305. FINCEN STUDY ON USE OF EMERGING TECHNOLOGIES.

(a) STUDY.—

(1) IN GENERAL.—The Director of the Financial Crimes Enforcement Network (‘FinCEN’) shall carry out a study on—

(A) the status of implementation and internal use of emerging technologies, including artificial intelligence (‘AI’), digital identity technologies, blockchain technologies, and other innovative technologies within FinCEN;

(B) whether AI, digital identity technologies, blockchain technologies, and other innovative technologies can be further leveraged to make FinCEN’s data analysis more efficient and effective; and

(C) how FinCEN could better utilize AI, digital identity technologies, blockchain technologies, and other innovative technologies to more actively analyze and disseminate the information it collects and stores to provide in-

vestigative leads to Federal, State, Tribal, and local law enforcement, and other Federal agencies (collective, “Agencies”), and better support its ongoing investigations when referring a case to the Agencies.

(2) INCLUSION OF GTO DATA.—The study required under this subsection shall include data collected through the Geographic Targeting Orders (“GTO”) program.

(3) CONSULTATION.—In conducting the study required under this subsection, FinCEN shall consult with the Directors of the Innovations Labs established in section 302.

(b) REPORT.—Not later than the end of the 6-month period beginning on the date of the enactment of this Act, the Director shall issue a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives containing—

(1) all findings and determinations made in carrying out the study required under subsection (a);

(2) with respect to each of subparagraphs (A), (B) and (C) of subsection (a)(1), any best practices or significant concerns identified by the Director, and their applicability to AI, digital identity technologies, blockchain technologies, and other innovative technologies with respect to U.S. efforts to combat money laundering and other forms of illicit finance; and

(3) any policy recommendations that could facilitate and improve communication and coordination between the private sector, FinCEN, and Agencies through the implementation of innovative approaches, in order to meet their Bank Secrecy Act (as defined under section 5312 of title 31, United States Code) and anti-money laundering compliance obligations.

PURPOSE AND SUMMARY

On May 3, 2019, Rep. Emanuel Cleaver introduced H.R. 2514, the “Coordinating Oversight, Upgrading and Innovating Technology, and Examiner Reform Act of 2019” (the COUNTER Act), which would amend the Bank Secrecy Act (BSA) and anti-money laundering and countering the financing of terrorism (AML/CFT) laws and regulations in the United States. The bipartisan COUNTER Act amends the BSA to close existing loopholes in the BSA/AML regime and increase penalties for bad actors. The bill also makes changes to the structure of the Treasury Department and Financial Crime Enforcement Network (FinCEN), including the creation of a Treasury Civil Liberties and Privacy Officer within each financial regulatory agency and an interagency Civil Liberties and Privacy Council. The COUNTER Act would also make changes to the BSA oversight and compliance regime, including by authorizing financial institutions to share BSA data with certain affiliates, and codifying financial regulators’ guidance enabling community financial institutions to share training and technology resources. H.R. 2514 would make the financial regulators’ joint innovation guidance permanent, would require that each financial banking regulator establish an innovation lab, create an inter-regulator innovation council, and other changes. The COUNTER Act would also require FinCEN to initiate raises to the Currency Transaction Report (CTR) threshold for domestic coin and currency transactions, every five (5) years, indexed to inflation—with the original base amount being \$10,000 at the legislation’s enactment.

BACKGROUND AND NEED FOR LEGISLATION

The BSA defines the roles and responsibilities for agencies and industry to enable defense of the United States’ financial system. The last major reforms to the BSA were in 2001 before the rise of lone-actor terrorists, decentralized cryptocurrencies, sophisticated transnational trafficking schemes, and cybercrime. At the same

time, innovations in regulatory technologies (RegTech) and financial technology (Fintech) to improve operations and compliance with regulations are dramatically changing how both industry and bad actors function.

The COUNTER Act addresses several loopholes within the existing U.S. anti-money laundering (AML) regime. Bad actors like drug traffickers and corrupt kleptocrats frequently use anonymous shell companies and all-cash schemes to buy and sell real estate to hide and clean their dirty money. In 2017, FinCEN acknowledged the magnitude of the U.S. real-estate loophole (which exempts the real estate industry from standard BSA/AML compliance requirements) by issuing a Geographic Targeting Order¹ (GTO) to require beneficial ownership information to be reported in certain types of area-based, high-end residential transactions. The agency stated at the time that “about 30 percent of the transactions covered by the GTOs involve a beneficial owner or purchaser representative that is also the subject of a previous suspicious activity report” from a financial institution. This transparency problem also extends to commercial real estate. High-profile examples include an Iranian-government-owned skyscraper in New York City² and shares of a luxury hotel, also located in New York City, purchased with millions in stolen, corrupt assets.³ The COUNTER Act addresses this loophole by requiring FinCEN to issue a GTO to cover similarly anonymous commercial real estate transactions throughout the United States.

Another loophole exists in the antiquities trade. According to the Antiquities Coalition, “the United States is the largest destination for archaeological and ethnological objects from around the world.”⁴ Terror groups like the Islamic State have looted and sold these treasures to fund their operations, which the head of UNESCO, the United Nations’ cultural heritage agency, said was worth millions of dollars and conducted at an “industrial scale.”⁵ High-end art purchases can also be used to launder money, including multi-million-dollar paintings⁶ and collectibles.⁷ However, today, persons trading or acting as intermediaries in the trade of works of art or antiquities are exempt from the BSA. The COUNTER Act would address this loophole by requiring the Secretary of the Treasury to study the extent to which the facilitation

¹“Geographic Targeting Order Covering TITLE INSURANCE COMPANY” FinCEN, November 5, 2018. Available at: https://www.fincen.gov/sites/default/files/shared/Real%20Estate%20GTO%20GENERIC_111518_FINAL.pdf.

²“Jury Finds United States May Seize Iran-Linked Office Tower” Brendan Pierson, Reuters, June 29, 2017. Available at: <https://www.reuters.com/article/us-usa-iran-lawsuit/jury-finds-untied-states-may-seize-iran-linked-office-tower-idUSKBN19K2NB>.

³“U.S. to Return \$200 Million IMDB-Linked Funds to Malaysia” Andrea Tan, Edvard Pettersson, and Anisah Shukry, Bloomberg, May 2, 2019. Available at: <https://www.bloomberg.com/news/articles/2019-05-03/u-s-said-to-return-200-million-1mdb-linked-funds-to-malaysia>.

⁴“Antiquities Coalition Policy Note: Taking the First Step Toward Ending Illegal Antiquities Trafficking” Antiquities Coalition website, February 22, 2019. Available at: <https://theantiquitiescoalition.org/antiquities-coalition-policy-note-taking-the-first-step-toward-ending-illegal-antiquities-trafficking/> (last accessed May 3, 2019).

⁵“Islamic State looting Syrian, Iraqi sites on industrial scale—UNESCO” Andrew Osborn, Reuters, July 2, 2015. <https://uk.reuters.com/article/uk-mideast-crisis-unesco/islamic-state-looting-syrian-iraqi-sites-on-industrial-scale-unesco-idUKKCN0PC1OS20150702>.

⁶“UK Art Dealer Matthew Green Charged in a \$9 Million Picasso Money-Laundering Scheme” Anti-Corruption Digest, March 8, 2018. <https://anticorruptiondigest.com/anti-corruption-news/2018/03/08/uk-art-dealer-matthew-green-charged-in-a-9-million-picasso-money-laundering-scheme/#axzz5muUDakx5>.

⁷“Michael Jackson Glove: US Fights Dictator’s Son” Sky News August 17, 2013. <https://news.sky.com/story/michael-jackson-glove-us-fights-dictators-son-10437068>.

of money laundering and terror finance through arts and antiquities may enter or affect the financial system of the United States and which entities should be regulated or exempted. Further, the COUNTER Act addresses this loophole by including the antiquities industry in the BSA definition of “financial institution” upon completion of the study.

This legislation would also address trade-based money laundering and Chinese money laundering. Trade-based money laundering (TBML), in which criminals disguise illicit funds by engaging in legitimate trades, has also been identified by the U.S. Department of Treasury as one of the most difficult forms of money laundering to counter.⁸ Accordingly, the COUNTER Act would address this challenge by directing the Treasury to develop a government-wide strategy to combat TBML. It also requires a review by the Treasury to better understand how money laundering is used by China in illicit activity, such as in the international narcotics trade (including fentanyl, other opioids, and methamphetamine precursors⁹), intellectual property theft, and natural resources trafficking.

The COUNTER Act is also designed to fortify existing Bank Secrecy Act collaboration, and create new avenues for such collaboration. Today, illicit financial flows are estimated to comprise 20 percent of developing country trade with advanced economies.¹⁰ One counter-terror and threat finance witness, Professor Celina B. Realuyo of National Defense University, testified before the Subcommittee on National Security, International Development, and Monetary Policy that good networks of public and private partners to combat the bad are vital to ensure that all entities are focused on the same threats and solutions.¹¹ Jacob Cohen, the former Director of FinCEN’s Office of Stakeholder Engagement, also testified that Treasury’s ability to connect with foreign governments and international organization allies in developing and executing policy and program priorities could be enhanced by increasing its presence overseas through international liaisons.¹² He suggested that by creating domestic liaisons, collaboration could be improved in the U.S., helping FinCEN to identify region-specific illicit finance risks and to issue targeted advisories or GTOs.¹³ The COUNTER Act would create these international and domestic liaisons and codify the FinCEN Exchange, a voluntary public-private information-

⁸U.S. Department of the Treasury, *National Money Laundering Risk Assessment*, June 12, 2015, p. 29, at <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/National%20Money%20Laundering%20Risk%20Assessment%20%E2%80%93%2006-12-2015.pdf>.

⁹“Evolution of the U.S. Overdose Crisis Understanding China’s Role in the Production and Supply of Synthetic Opioids” Bryce Pardo, RAND, Testimony presented before the House Foreign Affairs Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations, September 6, 2018. https://www.rand.org/content/dam/rand/pubs/testimonies/CT400/CT497/RAND_CT497.pdf.

¹⁰*Id.*

¹¹“Communicating, Cooperating and Collaborating through Public-Private Partnerships to Counter the Financing of Terrorism and Crime” Testimony of Celina B. Realuyo Before the Task Force to Investigate Terrorism Financing, Committee on Financial Services, U.S. House of Representatives, June 23, 2016. https://financialservices.house.gov/uploadedfiles/06.23.2016_celena_realuyo_testimony.pdf.

¹²“Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crimes” Testimony of Jacob Cohen Before the United States House of Representatives Committee on Financial Services Subcommittee on National Security, International Development, and Monetary Policy, March 13, 2019. <https://financialservices.house.gov/uploadedfiles/hrg-116-ba10-wstate-cohenj-20190313-u1.pdf>.

¹³*Id.*

sharing partnership among law enforcement, financial institutions, and FinCEN.¹⁴

The existing BSA/AML framework heavily relies on financial institutions taking steps to only provide financial services to legitimate actors and report suspicious activity to law enforcement.¹⁵ To do this, banks are required to know their customers,¹⁶ monitor transactions, conduct enhanced due diligence, report suspicious activity, and coordinate with industry and government partners to understand and detect ongoing and emerging threats. Today, however, there are statutory and regulatory limitations that limit how financial institutions may share information. For example, financial institutions cannot share illicit-finance information with foreign affiliates. In addition, FinCEN discontinued its “SARs Activity Review,” which afforded industry with federal-government analysis of financial crime trends and patterns¹⁷ and was used, especially by smaller banks that do not have large, in-house intelligence units, to train staff, tune risk controls, and to better understand potential threats to institutions. The COUNTER Act establishes a pilot project to permit specified information sharing between financial institutions and certain foreign affiliates, reinstates the SARS Activity Review, and makes permanent guidance that permits financial institutions to share compliance resources,¹⁸ such as training for employees of financial institutions.

Despite ongoing efforts to improve compliance by financial institutions with the law, regulators and law enforcement continue to bring civil and criminal BSA-violations.¹⁹ The COUNTER Act would create incentives for whistleblowers to report BSA violations by establishing a Treasury-based rewards program for those who come forward with significant information that leads to an enforcement action. The COUNTER Act would also heighten penalties for BSA violators by preventing the return of profits or bonuses for those convicted of crimes, and by authorizing Treasury to impose treble damages for repeat BSA offenders.

The financial industry is adopting increasingly advanced tools to improve data quality and analysis, and to conserve limited resources.²⁰ This innovation can contribute to better detection as well as more comprehensive investigations which, in turn, may lead to timelier and more useful SARs for law enforcement. The industry is also adopting or adapting to new products and services in the marketplace, such as cryptocurrencies, payments platforms, and blockchain technologies. Bad actors actively seek opportunities to

¹⁴“FinCEN Exchange Questions and Answers” FinCEN Website. <https://www.fincen.gov/resources/fin-exchange/fincen-exchange-frequently-asked-questions> (Last accessed May 2, 2019).

¹⁵“The First Line of Defense and Financial Crime” Speech by Michael Held at the 1LoD Summit, Federal Reserve Bank of New York, April 2, 2019. <https://www.newyorkfed.org/newsevents/speeches/2019/hel190402>.

¹⁶“Special Contributor Report: A Complete Guide to Understanding AML KYC Compliance.” Deepak Amirtha Raj, ACFCS Website, September 8, 2017. <https://www.acfcs.org/news/362763/Special-Contributor-Report-The-Complete-Guide-to-Understanding-AML-KYC-requirements.htm> (last accessed on May 3, 2019).

¹⁷“Index to Topics for The SAR Activity Review Volumes 1–23” FinCEN website. <https://www.fincen.gov/index-topics-sar-activity-review-volumes-1-23> (Last accessed May 2, 2019).

¹⁸Interagency Statement on Sharing Bank Secrecy Act Resources, FinCEN (October 03, 2018), <https://www.fincen.gov/news/news-releases/interagency-statement-sharing-bank-secrecy-act-resources>.

¹⁹“BSA-AML Civil Money Penalties” BankersOnline.com <https://www.bankersonline.com/penalty/penalty-type/bsa-aml-civil-money-penalties> (last accessed May 3, 2019).

²⁰“How Fintech is Changing the Compliance Landscape” Carol Stabile, ACAMS Today, March 6, 2017. <https://www.acamstoday.org/how-fintech-is-changing-the-compliance-landscape/>.

leverage, abuse, or trick these tools. One financial innovation expert, FinClusive CEO Amit Sharma, at a hearing before the Committee, testified that regulators need to understand this changing environment to regulate in a manner that encourages innovation while limiting negative impacts to our financial system and national security.²¹ The COUNTER Act would establish Innovation Labs in FinCEN and other financial regulators to provide outreach and to support implementation of responsible innovation relating to BSA requirements. The Committee intends that the Innovation Labs will serve as a one-stop shop for FI and industry BSA/AML innovation-related questions and concerns. The COUNTER Act also requires the federal financial regulators to coordinate agency consideration of new technology and the standards by which regulated entities may use them.

The COUNTER Act would also codify the regulators' joint innovation statement of December 2018, which encourages financial institutions to responsibly explore and invest in new BSA/AML technologies.²² The COUNTER Act further requires regulators to define the criteria by which financial institutions may discard outdated BSA/AML technologies, allowing them to fully shift resources to newer and more effective and efficient options.

The BSA/AML regime is a balance between the protection of civil liberties and privacy, and efforts to secure the nation and our financial system. Civil liberties and privacy advocacy groups, however, have raised concerns that as efforts to combat diverse threats grow, so does the government's monitoring of private individuals' economic activities. The COUNTER Act would address these concerns by requiring the FinCEN and each financial regulator to hire a dedicated Civil Liberties and Privacy Officer, who would engage on the development and review of BSA/AML regulation and provide input on program-level information-sharing activities (government-to-government, government-to-private-sector, and private-sector-to-private-sector), especially where there may be access to personally identifiable information. The COUNTER Act also establishes a standing Civil Liberties and Privacy Council across the agencies to facilitate the sharing of best practices and discussion of these issues.

In addition to making changes to the ways FinCEN collaborates with international and domestic partners, Jacob Cohen, who formerly served at FinCEN, testified before the Committee that "one of the greatest challenges for FinCEN has been its ability to hire and retain mission critical staff."²³ The COUNTER Act would address this concern by authorizing FinCEN to have direct hiring authority, thus allowing the agency to better compete for top talent.

Finally, the currency transaction report (CTR) threshold has been set at \$10,000 since 1972 and because it has not yet been ad-

²¹ Amit Sharma, March 13, 2019. Available at: <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba10-wstate-sharma-20190313.pdf>.

²² Treasury's FinCEN and Federal Banking Agencies Issue Joint Statement Encouraging Innovative Industry Approaches to AML Compliance, FinCEN (December 03, 2018), <https://www.fincen.gov/news/news-releases/treasurys-fincen-and-federal-banking-agencies-issue-joint-statement-encouraging>.

²³ "Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crimes" Testimony of Jacob Cohen Before the United States House of Representatives Committee on Financial Services Subcommittee on National Security, International Development, and Monetary Policy, March 13, 2019. <https://financialservices.house.gov/uploadedfiles/hhrg-116-ba10-wstate-cohenj-20190313-u1.pdf>.

justed for inflation, effectively, every year, the threshold has decreased. Law enforcement routinely uses information from CTRs for investigations and prosecutions, while financial institutions have expressed concerns with the burden of the unindexed \$10,000 number. The COUNTER Act aims to address stakeholders concerns by requiring FinCEN to initiate raises to the CTR threshold for domestic coin and currency transactions, every five (5) years, indexed to inflation—with the original base amount being \$10,000 at the legislation’s enactment.

SECTION-BY-SECTION ANALYSIS

Sec. 1. Short Title and Table of Contents

This section provides for the Short Title and provides the Table of Contents for the bill.

Sec. 2. Bank Secrecy Act definition

This section adds a definition of the Bank Secrecy Act (BSA) to title 31, United States Code.

TITLE I—STRENGTHENING TREASURY

Sec. 101. Improving the definition and purpose of the Bank Secrecy Act

This section amends section 5311 of Title 31 to expand the purpose of the BSA to also “protect our national security to safeguard the integrity of the international financial system.” It also amends the purpose to specifically require BSA records to have a high degree of usefulness “to law enforcement.”

Sec. 102. Special Hiring Authority

Subsection (a) amends section 310 of Title 31 to grant the Financial Crimes Enforcement Network (FinCEN) Special Hiring Authority to allow it to expedite the hiring of employees with critical, specialized skills.

Subsection (b) requires the Director of FinCEN to submit an annual report to Congress on the use of this Authority for the first seven years.

Sec. 103. Civil Liberties and Privacy Officer

Subsection (a) requires that FinCEN, each of the federal functional regulators and other entities appoint a dedicated Civil Liberties and Privacy Officer, who must be an attorney with expertise in data privacy laws.

Subsection (b) describes the duties of the Officers, including that requiring that the Officers would be consulted each time the BSA or anti-money laundering (AML) regulations affecting privacy or civil liberties are developed or reviewed; be consulted on information-sharing activities and programs, including activities that provide access to personally identifiable information; ensure coordination and clarity between AML, civil liberties, and privacy laws; contribute to the evaluation and regulation of new technologies and protection of personally identifiable information collected by Federal functional regulators; and develop metrics for program success.

Subsection (c) defines certain terms used in the section.

Sec. 104. Civil Liberties and Privacy Council

This section requires the establishment of a Civil Liberties and Privacy Council, comprised of the Civil Liberties and Privacy Officers in Sec. 103, to coordinate on activities and best practices related to their duties. The Council is intended to facilitate coordination and not to supplant the individual agency determinations on civil liberties and privacy.

This section provides that the Director of FinCEN will serve as the Chair, and the meetings, not less than quarterly, must include participation by public and private entities and law enforcement agencies but may include open and partially closed sessions at the discretion of the Council. The Council must develop an annual report on its activities, including any legislative recommendations. This section also provides that the Federal Advisory Committee Act does not apply to the Council.

Sec. 105. International coordination

Subsection (a) requires the Secretary of the Treasury to work with foreign counterparts including but not limited to the Financial Action Task Force, the International Monetary Fund, the World Bank, the Egmont Group of Financial Intelligence Units, the Organisation for Economic Co-operation and Development, and the United Nations, to promote stronger AML frameworks and enforcement of AML laws.

Subsection (b) provides that the Secretary of the Treasury may work directly with foreign counterparts and other organizations where goal cooperation can be met.

Subsection (c) amends Title XVI of the International Financial Institutions Act by adding a new section 1629 to support the capacity of the International Monetary Fund members to prevent money laundering and financing of terrorism by increasing the administrative budget of the Fund for technical assistance. Subsection (c) also provides that the Chairman of the National Advisory Council on International Monetary and Financial Policies must develop an annual report to Congress on technical assistance activities provided by the Fund for prevention of money laundering and financing of terrorism and the efficacy of providing technical assistance support through the administrative budget of the Fund.

Finally, subsection (c) also provides that the amendment to the International Financial Institutions Act sunsets at the end of four years.

Sec. 106. Treasury Attachés Program

This section amends Title 31 to add a new section 316 which establishes in statute the Treasury's Attachés Program and augments that program with six additional liaisons who, among other matters, have knowledge of BSA/AML to promote adoption of U.S. interests internationally, as described in the new section 316. Attachés appointed under this section are required to receive compensation at the higher of the rate of: (1) compensation provided to a comparable Foreign Service officer serving at the same embassy or; (2) the rate of compensation they would otherwise have received.

Sec. 107. Increasing technical assistance for international cooperation

Subsection (a) doubles the authorization of appropriations for the Treasury Department’s technical assistance program for fiscal years 2020–2024 from the amount authorized in fiscal year 2019. Subsection (a) also provides that the funds are to be used for providing technical assistance that promotes compliance with international standards and best practices, including those aimed at the establishment of effective anti-money laundering and countering the financing of terrorism (AML/CFT) regimes.

Subsection (b) provides that for five years after enactment of this section the Secretary of the Treasury must produce an annual report to Congress on AML/CFT technical assistance activities including strategic goals and how technical assistance will advance the goals, descriptions of technical assistance provided, a list of beneficiaries, and how the technical assistance complements, duplicates, or affects technical assistance provided by international financial institutions.

Sec. 108. FinCEN Domestic Liaisons

This section amends section 310 of Title 31 to establish a new outreach mechanism, the FinCEN Domestic Liaison program, through which six senior FinCEN employees will perform regional outreach and education among financial institutions and non-financial institutions. The Liaisons must:

1. Each be assigned to focus on a specific region of the US;
2. Be located at an office in such region (or co-located at an office of another Federal agency in such region); and
3. Perform outreach to the BSA officers at financial institutions and persons who are not financial institutions, especially with respect to actions taken by FinCEN that require specific actions by, or have specific effects on, such institutions or persons, as determined by the Director.

Sec. 109. FinCEN Exchange

This section further amends section 310 to codify the FinCEN Exchange program, a voluntary public-private information-sharing partnership among law enforcement, financial institutions, and FinCEN. The purpose of facilitating such information sharing is to:

1. “effectively and efficiently combat money laundering, terrorism financing, organized crime, and other financial crimes;
2. protect the financial system from illicit use; and
3. promote national security.”

This program includes targeted information and broader typologies. This section does not create new information-sharing authorities related to the BSA; all information sharing must be performed within the parameters of existing laws and regulations.

The amendment to section 310 provides that for five years after the enactment of this section, the Secretary of the Treasury must provide an annual report to the House Financial Services Committee and Senate Committee on Banking, Housing and Urban Affairs on the extent and the effectiveness of this partnership, an analysis of efforts taken by the partnership and results of the efforts, and legislative or administrative recommendations to strengthen FinCEN Exchange efforts.

Sec. 110. Study and strategy on trade-based money laundering

This section requires the Secretary of the Treasury, in consultation with appropriate stakeholders, to carry out a study on trade-based money laundering (TBML). Within one year of this section's enactment, a report to Congress must be issued containing all findings and determinations, and proposed strategies to combat TBML.

Sec. 111. National strategy on de-risking

This section requires the Secretary of the Treasury, in consultation with the private sector, examiners, and other regulators, to carry out a formal review examining the reasons why financial institutions engage in de-risking, the impact of de-risking on financial crime, the most appropriate ways to promote financial inclusion, formal and informal feedback provided by examiners that may have led to de-risking, and the relationship between a financial institution's resources and de-risking. Within one year of this section's enactment, a report to Congress must be issued containing all findings and strategies to reduce de-risking and adverse consequences related to de-risking.

Sec. 112. AML examination authority delegation study

This section requires the Secretary of the Treasury to conduct a study on the Secretary's delegation of examination authority under the BSA, including an evaluation of the efficacy of the delegation, especially with respect to mission of the BSA; whether the delegated agencies have appropriate resources to perform their delegated responsibilities; and whether the examiners in delegated agencies have sufficient training and support to perform their responsibilities. This section also provides that one year after the date of enactment, the Secretary shall issue a report to Congress which contains all findings and determinations; and recommendations to improve the efficacy of delegation authority, including the potential for de-delegation where it may be appropriate.

Sec. 113. Study and strategy on Chinese money laundering

This section requires the Secretary of the Treasury to conduct a study on the extent and effect of Chinese money laundering activities in the U.S. and worldwide. Working in partnership with appropriate federal agencies, it must develop strategies to combat these criminal activities and report its results to Congress. This section also provides that one year after the date of enactment, the Secretary shall issue a report to Congress which contains all findings and determinations; and the strategy developed to combat Chinese money laundering activities.

TITLE II—IMPROVING AML/CFT OVERSIGHT

Sec. 201. OECD pilot program on sharing of suspicious activity reports within a financial group

This section amends section 5318 of title 31 to require FinCEN to undertake pilot program that allows financial institutions to share Suspicious Activity Reports (SARs) with their foreign affiliates in OECD member jurisdictions. It provides that the Secretary of the Treasury issue regulations to implement this section not later than 180 days after the enactment of the Counter Act. How-

ever, this section prohibits the sharing of SARs with a foreign affiliate if they are in a jurisdiction that is subject to countermeasures imposed by the Federal Government or the Secretary of the Treasury has determined the jurisdiction cannot reasonably protect the privacy and confidentiality of such information. Foreign jurisdiction-originated reports received by a financial institution from a foreign affiliate shall be subject to the same protections as other SARs. This section also provides that within one year of the date of enactment and annually for three years the Secretary or their designee shall brief the House Financial Services Committee and Senate Committee on Banking, Housing, and Urban Affairs on the degree of information sharing under the program and the criteria used, the effectiveness of the pilot in identifying or preventing violations to U.S. law or regulations, and recommendations to amend the pilot design or inclusion of specific non-OECD jurisdictions in the program.

The amendments to section 531 made by this section provides that this pilot program terminates five years after the date of enactment, though the Secretary of the Treasury can extend the pilot an additional two years upon submission of a report to the House Financial Services Committee and Senate Committee on Banking, Housing, and Urban Affairs which contains:

1. Certification that the extension is in the national interest;
2. Evaluation of utility of pilot including analysis of illicit activity identified and prevented by the program; and
3. A legislative proposal for long term extension of program activities and expected budgetary resources.

Sec. 202. Training for examiners on AML/CFT

This section amends title 31 by adding a new section 5333, which requires each examiner reviewing compliance with the Bank Secrecy Act to attend at least 10 annual hours of AML/CFT training, including on risk profiles and red flags, financial crime patterns and trends, and de-risking. The Secretary of the Treasury must establish the training material in consultation with FinCEN, the FFIEC, and law enforcement partners.

Sec. 203. Sharing of compliance resources

This section amends section 5318 of title 31 by adding a new subsection (o) which codifies October 2018 joint guidance from FinCEN and other financial regulators that permits financial institutions, particularly community banks, to share compliance resources, such as sharing the same training or BSA officer. This section also requires the Secretary of the Treasury and the appropriate supervising agencies to carry out an outreach program to provide financial institutions with information, including on best practices, with respect to resource sharing. A Rule of Construction clarifies that this section does not require financial institutions to share resources.

Sec. 204. GAO Study on feedback loops

Subsection (a) requires the GAO to conduct a study and report on: (1) Best practices within the U.S. Government for providing feedback to relevant parties (including regulated private entities) on the usage and usefulness of personally identifiable information

(“PII”), sensitive-but-unclassified (“SBU”) data, information provided pursuant to the Bank Secrecy Act, or similar information provided by such parties to Government users of such information and data (including law enforcement or regulators); and (2) any practices or standards inside or outside the United States for providing feedback through information-sharing efforts, specifically related to efforts that combat illicit finance.

Subsection (b) provides that within 18 months of enactment of this section, the GAO must issue a report to the House Financial Services Committee and Senate Committee on Banking, Housing, and Urban Affairs on findings, best practices and potential concerns, and recommendations to reduce or eliminate unnecessary government collection of PII and SBU data.

Sec. 205. FinCEN study on BSA value

This section requires the Director of FinCEN to carry out a study on the value to law enforcement and national security of the Bank Secrecy Act. FinCEN is currently performing this study, but this section ensures that it is completed and provides findings to Congress.

Sec. 206. Sharing of threat pattern and trend information

This section amends section 5318 of Title 31 to require that, not less than semi-annually, FinCEN shall begin re-issuing the previously discontinued “SAR Activity Review—Trends, Tips & Issues” to provide financial institutions with typologies and case studies on emerging money laundering and terror financing threat patterns. In this section, “typologies” means the various techniques used to launder money or finance terrorism. The information shall also include data that can be adapted in algorithms, including for artificial intelligence and machine learning programs, where appropriate.

Sec. 207. Modernization and upgrading whistleblower protections

This section enhances protections for whistleblowers who provide original information related to BSA violations that leads to the successful enforcement of the covered action. Subsection (a) amends section 5323(d) of Title 31 to authorize forfeited funds to be used for awards to whistleblowers.

Subsection (b) adds a new section 5323A to title 31, which provides that an award to a whistleblower will be, in aggregate amount, equal to not less than 10% but not more than 30%, in total, of what has been collected of the monetary sanctions imposed in the action or related actions. The new section 5323A provides that the Secretary of the Treasury must take several factors into consideration when determining the award, including the significance of the information, the degree of assistance provided by the whistleblower, and the mission of FinCEN. It further provides that no awards may be granted to certain employees who have a legal obligation to provide the information and whistleblowers who are convicted of a criminal violation related to the action. The new section 5323A also establishes a process for collection of any award. Finally, the new section 5323A provides that the Secretary of the Treasury shall issue employee-protection regulations to protect

whistleblowers from retaliation, and retaliation is specifically prohibited.

Sec. 208. Certain violators barred from serving on public company boards

This section amends section 5321 of Title 31 by adding a new subsection (f) that would prohibit individuals who committed egregious BSA violations from serving on a public company board for 10 years. “Egregious” means a felony criminal violation for which the individual was convicted, and a civil violation where the individual willfully committed such and the violation facilitated money laundering or the financing of terrorism.

Sec. 209. Additional damages for repeat Bank Secrecy Act violators

Subsection (a) further amends section 5321 of Title 31 by adding a new subsection (g) that would increase monetary damages for repeat, violations of a criminal provision, or when as part of a deferred- or non-prosecution agreement they agreed they have committed a criminal violation, of the BSA. For each additional violation, an additional civil penalty may be imposed in an amount equal to up to three times the profit gained or loss avoided by such person as a result of the violation.

Subsection (b) provides that this section is prospective, not retrospective

Sec. 210. Justice annual report on deferred and non-prosecution agreements

This section requires the Department of Justice to report to Congress annually, for five years after enactment, on its use of deferred-prosecution agreements (DPAs) or non-prosecution agreements (NPsAs) with a financial institution alleged to have violated the BSA. The report would include:

1. A list of DPAs and NPAs that the Attorney General (AG) has entered into during the previous year with any person with respect to a violation or suspected violation of the Bank Secrecy Act;
2. the justification for entering into each such agreement;
3. the list of factors that were considered in determining that the AG should enter into each such agreement; and
4. the extent of coordination the AG conducted with FinCEN prior to entering into the agreement.

This section provides that the report may include a classified annex.

Sec. 211. Return of profits and bonuses

Subsection (a) amends section 5322 of Title 31 by adding a new subsection (d) that requires individuals convicted of BSA violations to be fined in an amount equal to the profit gained by such person by reason of such violation, in addition to other applicable fines. This section also requires such individual to return their profits and bonuses they received during every year the violation occurred.

Subsection (b) provides that the section shall not be construed to prohibit a financial institution from requiring the repayment of a bonus paid to one engaged in unethical, but non-criminal, activities.

Sec. 212. Prohibition on tax deductions for attorney's fees related to Bank Secrecy Act settlements and court costs

This section would prohibit persons from taking a tax deduction on their attorney's fees related to a BSA violation, if there is a legal finding against the individual as it relates to the BSA violation.

Sec. 213. Application of Bank Secrecy Act to dealers in art or antiquities

Subsection (a) amends section 5312(a) of title 31 by adding "a person trading or acting as an intermediary in the trade of works of art or antiquities, including an advisor, consultant or any other person who engages as a business in the solicitation of the sale of art" to the BSA definition of "financial institutions."

Subsection (b) provides that the Secretary of the Treasury, in coordination with law enforcement, shall perform a study to be submitted to Congress within 180 days of the enactment of this Act on the facilitation of money laundering and terror finance through the trade of works of art or antiquities, including an analysis of:

1. how the term "art" should be defined for the purposes of the Bank Secrecy Act (as defined under section 5312 of title 31, United States Code);
2. the extent to which the facilitation of money laundering and terror finance through the trade of works of art or antiquities enters or affects the financial system of the United States, including any qualitative data or statistics;
3. whether thresholds should apply in determining which entities to regulate;
4. an evaluation of which markets, by size, domestic or international geographical locations, or otherwise, should be subject to regulations;
5. an evaluation of whether certain exemptions should apply; and
6. any other points of study or analysis the Secretary determines necessary or appropriate.

Subsection (c) provides that the Secretary shall promulgate regulations to implement this section no later than 180 days following the completion of the report.

Sec. 214. Geographic Targeting Order

This section requires FinCEN to issue a Geographic Targeting Order (GTO) with an appropriate threshold that applies to commercial real estate transactions. GTOs are orders requiring financial institutions that exist within a geographic area to report to FinCEN on transactions which are greater than a specified value.

Sec. 215. Study and revisions to currency transaction reports and suspicious activity reports

Subsection (a) provides that the Secretary of the Treasury shall update each threshold amount for Currency Transaction Reports (CTRs) to reflect changes in the Consumer Price Index every five years. This subsection also provides that the Secretary may make appropriate adjustments to threshold amounts in high-risk areas if there is demonstrable evidence that an increase in the threshold

would increase serious crimes such as trafficking or endanger national security.

Subsection (a) also provides that the Comptroller General of the United States shall carry out a study of the existing currency transaction reporting regime including:

1. A review, in consultation with relevant stakeholders, of the effectiveness of the current reporting regime;
2. An analysis of the importance of CTRs to law enforcement; and
3. An analysis of the effects of raising the CTR thresholds.

Subsection (a) also provides that within one year of the date of enactment, the Comptroller General of the United States shall issue a report to the Secretary of Treasury and Congress containing study findings and determinations and recommendations for improving the current currency transaction reporting regime.

Subsection (b) provides that the Director of FinCEN shall carry out a study, in consultation with relevant industry, regulatory, and law enforcement regulators, of the design of a modified SAR form. The Director has the authority to contract with a private third-party to carry out the study. The purpose of the study is to balance law enforcement priorities, regulatory burden on financial institutions, and BSA reporting requirements for reports to provide a “high degree of usefulness” to law enforcement. The study shall:

1. Examine optimal SAR thresholds to determine the level at which a modified SAR form could be implemented;
2. Evaluate appropriate customers or transactions for a modified SAR; and
3. Analyze the most effective methods for reducing regulatory burden for financial institutions in complying with the BSA including modifying thresholds, shortening forms, combining BSA forms, filing reports in periodic batches, and other regulatory burden-reducing methods.

Subsection (b) also provides that within one year of the date of enactment, the Director shall issue a report to Congress containing study findings and sample modified SAR forms.

Subsection (c) defines certain terms included in this section.

Sec. 216. Streamlining requirements for currency transaction reports and suspicious activity reports

Subsection (a) requires the Secretary of the Treasury, in consultation with relevant stakeholders, to undertake a formal review of existing reporting requirements for financial institutions under the BSA and propose changes to reduce regulatory burdens and ensure information provided is of a “high degree of usefulness” to law enforcement.

Subsection (b) provides that the review includes a study of:

1. Whether to increase the 3- day timeframe for filing SARs;
2. Whether to tie thresholds for currency transaction reports and SARs to inflation or other periodic adjustment;
3. Whether to narrow the circumstances under or the processes by which a financial institution determines whether to file a “continuing suspicious activity report”;
4. An analysis of fields designated as “critical” on SAR forms and whether the number of fields should be reduced;

5. Increased use of exemption provisions to reduce the number of low-utility currency transaction reports;
6. Current financial institution reporting requirements under the BSA and its implementing regulations and guidance; and
7. Other items as deemed appropriate by the Secretary.

Subsection (c) provides that not later than one year from the date of enactment of this Act, the Secretary, in consultation with law enforcement and stakeholders subject to the BSA, shall issue a report to Congress containing required findings and determinations of the review required under subsection (a).

TITLE III—MODERNIZING THE AML SYSTEM

Sec. 301. Encouraging innovation in BSA compliance

This section further amends section 5318 of title 31 by adding a new subsection (p) which codifies a joint innovation-related statement, released by FinCEN and financial regulators in December 2018, that requires the financial regulators to encourage financial institutions to consider, evaluate, and, where appropriate, responsibly implement innovative approaches to meet the requirements of the BSA, including through the use of innovation pilot programs. The Secretary of the Treasury may provide exemptions from the requirements of the BSA if the Secretary determines such exemptions are necessary to facilitate the testing and potential use of new technologies and other innovations. The new section 5318(p) includes a rule of construction to clarify that this section does not require financial institutions to engage in innovation.

Sec. 302. Innovation Labs

This section amends title 31 to add a new section 5334, which codifies a joint innovation-related statement, released by FinCEN and fellow regulators in December 2018, that required the establishment of BSA-related Innovation projects or offices within each regulator. Subsection (a) of the new section 5334 statutorily mandates the establishment of these units, which would be called “Innovation Labs.” Subsection (b) of the new section 5334 establishes that each Innovation Lab be headed by a director.

Subsection (c) provides that the duties for the Labs shall be to:

1. to provide outreach to law enforcement agencies, financial institutions, and other persons (including vendors and technology companies) with respect to innovation and new technologies used to comply with the requirements of the BSA;
2. to support the implementation of responsible innovation and new technology, in a manner that complies with the requirements of the BSA;
3. to explore opportunities for public-private partnerships; and
4. to develop metrics of success.

Sec. 303. Innovation Council

This section amends title 31 to add a new section 5335, which requires Directors of the Innovation Labs established in the new section 5334 added by Section 302 of this Act to meet via a standing regulatory Innovation Council to discuss and coordinate action.

The Council is intended to facilitate coordination and not to supplant the individual agency determinations on innovation. The new section 5335 provides that the Council must meet at least semi-annually and must include participation by public and private entities and law enforcement agencies. The new section 5335 also provides that for each of the seven years after the enactment of this section, the Council must issue an annual report to the Secretary of the Treasury on the activities of the Council during the previous year, including the success of programs as measured by metrics of success developed pursuant to Section 302, and any legislative recommendations.

Sec. 304. Parallel runs rulemaking

Subsection (a) further amends section 5318 of title 31 by adding a new subsection (q) that requires the Secretary of the Treasury to issue a rule to specify:

1. with respect to technology and processes designed to facilitate compliance with the BSA requirements, under what circumstances it is necessary for a financial institution to test new technology and processes alongside legacy technology and processes ('parallel runs');
2. if parallel runs are required, what tests must be completed; and
3. in what instances or under what circumstances and criteria a financial institution may replace or terminate such legacy technology and processes for any examinable technology or process without the replacement or termination being determined an examination deficiency.

The new subsection (q) provides that the standards for determining parallel runs may include an emphasis on innovative approaches, risk-based back-testing of the regime, requirements for appropriate data privacy and security, and a requirement that algorithms used by the regime be disclosed to FinCEN. The new subsection (q) provides that algorithms and materials associated disclosed to a government agency are to be considered confidential and not subject to public disclosure.

Subsection (b) requires that the Financial Institutions Examination Council (FFIEC) manual must be updated accordingly to reflect the changed policy and to ensure that institutions are not penalized for the associated decisions to replace or terminate their BSA-AML technology.

Sec. 305. FinCEN study on use of emerging technologies

Subsection (a) directs the Director of FinCEN to carry out a study, in consultation with the Directors of the Innovation Labs from sec. 302, on:

1. The status of implementation and use of emerging technologies including artificial intelligence (AI), digital identity, blockchain, and other innovative technologies within FinCEN;
2. Whether these emerging technologies can be leveraged for more efficient and effective data analysis by FinCEN; and
3. How FinCEN could better utilize the technologies to actively analyze and disseminate information collected to support investigations by federal agencies, state, tribal, and local law enforcement and better support its ongoing investigations.

The study shall include data collected through the Geographic Targeting Orders program from sec 214.

Subsection (b) provides that within six months of the date of enactment of this Act, the Director of FinCEN shall issue a report to the House Financial Services Committee and the Senate Committee on Banking, Housing, and Urban Affairs containing study findings and determinations, best practices or concerns identified by the Director with respect to innovative technologies and U.S. efforts to combat money laundering and illicit finance, and policy recommendations to improve communication and coordination between the private sector, FinCEN and federal agencies to meet BSA AML/CFT.

HEARINGS

For the purposes of section 103(i) of H. Res. 6 for the 116th Congress—

1. The Committee on Financial Services held a hearing to consider a discussion draft of H.R. 2513 entitled ‘Promoting Corporate Transparency: Examining Legislative Proposals to Detect and Deter Financial Crime’ on March 13, 2019. Testifying on the panel was: Mr. Jacob Cohen, former Director, Office of Stakeholder Engagement, FinCEN; Mr. Dennis M. Lormel, President and Chief Executive Officer, DML Associates, LLC; Mr. Amit Sharma, Chief Executive Officer, FinClusive; and Dr. Gary Shiffman, Founder and Chief Executive Officer, Giant Oak, Inc.

2. In addition, the following related hearing was held—In the 115th Congress, the Committee held a joint hearing with the Subcommittee on Terrorism and Illicit Finance to consider H.R. 2219, the “Counter Terrorism and Illicit Finance Act” entitled, ‘Legislative Proposals to Counter Terrorism and Illicit Finance’ on November 29, 2017. Testifying on the panel was: Mr. Daniel H. Bley, Executive Vice President and Chief Risk Officer, Webster Bank, on behalf of the Mid-Size Bank Coalition of America; Mr. John J. Byrne, President, Condor Consulting LLC; Mr. William J. Fox, Managing Director, Global Head of Financial Crimes Compliance, Bank of America, on behalf of The Clearing House; Ms. Stefanie Ostfeld, Deputy Head of US Office, Global Witness; and Mr. Chip Poncy, President and Co-Founder, Financial Integrity Network.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on May 9, 2019, and ordered H.R. 2514 to be reported favorably to the House with an amendment in the nature of a substitute by a vote of 55 yeas and 0 nays, a quorum being present.

COMMITTEE VOTES AND ROLL CALL VOTES

In compliance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the Committee advises that the following roll call votes occurred during the Committee’s consideration of H.R. 2514.

Present	Representatives	Ayes	Nays
	Ms. Waters, <i>Chairwoman</i>	X	
	Mrs. Maloney	X	
	Ms. Velázquez	X	
	Mr. Sherman	X	
	Mr. Meeks	X	
	Mr. Clay	X	
	Mr. Scott	X	
	Mr. Green	X	
	Mr. Cleaver	X	
	Mr. Perlmutter	X	
	Mr. Himes		
	Mr. Foster	X	
	Mrs. Beatty	X	
	Mr. Heck	X	
	Mr. Vargas	X	
	Mr. Gottheimer	X	
	Mr. Gonzalez (TX)	X	
	Mr. Lawson	X	
	Mr. San Nicolas		
	Ms. Tlaib	X	
	Ms. Porter	X	
	Ms. Axne	X	
	Mr. Casten	X	
	Ms. Pressley	X	
	Mr. McAdams	X	
	Ms. Ocasio-Cortez		
	Ms. Wexton	X	
	Mr. Lynch	X	
	Ms. Gabbard		
	Ms. Adams	X	
	Ms. Dean	X	
	Mr. Garcia (IL)	X	
	Ms. Garcia (TX)	X	
	Mr. Phillips	X	
34			
	Mr. McHenry, <i>Ranking Member</i>	X	
	Ms. Wagner	X	
	Mr. King	X	
	Mr. Lucas	X	
	Mr. Posey	X	
	Mr. Luetkemeyer	X	
	Mr. Huizenga	X	
	Mr. Duffy	X	
	Mr. Stivers	X	
	Mr. Barr	X	
	Mr. Tipton	X	
	Mr. Williams	X	
	Mr. Hill	X	
	Mr. Emmer		
	Mr. Zeldin	X	
	Mr. Loudermilk	X	
	Mr. Mooney	X	
	Mr. Davidson	X	
	Mr. Budd	X	
	Mr. Kustoff	X	
	Mr. Hollingsworth	X	
	Mr. Gonzalez (OH)	X	
	Mr. Rose	X	
	Mr. Steil	X	
	Mr. Gooden	X	
	Mr. Riggleman	X	
26			

Committee on Financial Services
Full Committee
116th Congress (1st Session)

Date: 5/9/2019

Measure H.R. 2514 (Final Passage)

Amendment No. _____

Offered by Cleaver

Agreed To	Yes X	No	Prsnt	Wdrn
Voice Vote	Ayes		Nays	

Record Vote	FC 55 Ayes-0 Noes
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STATEMENT OF OVERSIGHT FINDINGS AND RECOMMENDATIONS OF
THE COMMITTEE

In compliance with clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee's oversight findings and recommendations are reflected in the descriptive portions of this report.

STATEMENT OF PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause (3)(c) of rule XIII of the Rules of the House of Representatives, the goals of H.R. 2514 are to amend the Bank Secrecy Act and current anti-money laundering/countering the financing of terrorism (AML/CFT) laws and regulations in the United States.

NEW BUDGET AUTHORITY AND CBO COST ESTIMATE

Pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives and section 308(a) of the *Congressional Budget Act of 1974*, and pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives and section 402 of the *Congressional Budget Act of 1974*, the Committee has received the following estimate for H.R. 2514 from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 16, 2019.

Hon. MAXINE WATERS,
*Chairwoman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MADAM CHAIRWOMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2514, the COUNTER Act of 2019.

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

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance			
H.R. 2514, COUNTER Act of 2019			
As ordered reported by the House Committee on Financial Services on May 9, 2019			
By Fiscal Year, Millions of Dollars	2020	2020-2024	2020-2029
Direct Spending (Outlays)	1	11	28
Revenues	19	104	226
Deficit Effect	-18	-93	-198
Spending Subject to Appropriation (Outlays)	16	247	not estimated
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	Yes, Cannot Determine Costs
The bill would			
<ul style="list-style-type: none"> Require the Financial Crimes Enforcement Network (FinCEN) to take steps to improve its communications with financial institutions and coordinate with federal financial regulators Require training for federal financial examiners in enforcing laws aimed at money laundering and the financing of terrorism Require federal financial regulators to establish innovation labs Reauthorize the International Affairs Technical Assistance office in the Department of the Treasury Establish a new FinCEN whistleblower program for the Bank Secrecy Act (BSA) Prohibit violators of the BSA from deducting attorney's fees and court costs on their tax returns Direct the Department of the Treasury to issue several rules that would impose mandates on private entities 			
Estimated budgetary effects would primarily stem from			
<ul style="list-style-type: none"> Additional actions required of FinCEN and federal financial regulators Increased fees and assessments paid to federal regulatory agencies An increase in tax liability by prohibiting deductions of attorney's fees for violators of the BSA 			
Detailed estimate begins on the next page.			

Bill Summary: H.R. 2514 would change how the government enforces the Bank Secrecy Act. The bill also would direct the staff of the federal financial regulators to attend additional training on enforcing the BSA and on efforts to counter money laundering.¹

Estimated Federal Cost: The estimated budgetary effect of H.R. 2514 is shown in Table 1. The costs of the legislation fall within budget functions 150 (international affairs), 370 (commerce and housing credit), 750 (administration of justice), and 800 (general government).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2514

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020–2024	2020–2029	
Increases in Direct Spending													
Estimated Budget Authority	3	3	2	2	2	3	3	4	4	4	13	30	

¹Federal financial regulators include the Board of Governors of the Federal Reserve System, the Commodity Futures Trading Commission (CFTC), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Securities and Exchange Commission (SEC).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 2514—Continued

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020– 2024	2020– 2029	
Estimated Outlays	1	3	3	2	2	2	3	4	4	4	11	28	
	Increases in Revenues												
Estimated Revenues	19	20	21	21	22	23	24	24	25	25	104	226	
	Net Decrease in the Deficit												
	From Changes in Direct Spending and Revenues												
Effect on the Deficit	-18	-17	-18	-19	-20	-21	-21	-20	-21	-21	-93	-198	
	Increases in Spending Subject to Appropriation												
Estimated Authorization	72	67	67	68	68	n.e.	n.e.	n.e.	n.e.	n.e.	342	n.e.	
Estimated Outlays	16	41	61	64	65	n.e.	n.e.	n.e.	n.e.	n.e.	247	n.e.	
Memorandum:													
Increases in Revenues from Whistleblower Program ^a ..	0	0	0	1	1	2	3	3	3	3	2	16	

Sources: Congressional Budget Office; staff of the Joint Committee on Taxation

Components may not sum to totals because of rounding; n.e. = not estimated.

^aThe Conference Report for the Balanced Budget Act of 1997 (Public Law 105-33) established a series of scorekeeping rules that guide what budget effects are attributed to proposed legislation. Rule 14 states that no increase in receipts or decrease in direct spending will be scored as a result of a provision of a law that provides direct spending for administrative or program management activities. Thus, any estimated additional penalties that may be collected under the proposed expansion to the Whistleblower program cannot be attributed to this bill for Congressional scorekeeping purposes.

Basis of estimate: For this estimate, CBO assumes that H.R. 2514 will be enacted near the end of 2019.

Direct spending: CBO estimates that enacting H.R. 2514 would increase direct spending by \$28 million over the 2020–2029 period mostly for costs to federal financial regulators.

The operating costs for several financial regulators (the FDIC, the NCUA, and the OCC) are classified in the federal budget as direct spending. The NCUA and the OCC collect fees from financial institutions to offset their operating costs; those fees are considered reductions in direct spending. The FDIC pays its operating costs from the Deposit Insurance Fund (DIF). Costs incurred by the Federal Reserve reduce remittances to the Treasury (such remittances are recorded as revenues). Costs for the CFTC, the SEC, and the Treasury are subject to the availability of annual appropriations. However, the SEC is authorized under current law to collect fees sufficient to offset its annual appropriation.

Federal Financial Regulators. In total, CBO estimates that enacting H.R. 2514 would increase gross direct spending by \$87 million over the 2020–2029 period for the FDIC, the NCUA and the OCC to implement the bill. Of that spending, \$62 million would be offset by fees levied by the NCUA and the OCC. CBO estimates that, on net, budget deficits would increase by \$25 million under the bill over the 2020–2029 period.

Examiner Training. H.R. 2514 would require federal financial examiners who review compliance with the BSA to attend at least 10 hours of annual training on enforcing laws that prohibit money laundering and laws related to the financing of terrorism. Together, those agencies and the Federal Reserve employ approximately 7,000 examiners who would require additional training under the bill. Using information from several of the affected agencies, CBO estimates that additional staff would be needed by the FDIC, the NCUA, and the OCC to fulfill duties that otherwise would have been completed by examiners while they were being

trained. CBO estimates that each agency would require, on average, five additional staff at an average cost of \$250,000 to implement the requirement. Thus, enacting the bill would increase gross direct spending by \$36 million and net direct spending by \$10 million over the 2020–2029 period.

Innovation Labs. H.R. 2514 would require each federal financial regulator to establish an innovation lab to provide information and support to private entities regarding new approaches that may be used to comply with the BSA. Using information from the affected agencies, CBO estimates that they each would require, on average, about four additional employees to meet those requirements increasing gross direct spending by \$33 million and net direct spending by \$10 million over the 2020–2029 period.

Other Costs. The bill would require federal financial regulators to consult with the Treasury on several reports, update bank examination manuals, and appoint a civil liberties and privacy officer. CBO estimates that implementing those requirements would increase gross direct spending by \$18 million and net direct spending by \$5 million over the 2020–2029 period.

Whistleblower Program. H.R. 2514 would direct the Financial Crimes Enforcement Network to establish a new whistleblower program that would award a portion of penalties collected for violation of the BSA to people who provide information leading to the imposition of penalties. Based on information from FinCEN and an analysis of similar programs at the SEC and the CFTC, CBO estimates enacting the program would cost about \$1 million each year starting in 2027, the year in which CBO expects the final regulations would be in place and the whistleblower program would be fully operational. Over the 2020–2029 period, CBO estimates, the award program would increase direct spending by \$3 million.

Revenues: CBO and the staff of the Joint Committee on Taxation (JCT) estimate that enacting H.R. 2514 would, on net, increase revenues by \$226 million over the 2020–2029 period.

Tax Deductions. The bill would prohibit businesses and individuals from deducting attorney’s fees and court costs related to Bank Secrecy Act settlements on their tax returns. JCT estimates that enacting this provision would increase revenues by \$256 million over the 2020–2029 period.

Federal Reserve. The Federal Reserve would be subject to the same requirements under H.R. 2514 as other federal financial regulators as discussed earlier. Using information from the Federal Reserve, CBO estimates that the additional training and creating an innovation lab would cost about \$3 million each year and would thus decrease revenues by \$30 million over the 2020–2029 period.

Whistleblower Program. CBO expects that implementing the proposed FinCEN whistleblower program would increase revenues from penalties. However, under Congressional scorekeeping rules, the estimated increase in revenues from whistleblower rewards that we estimate would result from providing additional mandatory funds cannot be used to offset that increased spending.² CBO esti-

²The Conference Report for the Balanced Budget Act of 1997 (Public Law 105–33) established a series of scorekeeping rules that guide what budgetary effects are attributed to proposed legislation. Rule 14 states that “no increase in receipts or decrease in direct spending will be scored

mates that the “nonscoreable” revenues from this provision would total \$16 million over the 2020–2029 period. That estimate is based on an assessment of past FinCEN enforcement actions and on an evaluation of similar whistleblower programs at the SEC and the CFTC.

Spending subject to appropriation: CBO estimates that implementing H.R. 2514 would cost \$247 million over the 2019–2024 period, assuming appropriation of the necessary amounts (see Table 2).

TABLE 2.—ESTIMATED INCREASES IN SPENDING SUBJECT TO APPROPRIATION UNDER H.R. 2514

	By fiscal year, millions of dollars—					
	2020	2021	2022	2023	2024	2020–2024
Technical Assistance						
Estimated Authorization	60	60	60	60	60	300
Estimated Outlays	5	34	54	57	57	207
FinCEN						
Estimated Authorization	6	6	6	7	7	32
Estimated Outlays	5	6	6	7	7	31
Reports						
Estimated Authorization	6	*	*	*	*	7
Estimated Outlays	5	1	*	*	*	7
CFTC and SEC						
Estimated Authorization	*	*	*	*	*	2
Estimated Outlays	*	*	*	*	*	2
Total Changes						
Estimated Authorization	72	67	67	68	68	342
Estimated Outlays	16	41	61	64	65	247

Components may not sum to totals because of rounding.
CFTC = Commodity Futures Trading Commission; FinCEN = Financial Crimes Enforcement Network; SEC = Securities and Exchange Commission.

Technical Assistance. Over the 2020–2024 period the bill would authorize the appropriation of twice the amount appropriated in 2019 to the Treasury (\$30 million) to help foster international cooperation in combating money laundering and terrorism. Based on the funding for the current program, CBO estimates that the legislation would authorize the appropriation of \$60 million annually and cost \$207 million over the 2020–2024 period and \$93 million after 2024, assuming appropriation of the authorized amounts.

FinCEN. H.R. 2514 would require FinCEN to increase outreach to financial institutions, publish information about its use of reports filed by those institutions, and initiate a project to support the use of new technology to improve compliance with the BSA. Using information from FinCEN, CBO estimates that implementing those provisions would cost \$31 million over the 2020–2024 period, mostly to hire additional staff.

Reports. H.R. 2514 would require FinCEN, the Department of the Treasury, and other agencies to prepare a total of 15 reports to the Congress on money laundering and financial reporting. Based on the cost of similar activities, CBO estimates preparing those reports would cost about \$7 million over the 2020–2024 period.

CFTC and SEC. CBO estimates that the CFTC would spend about \$2 million over the 2020–2024 period to hire two employees

as a result of a provision of a law that provides direct spending for administrative or program management activities.”

at an annual cost of \$240,000 per employee. Such spending would be subject to the availability of appropriated funds.

CBO estimates that the SEC would spend about \$3 million over the 2020–2024 period to hire two employees at approximately \$260,000 per employee. Such spending would be subject to the availability of discretionary funds. However, the SEC is authorized to collect fees sufficient to offset its annual appropriation. Assuming future appropriation actions consistent with that authority, CBO estimates that the net effect on discretionary spending would be negligible.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 3.

TABLE 3.—CBO’s ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 2514

	By fiscal year, millions of dollars—											
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2020– 2024	2020– 2029
	Net Decrease in the Deficit											
Pay-As-You-Go Effect	-18	-17	-18	-19	-20	-21	-21	-20	-21	-21	-93	-198
Memorandum:												
Changes in Outlays ..	1	3	3	2	2	2	3	4	4	4	11	28
Changes in Revenues	19	20	21	21	22	23	24	24	25	25	104	226

Increase in long-term deficits: None.

Mandates: CBO has determined that the nontax provisions of H.R. 2514 contain private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO cannot determine whether the aggregate cost of those mandates would exceed the threshold established in UMRA for private-sector mandates (\$164 million in 2019, adjusted annually for inflation).

H.R. 2514 would direct the Department of Treasury to issue several rules that would impose mandates on private-sector entities subject to the BSA. The costs to comply with the mandates would include expenses incurred to meet new reporting and other requirements set out in the bill. Because the Treasury Department has not yet established those rules, CBO cannot determine whether the cost to comply with the mandates would exceed UMRA’s private-sector threshold.

Specifically, H.R. 2514 would require the Treasury Department to issue regulations establishing:

- Protections for some whistleblowing employees by prohibiting employers from dismissing or disciplining employees for disclosing violations of laws enforced by FinCEN;
- Requirements that antiquities dealers comply with the BSA;
- Requirements that some commercial real estate companies report beneficial ownership information to FinCEN for transactions within a geographic region and over a specific dollar threshold, which would be determined by the department; and
- Requirements for how to install new technology designed by financial institutions to facilitate compliance with the BSA.

If federal regulatory agencies increased fees to offset the costs associated with implementing the bill, H.R. 2514 would increase the cost of an existing mandate on financial institutions required to pay those assessments and fees. CBO estimates that the incremental cost of the mandate would average less than \$10 million annually over the 2019–2024 period.

H.R. 2514 contains no intergovernmental mandates as defined in UMRA.

Estimate prepared by: Federal costs: Mark Grabowicz (Financial Crimes Enforcement Network); David Hughes (Commodity Futures Trading Commission, Securities and Exchange Commission); Matthew Pickford (Department of the Treasury); Stephen Rabent (Federal Deposit Insurance Corporation, National Credit Union Administration, Office of the Comptroller of the Currency); Ellen Steele (Financial Crimes Enforcement Network whistleblower).

Revenues: The staff of the Joint Committee on Taxation; Nathaniel Frentz (Federal Reserve); Ellen Steele (Financial Crimes Enforcement Network whistleblower).

Mandates: Rachel Austin.

Estimate reviewed by: Kim Cawley, Chief, Natural and Physical Resources Cost Estimating Unit; Susan Willie, Chief, Mandates Unit; H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis; John McClelland, Assistant Director for Tax Analysis; Theresa Gullo, Assistant Director for Budget Analysis.

COMMITTEE COST ESTIMATE

Clause 3(d)(1) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison of the costs that would be incurred in carrying out H.R. 2514. However, clause 3(d)(2)(B) of that rule provides that this requirement does not apply when the committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 402 of the *Congressional Budget Act*.

UNFUNDED MANDATE STATEMENT

Pursuant to Section 423 of the *Congressional Budget and Impoundment Control Act* (as amended by Section 101(a)(2) of the *Unfunded Mandates Reform Act*, Pub. L. 104–4), the Committee adopts as its own the estimate of federal mandates regarding H.R. 2514, as amended, prepared by the Director of the Congressional Budget Office.

ADVISORY COMMITTEE

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

APPLICATION OF LAW TO THE LEGISLATIVE BRANCH

Pursuant to section 102(b)(3) of the *Congressional Accountability Act*, Pub. L. No. 104–1, H.R. 2514, as amended, does not apply to terms and conditions of employment or to access to public services or accommodations within the legislative branch.

EARMARK STATEMENT

In accordance with clause 9 of rule XXI of the Rules of the House of Representatives, H.R. 2514 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as described in clauses 9(e), 9(f), and 9(g) of rule XXI.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of H.R. 2514 establishes or reauthorizes a program of the Federal Government known to be duplicative of another federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

CHANGES TO EXISTING LAW

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, H.R. 2514, as reported, are shown as follows:

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 italics, 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

SUBCHAPTER I—ORGANIZATION

Sec.

301. Department of the Treasury.

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315. Continuing in office.

316. *Treasury Attachés Program.*

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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) *SPECIAL HIRING AUTHORITY.*—

(1) *IN GENERAL.*—*The Secretary of the Treasury may appoint, without regard to the provisions of sections 3309 through 3318 of title 5, candidates directly to positions in the competitive service (as defined in section 2102 of that title) in FinCEN.*

(2) *PRIMARY RESPONSIBILITIES.*—*The primary responsibility of candidates appointed pursuant to paragraph (1) shall be to provide substantive support in support of the duties described in subparagraphs (A), (B), (E), and (F) of subsection (b)(2).*

(e) *FINCEN DOMESTIC LIAISONS.*—

(1) *IN GENERAL.*—*The Director of FinCEN shall appoint at least 6 senior FinCEN employees as FinCEN Domestic Liaisons, who shall—*

(A) *each be assigned to focus on a specific region of the United States;*

(B) *be located at an office in such region (or co-located at an office of the Board of Governors of the Federal Reserve System in such region); and*

(C) *perform outreach to BSA officers at financial institutions (including non-bank financial institutions) and persons who are not financial institutions, especially with respect to actions taken by FinCEN that require specific actions by, or have specific effects on, such institutions or persons, as determined by the Director.*

(2) *DEFINITIONS.*—*In this subsection:*

(A) *BSA OFFICER.*—*The term “BSA officer” means an employee of a financial institution whose primary job responsibility involves compliance with the Bank Secrecy Act, as such term is defined under section 5312.*

(B) *FINANCIAL INSTITUTION.*—*The term “financial institution” has the meaning given that term under section 5312.*

(f) *FINCEN EXCHANGE.*—

(1) *ESTABLISHMENT.*—*The FinCEN Exchange is hereby established within FinCEN, which shall consist of the FinCEN Exchange program of FinCEN in existence on the day before the date of enactment of this paragraph.*

(2) *PURPOSE.*—*The FinCEN Exchange shall facilitate a voluntary public-private information sharing partnership among law enforcement, financial institutions, and FinCEN to—*

(A) *effectively and efficiently combat money laundering, terrorism financing, organized crime, and other financial crimes;*

- (B) *protect the financial system from illicit use; and*
 (C) *promote national security.*

(3) *REPORT.—*

(A) *IN GENERAL.—Not later than one year after the date of enactment of this subsection, and annually thereafter for the next five years, the Secretary of the Treasury 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 containing—*

(i) an analysis of the efforts undertaken by the FinCEN Exchange and the results of such efforts;

(ii) an analysis of the extent and effectiveness of the FinCEN Exchange, including any benefits realized by law enforcement from partnership with financial institutions; and

(iii) any legislative, administrative, or other recommendations the Secretary may have to strengthen FinCEN Exchange efforts.

(B) *CLASSIFIED ANNEX.—Each report under subparagraph (A) may include a classified annex.*

(4) *INFORMATION SHARING REQUIREMENT.—Information shared pursuant to this subsection shall be shared in compliance with all other applicable Federal laws and regulations.*

(5) *RULE OF CONSTRUCTION.—Nothing under this subsection may be construed to create new information sharing authorities related to the Bank Secrecy Act (as such term is defined under section 5312 of title 31, United States Code).*

(6) *FINANCIAL INSTITUTION DEFINED.—In this subsection, the term “financial institution” has the meaning given that term under section 5312.*

[(d)] (g) 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.

* * * * *

§ 316. Treasury Attachés Program

(a) *IN GENERAL.*—There is established the Treasury Attachés Program, under which the Secretary of the Treasury shall appoint employees of the Department of the Treasury, after nomination by the Director of the Financial Crimes Enforcement Network (“FinCEN”), as a Treasury attaché, who shall—

(1) be knowledgeable about the Bank Secrecy Act and anti-money laundering issues;

(2) be co-located in a United States embassy;

(3) perform outreach with respect to Bank Secrecy Act and anti-money laundering issues;

(4) establish and maintain relationships with foreign counterparts, including employees of ministries of finance, central banks, and other relevant official entities;

(5) conduct outreach to local and foreign financial institutions and other commercial actors, including—

(A) information exchanges through FinCEN and FinCEN programs; and

(B) soliciting buy-in and cooperation for the implementation of—

(i) United States and multilateral sanctions; and

(ii) international standards on anti-money laundering and the countering of the financing of terrorism; and

(6) perform such other actions as the Secretary determines appropriate.

(b) *NUMBER OF ATTACHÉS.*—The number of Treasury attachés appointed under this section at any one time shall be not fewer than 6 more employees than the number of employees of the Department of the Treasury serving as Treasury attachés on March 1, 2019.

(c) *COMPENSATION.*—Each Treasury attaché appointed under this section and located at a United States embassy shall receive compensation at the higher of—

(1) the rate of compensation provided to a Foreign Service officer at a comparable career level serving at the same embassy; or

(2) the rate of compensation the Treasury attaché would otherwise have received, absent the application of this subsection.

(d) *BANK SECRECY ACT DEFINED.*—In this section, the term “Bank Secrecy Act” has the meaning given that term under section 5312.

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SUBTITLE IV—MONEY

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CHAPTER 53—MONETARY TRANSACTIONS

SUBCHAPTER I—CREDIT AND MONETARY EXPANSION

Sec.

5301. Buying obligations of the United States Government.

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

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5323A. *Whistleblower incentives.*

* * * * *

5333. *AML/CFT Training.*

5334. *Innovation Labs.*

5335. *Innovation Council.*

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

§ 5311. Declaration of purpose

It is the purpose of this subchapter (except section 5315) to protect our national security, to safeguard the integrity of the international financial system, and to require certain reports or records where they have a high degree of usefulness to law enforcement in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

§ 5312. Definitions and application

(a) In this subchapter—

(1) “financial agency” means a person acting for a person (except for a country, a monetary or financial authority acting as a monetary or financial authority, or an international financial institution of which the United States Government is a member) as a financial institution, bailee, depository trustee, or agent, or acting in a similar way related to money, credit, securities, gold, or a transaction in money, credit, securities, or gold.

(2) “financial institution” means—

- (A) an insured bank (as defined in section 3(h) of the Federal Deposit Insurance Act (12 U.S.C. 1813(h)));
- (B) a commercial bank or trust company;
- (C) a private banker;
- (D) an agency or branch of a foreign bank in the United States;
- (E) any credit union;
- (F) a thrift institution;

- (G) a broker or dealer registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.);
- (H) a broker or dealer in securities or commodities;
- (I) an investment banker or investment company;
- (J) a currency exchange;
- (K) an issuer, redeemer, or cashier of travelers' checks, checks, money orders, or similar instruments;
- (L) an operator of a credit card system;
- (M) an insurance company;
- (N) a dealer in precious metals, stones, or jewels;
- (O) a pawnbroker;
- (P) a loan or finance company;
- (Q) a travel agency;
- (R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system;
- (S) a telegraph company;
- (T) a business engaged in vehicle sales, including automobile, airplane, and boat sales;
- (U) persons involved in real estate closings and settlements;
- (V) the United States Postal Service;
- (W) an agency of the United States Government or of a State or local government carrying out a duty or power of a business described in this paragraph;
- (X) a casino, gambling casino, or gaming establishment with an annual gaming revenue of more than \$1,000,000 which—
- (i) is licensed as a casino, gambling casino, or gaming establishment under the laws of any State or any political subdivision of any State; or
 - (ii) is an Indian gaming operation conducted under or pursuant to the Indian Gaming Regulatory Act other than an operation which is limited to class I gaming (as defined in section 4(6) of such Act);
- (Y) any business or agency which engages in any activity which the Secretary of the Treasury determines, by regulation, to be an activity which is similar to, related to, or a substitute for any activity in which any business described in this paragraph is authorized to engage; **[or]**
- (Z) a person trading or acting as an intermediary in the trade of antiquities, including an advisor, consultant or any other person who engages as a business in the solicitation of the sale of antiquities; or*
- [(Z)]** (AA) any other business designated by the Secretary whose cash transactions have a high degree of usefulness in criminal, tax, or regulatory matters.
- (3) “monetary instruments” means—
- (A) United States coins and currency;

(B) as the Secretary may prescribe by regulation, coins and currency of a foreign country, travelers' checks, bearer negotiable instruments, bearer investment securities, bearer securities, stock on which title is passed on delivery, and similar material; and

(C) as the Secretary of the Treasury shall provide by regulation for purposes of sections 5316 and 5331, checks, drafts, notes, money orders, and other similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

(4) **NONFINANCIAL TRADE OR BUSINESS.**—The term “non-financial trade or business” means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.

(5) “person”, in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

(6) “United States” means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

(7) **BANK SECRECY ACT.**—The term “Bank Secrecy act” means—

(A) section 21 of the Federal Deposit Insurance Act;

(B) chapter 2 of title I of Public Law 91-508; and

(C) this subchapter.

(b) In this subchapter—

(1) “domestic financial agency” and “domestic financial institution” apply to an action in the United States of a financial agency or institution.

(2) “foreign financial agency” and “foreign financial institution” apply to an action outside the United States of a financial agency or institution.

(c) **ADDITIONAL DEFINITIONS.**—For purposes of this subchapter, the following definitions shall apply:

(1) **CERTAIN INSTITUTIONS INCLUDED IN DEFINITION.**—The term “financial institution” (as defined in subsection (a)) includes the following:

(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act.

* * * * *

§ 5318. Compliance, exemptions, and summons authority

(a) **GENERAL POWERS OF SECRETARY.**—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions or non-financial trades or businesses to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

(3) examine any books, papers, records, or other data of domestic financial institutions or nonfinancial trades or businesses relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution or nonfinancial trade or business, an officer or employee of a financial institution or nonfinancial trade or business (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

(5) exempt from the requirements of this subchapter any class of transactions within any State if the Secretary determines that—

(A) under the laws of such State, that class of transactions is subject to requirements substantially similar to those imposed under this subchapter; and

(B) there is adequate provision for the enforcement of such requirements;

(6) rely on examinations conducted by a State supervisory agency of a category of financial institution, if the Secretary determines that—

(A) the category of financial institution is required to comply with this subchapter and regulations prescribed under this subchapter; or

(B) the State supervisory agency examines the category of financial institution for compliance with this subchapter and regulations prescribed under this subchapter; and

(7) prescribe an appropriate exemption from a requirement under this subchapter and regulations prescribed under this subchapter. The Secretary may revoke an exemption under this paragraph or paragraph (5) by actually or constructively notifying the parties affected. A revocation is effective during judicial review.

(b) LIMITATIONS ON SUMMONS POWER.—

(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91-508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution or nonfinancial trade or business operates or conducts business in the United States.

(2) FEES AND TRAVEL EXPENSES.—Persons summoned under this section shall be paid the same fees and mileage for travel in the United States that are paid witnesses in the courts of the United States.

(3) NO LIABILITY FOR EXPENSES.—The United States shall not be liable for any expense, other than an expense described in paragraph (2), incurred in connection with the production of books, papers, records, or other data under this section.

(d) SERVICE OF SUMMONS.—Service of a summons issued under this section may be by registered mail or in such other manner calculated to give actual notice as the Secretary may prescribe by regulation.

(e) CONTUMACY OR REFUSAL.—

(1) REFERRAL TO ATTORNEY GENERAL.—In case of contumacy by a person issued a summons under paragraph (3) or (4) of subsection (a) or a refusal by such person to obey such summons, the Secretary of the Treasury shall refer the matter to the Attorney General.

(2) JURISDICTION OF COURT.—The Attorney General may invoke the aid of any court of the United States within the jurisdiction of which—

(A) the investigation which gave rise to the summons is being or has been carried on;

(B) the person summoned is an inhabitant; or

(C) the person summoned carries on business or may be found, to compel compliance with the summons.

(3) COURT ORDER.—The court may issue an order requiring the person summoned to appear before the Secretary or his delegate to produce books, papers, records, and other data, to give testimony as may be necessary to explain how such material was compiled and maintained, and to pay the costs of the proceeding.

(4) FAILURE TO COMPLY WITH ORDER.—Any failure to obey the order of the court may be punished by the court as a contempt thereof.

(5) SERVICE OF PROCESS.—All process in any case under this subsection may be served in any judicial district in which such person may be found.

(f) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) ¹ unless the relevant financial institution or nonfinancial trade or business prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

(g) REPORTING OF SUSPICIOUS TRANSACTIONS.—

(1) IN GENERAL.—The Secretary may require any financial institution, and any director, officer, employee, or agent of any financial institution, to report any suspicious transaction relevant to a possible violation of law or regulation.

(2) NOTIFICATION PROHIBITED.—

(A) IN GENERAL.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

(i) neither the financial institution, director, officer, employee, or agent of such institution (whether or not any such person is still employed by the institution), nor any other current or former director, officer, or employee of, or contractor for, the financial institution or other reporting person, may notify any person involved in the transaction that the transaction has been reported *or otherwise reveal any information that would reveal that the transaction has been reported, including materials prepared or used by the financial institution for the purpose of identifying and detecting potentially suspicious activity*; and

(ii) no current or former officer or employee of or contractor for the Federal Government or of or for any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported, *or otherwise reveal any information that would reveal that the transaction has been reported, including materials prepared or used by the financial institution for the purpose of identifying and detecting potentially suspicious activity*, other than as necessary to fulfill the official duties of such officer or employee.

(B) DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.—

(i) RULE OF CONSTRUCTION.—Notwithstanding the application of subparagraph (A) in any other context, subparagraph (A) shall not be construed as prohibiting any financial institution, or any director, officer, employee, or agent of such institution, from including information that was included in a report to which subparagraph (A) applies—

(I) in a written employment reference that is provided in accordance with section 18(w) of the Federal Deposit Insurance Act in response to a request from another financial institution; or

(II) in a written termination notice or employment reference that is provided in accordance with the rules of a self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission,

except that such written reference or notice may not disclose that such information was also included in any such report, or that such report was made.

(ii) INFORMATION NOT REQUIRED.—Clause (i) shall not be construed, by itself, to create any affirmative duty to include any information described in clause (i) in any employment reference or termination notice referred to in clause (i).

(3) LIABILITY FOR DISCLOSURES.—

(A) IN GENERAL.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to the person who is the subject of such disclosure or any other person identified in the disclosure.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

(i) any inference that the term “person”, as used in such subparagraph, may be construed more broadly than its ordinary usage so as to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

(4) SINGLE DESIGNEE FOR REPORTING SUSPICIOUS TRANSACTIONS.—

(A) IN GENERAL.—In requiring reports under paragraph (1) of suspicious transactions, the Secretary of the Treasury shall designate, to the extent practicable and appropriate, a single officer or agency of the United States to whom such reports shall be made.

(B) DUTY OF DESIGNEE.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to any appropriate law enforcement, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.

(C) COORDINATION WITH OTHER REPORTING REQUIREMENTS.—Subparagraph (A) shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any other applicable provision of law.

(5) *OECD PILOT PROGRAM ON SHARING WITH FOREIGN BRANCHES, SUBSIDIARIES, AND AFFILIATES.*—

(A) *IN GENERAL.*—Not later than 180 days after the date of the enactment of this paragraph, the Secretary of the Treasury shall issue rules, subject to such controls and restrictions as the Director of the Financial Crimes Enforcement Network determines appropriate, establishing the pilot program described under subparagraph (B). In prescribing such rules, the Secretary shall ensure that the sharing of information described under such subparagraph (B) is subject to appropriate standards and requirements regarding data security and the confidentiality of personally identifiable information.

(B) *PILOT PROGRAM DESCRIBED.*—The pilot program required under this paragraph shall—

(i) permit any financial institution with a reporting obligation under this subsection to share reports (and information on such reports) under this subsection with the institution's foreign branches, subsidiaries, and affiliates for the purpose of combating illicit finance risks, notwithstanding any other provision of law except subparagraph (C), but only if such foreign branch, subsidiary, or affiliate is located in a jurisdiction that is a member of the Organisation for Economic Co-operation and Development;

(ii) terminate on the date that is five years after the date of enactment of this paragraph, except that the Secretary may extend the pilot program for up to two years upon submitting a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that includes—

(I) a certification that the extension is in the national interest of the United States, with a detailed explanation of the reasons therefor;

(II) an evaluation of the usefulness of the pilot program, including a detailed analysis of any illicit activity identified or prevented as a result of the program; and

(III) a detailed legislative proposal providing for a long-term extension of the pilot program activities, including expected budgetary resources for the activities, if the Secretary determines that a long-term extension is appropriate.

(C) *PROHIBITION INVOLVING CERTAIN JURISDICTIONS.*—In issuing the regulations required under subparagraph (A), the Secretary may not permit a financial institution to share information on reports under this subsection with a foreign branch, subsidiary, or affiliate located in a jurisdiction that—

(i) is subject to countermeasures imposed by the Federal Government; or

(ii) the Secretary has determined cannot reasonably protect the privacy and confidentiality of such information.

(D) *IMPLEMENTATION UPDATES.*—Not later than 360 days after the date rules are issued under subparagraph (A), and annually thereafter for three years, the Secretary, or the Secretary’s designee, shall brief the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on—

(i) the degree of any information sharing permitted under the pilot program, and a description of criteria used by the Secretary to evaluate the appropriateness of the information sharing;

(ii) the effectiveness of the pilot program in identifying or preventing the violation of a United States law or regulation, and mechanisms that may improve such effectiveness; and

(iii) any recommendations to amend the design of the pilot program, or to include specific non-OECD jurisdictions in the program.

(6) *TREATMENT OF FOREIGN JURISDICTION-ORIGINATED REPORTS.*—A report received by a financial institution from a foreign affiliate with respect to a suspicious transaction relevant to a possible violation of law or regulation shall be subject to the same confidentiality requirements provided under this subsection for a report of a suspicious transaction described under paragraph (1).

(7) *SHARING OF THREAT PATTERN AND TREND INFORMATION.*—

(A) *SAR ACTIVITY REVIEW.*—The Director of the Financial Crimes Enforcement Network shall restart publication of the “SAR Activity Review – Trends, Tips & Issues”, on not less than a semi-annual basis, to provide meaningful information about the preparation, use, and value of reports filed under this subsection by financial institutions, as well as other reports filed by financial institutions under the Bank Secrecy Act.

(B) *INCLUSION OF TYPOLOGIES.*—In each publication described under subparagraph (A), the Director shall provide financial institutions with typologies, including data that can be adapted in algorithms (including for artificial intelligence and machine learning programs) where appropriate, on emerging money laundering and counter terror financing threat patterns and trends.

(C) *TYPOLGY DEFINED.*—For purposes of this paragraph, the term “typology” means the various techniques used to launder money or finance terrorism.

(h) *ANTI-MONEY LAUNDERING PROGRAMS.*—

(1) *IN GENERAL.*—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

(A) the development of internal policies, procedures, and controls;

(B) the designation of a compliance officer;

(C) an ongoing employee training program; and

(D) an independent audit function to test programs.

(2) REGULATIONS.—The Secretary of the Treasury, after consultation with the appropriate Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act), may prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the rules contained in part 103 of title 31, of the Code of Federal Regulations, or any successor rule thereto, for so long as such financial institution is not subject to the provisions of such rules.

(3) CONCENTRATION ACCOUNTS.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.

(i) DUE DILIGENCE FOR UNITED STATES PRIVATE BANKING AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

(1) IN GENERAL.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person shall establish appropriate, specific, and, where necessary, enhanced, due diligence policies, procedures, and controls that are reasonably designed to detect and report instances of money laundering through those accounts.

(2) ADDITIONAL STANDARDS FOR CERTAIN CORRESPONDENT ACCOUNTS.—

(A) IN GENERAL.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

(i) under an offshore banking license; or

(ii) under a banking license issued by a foreign country that has been designated—

(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member, with which des-

ignation the United States representative to the group or organization concurs; or

(II) by the Secretary of the Treasury as warranting special measures due to money laundering concerns.

(B) POLICIES, PROCEDURES, AND CONTROLS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under subsection (g); and

(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under subsection (g); and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, that is reasonably designed to detect and report transactions that may involve the proceeds of foreign corruption.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) OFFSHORE BANKING LICENSE.—The term “offshore banking license” means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

(B) PRIVATE BANKING ACCOUNT.—The term “private banking account” means an account (or any combination of accounts) that—

(i) requires a minimum aggregate deposits of funds or other assets of not less than \$1,000,000;

(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.

(j) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

(1) IN GENERAL.—A financial institution described in subparagraphs (A) through (G) of section 5312(a)(2) (in this subsection referred to as a “covered financial institution”) shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—A covered financial institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that covered financial institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. The Secretary of the Treasury shall, by regulation, delineate the reasonable steps necessary to comply with this paragraph.

(3) EXCEPTION.—Paragraphs (1) and (2) do not prohibit a covered financial institution from providing a correspondent account to a foreign bank, if the foreign bank—

(A) is an affiliate of a depository institution, credit union, or foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank described in subparagraph (A), as applicable.

(4) DEFINITIONS.—For purposes of this subsection—

(A) the term “affiliate” means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank; and

(B) the term “physical presence” means a place of business that—

(i) is maintained by a foreign bank;

(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

(I) employs 1 or more individuals on a full-time basis; and

(II) maintains operating records related to its banking activities; and

(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.

(k) BANK RECORDS RELATED TO ANTI-MONEY LAUNDERING PROGRAMS.—

(1) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) APPROPRIATE FEDERAL BANKING AGENCY.—The term “appropriate Federal banking agency” has the same meaning as in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(B) INCORPORATED TERM.—The term “correspondent account” has the same meaning as in section 5318A(e)(1)(B).

(2) 120-HOUR RULE.—Not later than 120 hours after receiving a request by an appropriate Federal banking agency for information related to anti-money laundering compliance by a covered financial institution or a customer of such institution, a covered financial institution shall provide to the appropriate Federal banking agency, or make available at a location specified by the representative of the appropriate Federal banking agency, information and account documentation for any account opened, maintained, administered or managed in the United States by the covered financial institution.

(3) FOREIGN BANK RECORDS.—

(A) SUMMONS OR SUBPOENA OF RECORDS.—

(i) IN GENERAL.—The Secretary of the Treasury or the Attorney General may issue a summons or subpoena to any foreign bank that maintains a correspondent account in the United States and request records related to such correspondent account, including records maintained outside of the United States relating to the deposit of funds into the foreign bank.

(ii) SERVICE OF SUMMONS OR SUBPOENA.—A summons or subpoena referred to in clause (i) may be served on the foreign bank in the United States if the foreign bank has a representative in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(B) ACCEPTANCE OF SERVICE.—

(i) MAINTAINING RECORDS IN THE UNITED STATES.—Any covered financial institution which maintains a correspondent account in the United States for a foreign bank shall maintain records in the United States identifying the owners of such foreign bank and the name and address of a person who resides in the United States and is authorized to accept service of legal process for records regarding the correspondent account.

(ii) LAW ENFORCEMENT REQUEST.—Upon receipt of a written request from a Federal law enforcement officer for information required to be maintained under this paragraph, the covered financial institution shall provide the information to the requesting officer not later than 7 days after receipt of the request.

(C) TERMINATION OF CORRESPONDENT RELATIONSHIP.—

(i) TERMINATION UPON RECEIPT OF NOTICE.—A covered financial institution shall terminate any correspondent relationship with a foreign bank not later than 10 business days after receipt of written notice from the Secretary or the Attorney General (in each case, after consultation with the other) that the foreign bank has failed—

(I) to comply with a summons or subpoena issued under subparagraph (A); or

(II) to initiate proceedings in a United States court contesting such summons or subpoena.

(ii) LIMITATION ON LIABILITY.—A covered financial institution shall not be liable to any person in any court or arbitration proceeding for terminating a correspondent relationship in accordance with this subsection.

(iii) FAILURE TO TERMINATE RELATIONSHIP.—Failure to terminate a correspondent relationship in accordance with this subsection shall render the covered financial institution liable for a civil penalty of up to \$10,000 per day until the correspondent relationship is so terminated.

(1) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS.—

(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards for financial institutions and their customers regarding the identity of the customer that shall apply in connection with the opening of an account at a financial institution.

(2) MINIMUM REQUIREMENTS.—The regulations shall, at a minimum, require financial institutions to implement, and customers (after being given adequate notice) to comply with, reasonable procedures for—

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information; and

(C) consulting lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any government agency to determine whether a person seeking to open an account appears on any such list.

(3) FACTORS TO BE CONSIDERED.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) CERTAIN FINANCIAL INSTITUTIONS.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal func-

tional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

(5) EXEMPTIONS.—The Secretary (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

(6) EFFECTIVE DATE.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of enactment of the International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001.

(m) APPLICABILITY OF RULES.—Any rules promulgated pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b) shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including any person who engages as a business in an informal money transfer system or any network of people who engage as a business in facilitating the transfer of money domestically or internationally outside of the conventional financial institutions system.

(n) REPORTING OF CERTAIN CROSS-BORDER TRANSMITTALS OF FUNDS.—

(1) IN GENERAL.—Subject to paragraphs (3) and (4), the Secretary shall prescribe regulations requiring such financial institutions as the Secretary determines to be appropriate to report to the Financial Crimes Enforcement Network certain cross-border electronic transmittals of funds, if the Secretary determines that reporting of such transmittals is reasonably necessary to conduct the efforts of the Secretary against money laundering and terrorist financing.

(2) LIMITATION ON REPORTING REQUIREMENTS.—Information required to be reported by the regulations prescribed under paragraph (1) shall not exceed the information required to be retained by the reporting financial institution pursuant to section 21 of the Federal Deposit Insurance Act and the regulations promulgated thereunder, unless—

(A) the Board of Governors of the Federal Reserve System and the Secretary jointly determine that a particular item or items of information are not currently required to be retained under such section or such regulations; and

(B) the Secretary determines, after consultation with the Board of Governors of the Federal Reserve System, that the reporting of such information is reasonably necessary to conduct the efforts of the Secretary to identify cross-border money laundering and terrorist financing.

(3) FORM AND MANNER OF REPORTS.—In prescribing the regulations required under paragraph (1), the Secretary shall, subject to paragraph (2), determine the appropriate form, manner, content, and frequency of filing of the required reports.

(4) FEASIBILITY REPORT.—

(A) IN GENERAL.—Before prescribing the regulations required under paragraph (1), and as soon as is practicable after the date of enactment of the Intelligence Reform and Terrorism Prevention Act of 2004, the Secretary shall submit a report to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives that—

(i) identifies the information in cross-border electronic transmittals of funds that may be found in particular cases to be reasonably necessary to conduct the efforts of the Secretary to identify money laundering and terrorist financing, and outlines the criteria to be used by the Secretary to select the situations in which reporting under this subsection may be required;

(ii) outlines the appropriate form, manner, content, and frequency of filing of the reports that may be required under such regulations;

(iii) identifies the technology necessary for the Financial Crimes Enforcement Network to receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing; and

(iv) discusses the information security protections required by the exercise of the Secretary's authority under this subsection.

(B) CONSULTATION.—In reporting the feasibility report under subparagraph (A), the Secretary may consult with the Bank Secrecy Act Advisory Group established by the Secretary, and any other group considered by the Secretary to be relevant.

(5) REGULATIONS.—

(A) IN GENERAL.—Subject to subparagraph (B), the regulations required by paragraph (1) shall be prescribed in final form by the Secretary, in consultation with the Board of Governors of the Federal Reserve System, before the end of the 3-year period beginning on the date of enactment of the National Intelligence Reform Act of 2004.

(B) TECHNOLOGICAL FEASIBILITY.—No regulations shall be prescribed under this subsection before the Secretary certifies to the Congress that the Financial Crimes Enforcement Network has the technological systems in place to effectively and efficiently receive, keep, exploit, protect the security of, and disseminate information from reports of cross-border electronic transmittals of funds to law enforcement and other entities engaged in efforts against money laundering and terrorist financing.

(o) SHARING OF COMPLIANCE RESOURCES.—

(1) SHARING PERMITTED.—*Two or more financial institutions may enter into collaborative arrangements in order to more efficiently comply with the requirements of this subchapter.*

(2) OUTREACH.—*The Secretary of the Treasury and the appropriate supervising agencies shall carry out an outreach program to provide financial institutions with information, including*

best practices, with respect to the sharing of resources described under paragraph (1).

(p) **ENCOURAGING INNOVATION IN COMPLIANCE.**—

(1) **IN GENERAL.**—*The Federal functional regulators shall encourage financial institutions to consider, evaluate, and, where appropriate, responsibly implement innovative approaches to meet the requirements of this subchapter, including through the use of innovation pilot programs.*

(2) **EXEMPTIVE RELIEF.**—*The Secretary, pursuant to subsection (a), may provide exemptions from the requirements of this subchapter if the Secretary determines such exemptions are necessary to facilitate the testing and potential use of new technologies and other innovations.*

(3) **RULE OF CONSTRUCTION.**—*This subsection may not be construed to require financial institutions to consider, evaluate, or implement innovative approaches to meet the requirements of the Bank Secrecy Act.*

(4) **FEDERAL FUNCTIONAL REGULATOR DEFINED.**—*In this subsection, the term “Federal functional regulator” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.*

(q) **PARALLEL RUNS RULEMAKING.**—

(1) **IN GENERAL.**—*The Secretary of the Treasury, in consultation with the head of each agency to which the Secretary has delegated duties or powers under subsection (a), shall issue a rule to specify—*

(A) *with respect to technology and processes designed to facilitate compliance with the Bank Secrecy Act requirements, under what circumstances it is necessary for a financial institution to test new technology and processes alongside legacy technology and processes (“parallel runs”);*

(B) *if parallel runs are required, what standards must be met; and*

(C) *in what instances or under what circumstance and criteria a financial institution may replace or terminate such legacy technology and processes for any examinable technology or process without the replacement or termination being determined an examination deficiency.*

(2) **STANDARDS.**—*The standards described under paragraph (1)(B) may include—*

(A) *an emphasis on using innovative approaches, such as machine learning, rather than rules-based systems;*

(B) *risk-based back-testing of the regime to facilitate calibration of relevant systems;*

(C) *requirements for appropriate data privacy and security; and*

(D) *a requirement that the algorithms used by the regime be disclosed to the Financial Crimes Enforcement Network.*

(3) **CONFIDENTIALITY OF ALGORITHMS.**—*If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this subsection or any other authority, discloses the institution’s algorithms to a Gov-*

ernment agency, such algorithms and any materials associated with the creation of such algorithms shall be considered confidential and not subject to public disclosure.

* * * * *

§ 5321. Civil penalties

(a)(1) A domestic financial institution or nonfinancial trade or business, and a partner, director, officer, or employee of a domestic financial institution or nonfinancial trade or business, willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508, is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed \$100,000) involved in the transaction (if any) or \$25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(2) The Secretary of the Treasury may impose an additional civil penalty on a person not filing a report, or filing a report containing a material omission or misstatement, under section 5316 of this title or a regulation prescribed under section 5316. A civil penalty under this paragraph may not be more than the amount of the monetary instrument for which the report was required. A civil penalty under this paragraph is reduced by an amount forfeited under section 5317(b) of this title.

(3) A person not filing a report under a regulation prescribed under section 5315 of this title or not complying with an injunction under section 5320 of this title enjoining a violation of, or enforcing compliance with, section 5315 or a regulation prescribed under section 5315, is liable to the Government for a civil penalty of not more than \$10,000.

(4) STRUCTURED TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates any provision of section 5324.

(B) MAXIMUM AMOUNT LIMITATION.—The amount of any civil money penalty imposed under subparagraph (A) shall not exceed the amount of the coins and currency (or such other monetary instruments as the Secretary may prescribe) involved in the transaction with respect to which such penalty is imposed.

(C) COORDINATION WITH FORFEITURE PROVISION.—The amount of any civil money penalty imposed by the Secretary under subparagraph (A) shall be reduced by the amount of any forfeiture to the United States in connection with the transaction with respect to which such penalty is imposed.

(5) FOREIGN FINANCIAL AGENCY TRANSACTION VIOLATION.—

(A) PENALTY AUTHORIZED.—The Secretary of the Treasury may impose a civil money penalty on any person who violates, or causes any violation of, any provision of section 5314.

(B) AMOUNT OF PENALTY.—

- (i) IN GENERAL.—Except as provided in subparagraph (C), the amount of any civil penalty imposed under subparagraph (A) shall not exceed \$10,000.
- (ii) REASONABLE CAUSE EXCEPTION.—No penalty shall be imposed under subparagraph (A) with respect to any violation if—
- (I) such violation was due to reasonable cause, and
 - (II) the amount of the transaction or the balance in the account at the time of the transaction was properly reported.
- (C) WILLFUL VIOLATIONS.—In the case of any person willfully violating, or willfully causing any violation of, any provision of section 5314—
- (i) the maximum penalty under subparagraph (B)(i) shall be increased to the greater of—
 - (I) \$100,000, or
 - (II) 50 percent of the amount determined under subparagraph (D), and
 - (ii) subparagraph (B)(ii) shall not apply.
- (D) AMOUNT.—The amount determined under this subparagraph is—
- (i) in the case of a violation involving a transaction, the amount of the transaction, or
 - (ii) in the case of a violation involving a failure to report the existence of an account or any identifying information required to be provided with respect to an account, the balance in the account at the time of the violation.
- (6) NEGLIGENCE.—
- (A) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than \$500 on any financial institution or nonfinancial trade or business which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.
- (B) PATTERN OF NEGLIGENT ACTIVITY.—If any financial institution or nonfinancial trade or business engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than \$50,000 on the financial institution or nonfinancial trade or business.
- (7) PENALTIES FOR INTERNATIONAL COUNTER MONEY LAUNDERING VIOLATIONS.—The Secretary may impose a civil money penalty in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000, on any financial institution or agency that violates any provision of subsection (i) or (j) of section 5318 or any special measures imposed under section 5318A.
- (b) TIME LIMITATIONS FOR ASSESSMENTS AND COMMENCEMENT OF CIVIL ACTIONS.—
- (1) ASSESSMENTS.—The Secretary of the Treasury may assess a civil penalty under subsection (a) at any time before the end of the 6-year period beginning on the date of the transaction with respect to which the penalty is assessed.
 - (2) CIVIL ACTIONS.—The Secretary may commence a civil action to recover a civil penalty assessed under subsection (a) at

any time before the end of the 2-year period beginning on the later of—

(A) the date the penalty was assessed; or

(B) the date any judgment becomes final in any criminal action under section 5322 in connection with the same transaction with respect to which the penalty is assessed.

(c) The Secretary may remit any part of a forfeiture under subsection (c) or (d) of section 5317 of this title or civil penalty under subsection (a)(2) of this section.

(d) CRIMINAL PENALTY NOT EXCLUSIVE OF CIVIL PENALTY.—A civil money penalty may be imposed under subsection (a) with respect to any violation of this subchapter notwithstanding the fact that a criminal penalty is imposed with respect to the same violation.

(e) DELEGATION OF ASSESSMENT AUTHORITY TO BANKING AGENCIES.—

(1) IN GENERAL.—The Secretary of the Treasury shall delegate, in accordance with section 5318(a)(1) and subject to such terms and conditions as the Secretary may impose in accordance with paragraph (3), any authority of the Secretary to assess a civil money penalty under this section on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) to the appropriate Federal banking agencies (as defined in such section 3).

(2) AUTHORITY OF AGENCIES.—Subject to any term or condition imposed by the Secretary of the Treasury under paragraph (3), the provisions of this section shall apply to an appropriate Federal banking agency to which is delegated any authority of the Secretary under this section in the same manner such provisions apply to the Secretary.

(3) TERMS AND CONDITIONS.—

(A) IN GENERAL.—The Secretary of the Treasury shall prescribe by regulation the terms and conditions which shall apply to any delegation under paragraph (1).

(B) MAXIMUM DOLLAR AMOUNT.—The terms and conditions authorized under subparagraph (A) may include, in the Secretary's sole discretion, a limitation on the amount of any civil penalty which may be assessed by an appropriate Federal banking agency pursuant to a delegation under paragraph (1).

(f) CERTAIN VIOLATORS BARRED FROM SERVING ON BOARDS OF UNITED STATES FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—*An individual found to have committed an egregious violation of a provision of (or rule issued under) the Bank Secrecy Act shall be barred from serving on the board of directors of a United States financial institution for a 10-year period beginning on the date of such finding.*

(2) EGREGIOUS VIOLATION DEFINED.—*With respect to an individual, the term "egregious violation" means—*

(A) *a felony criminal violation for which the individual was convicted; and*

(B) *a civil violation where the individual willfully committed such violation and the violation facilitated money laundering or the financing of terrorism.*

(g) *ADDITIONAL DAMAGES FOR REPEAT VIOLATORS.*—In addition to any other fines permitted by this section and section 5322, with respect to a person who has previously been convicted of a criminal provision of (or rule issued under) the Bank Secrecy Act or who has admitted, as part of a deferred- or non-prosecution agreement, to having previously committed a violation of a criminal provision of (or rule issued under) the Bank Secrecy Act, the Secretary may impose an additional civil penalty against such person for each additional such violation in an amount equal to up three times the profit gained or loss avoided by such person as a result of the violation.

§ 5322. Criminal penalties

(a) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508, shall be fined not more than \$250,000, or imprisoned for not more than five years, or both.

(b) A person willfully violating this subchapter or a regulation prescribed or order issued under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508, while violating another law of the United States or as part of a pattern of any illegal activity involving more than \$100,000 in a 12-month period, shall be fined not more than \$500,000, imprisoned for not more than 10 years, or both.

(c) For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

(d) A financial institution or agency that violates any provision of subsection (i) or (j) of section 5318, or any special measures imposed under section 5318A, or any regulation prescribed under subsection (i) or (j) of section 5318 or section 5318A, shall be fined in an amount equal to not less than 2 times the amount of the transaction, but not more than \$1,000,000.

(e) *RETURN OF PROFITS AND BONUSES.*—A person convicted of violating a provision of (or rule issued under) the Bank Secrecy Act shall—

(1) *in addition to any other fine under this section, be fined in an amount equal to the profit gained by such person by reason of such violation, as determined by the court; and*

(2) *if such person is an individual who was a partner, director, officer, or employee of a financial institution at the time the violation occurred, repay to such financial institution any bonus paid to such individual during the Federal fiscal year in which the violation occurred or the Federal fiscal year after which the violation occurred.*

§ 5323. Rewards for informants

(a) The Secretary may pay a reward to an individual who provides original information which leads to a recovery of a criminal

fine, civil penalty, or forfeiture, which exceeds \$50,000, for a violation of this chapter.

(b) The Secretary shall determine the amount of a reward under this section. The Secretary may not award more than 25 per centum of the net amount of the fine, penalty, or forfeiture collected or \$150,000, whichever is less.

(c) An officer or employee of the United States, a State, or a local government who provides information described in subsection (a) in the performance of official duties is not eligible for a reward under this section.

[(d) There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.]

(d) *SOURCE OF REWARDS.*—*For the purposes of paying a reward under this section, the Secretary may use, without further appropriation, criminal fine, civil penalty, or forfeiture amounts recovered based on the original information with respect to which the reward is being paid.*

§ 5323A. Whistleblower incentives

(a) *DEFINITIONS.*—*In this section:*

(1) *COVERED JUDICIAL OR ADMINISTRATIVE ACTION.*—*The term “covered judicial or administrative action” means any judicial or administrative action brought by FinCEN under the Bank Secrecy Act that results in monetary sanctions exceeding \$1,000,000.*

(2) *FINCEN.*—*The term “FinCEN” means the Financial Crimes Enforcement Network.*

(3) *MONETARY SANCTIONS.*—*The term “monetary sanctions”, when used with respect to any judicial or administrative action, means—*

(A) *any monies, including penalties, disgorgement, and interest, ordered to be paid; and*

(B) *any monies deposited into a disgorgement fund as a result of such action or any settlement of such action.*

(4) *ORIGINAL INFORMATION.*—*The term “original information” means information that—*

(A) *is derived from the independent knowledge or analysis of a whistleblower;*

(B) *is not known to FinCEN from any other source, unless the whistleblower is the original source of the information; and*

(C) *is not exclusively derived from an allegation made in a judicial or administrative hearing, in a governmental report, hearing, audit, or investigation, or from the news media, unless the whistleblower is a source of the information.*

(5) *RELATED ACTION.*—*The term “related action”, when used with respect to any judicial or administrative action brought by FinCEN, means any judicial or administrative action that is based upon original information provided by a whistleblower that led to the successful enforcement of the action.*

(6) *SECRETARY.*—*The term “Secretary” means the Secretary of the Treasury.*

(7) *WHISTLEBLOWER.*—*The term “whistleblower” means any individual who provides, or 2 or more individuals acting jointly*

who provide, information relating to a violation of laws enforced by FinCEN, in a manner established, by rule or regulation, by FinCEN.

(b) AWARDS.—

(1) *IN GENERAL.*—In any covered judicial or administrative action, or related action, the Secretary, under such rules as the Secretary may issue and subject to subsection (c), shall pay an award or awards to 1 or more whistleblowers who voluntarily provided original information to FinCEN that led to the successful enforcement of the covered judicial or administrative action, or related action, in an aggregate amount equal to not more than 30 percent, in total, of what has been collected of the monetary sanctions imposed in the action.

(2) *SOURCE OF AWARDS.*—For the purposes of paying any award under paragraph (1), the Secretary may use, without further appropriation, monetary sanction amounts recovered based on the original information with respect to which the award is being paid.

(c) DETERMINATION OF AMOUNT OF AWARD; DENIAL OF AWARD.—

(1) DETERMINATION OF AMOUNT OF AWARD.—

(A) *DISCRETION.*—The determination of the amount of an award made under subsection (b) shall be in the discretion of the Secretary.

(B) *CRITERIA.*—In responding to a disclosure and determining the amount of an award made, FinCEN staff shall meet with the whistleblower to discuss evidence disclosed and rebuttals to the disclosure, and shall take into consideration—

(i) the significance of the information provided by the whistleblower to the success of the covered judicial or administrative action;

(ii) the degree of assistance provided by the whistleblower and any legal representative of the whistleblower in a covered judicial or administrative action;

(iii) the mission of FinCEN in deterring violations of the law by making awards to whistleblowers who provide information that lead to the successful enforcement of such laws; and

(iv) such additional relevant factors as the Secretary may establish by rule.

(2) DENIAL OF AWARD.—No award under subsection (b) shall be made—

(A) to any whistleblower who is, or was at the time the whistleblower acquired the original information submitted to FinCEN, a member, officer, or employee of—

(i) an appropriate regulatory agency;

(ii) the Department of Justice;

(iii) a self-regulatory organization; or

(iv) a law enforcement organization;

(B) to any whistleblower who is convicted of a criminal violation, or who the Secretary has a reasonable basis to believe committed a criminal violation, related to the judicial or administrative action for which the whistleblower otherwise could receive an award under this section;

(C) to any whistleblower who gains the information through the performance of an audit of financial statements required under the Bank Secrecy Act and for whom such submission would be contrary to its requirements; or

(D) to any whistleblower who fails to submit information to FinCEN in such form as the Secretary may, by rule, require.

(3) *STATEMENT OF REASONS.*—For any decision granting or denying an award, the Secretary shall provide to the whistleblower a statement of reasons that includes findings of fact and conclusions of law for all material issues.

(d) *REPRESENTATION.*—

(1) *PERMITTED REPRESENTATION.*—Any whistleblower who makes a claim for an award under subsection (b) may be represented by counsel.

(2) *REQUIRED REPRESENTATION.*—

(A) *IN GENERAL.*—Any whistleblower who anonymously makes a claim for an award under subsection (b) shall be represented by counsel if the whistleblower anonymously submits the information upon which the claim is based.

(B) *DISCLOSURE OF IDENTITY.*—Prior to the payment of an award, a whistleblower shall disclose their identity and provide such other information as the Secretary may require, directly or through counsel for the whistleblower.

(e) *APPEALS.*—Any determination made under this section, including whether, to whom, or in what amount to make awards, shall be in the discretion of the Secretary. Any such determination, except the determination of the amount of an award if the award was made in accordance with subsection (b), may be appealed to the appropriate court of appeals of the United States not more than 30 days after the determination is issued by the Secretary. The court shall review the determination made by the Secretary in accordance with section 706 of title 5.

(f) *EMPLOYEE PROTECTIONS.*—The Secretary of the Treasury shall issue regulations protecting a whistleblower from retaliation, which shall be as close as practicable to the employee protections provided for under section 1057 of the Consumer Financial Protection Act of 2010.

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§ 5333. AML/CFT Training

(a) *TRAINING REQUIREMENT.*—Each Federal examiner reviewing compliance with the Bank Secrecy Act shall attend at least 10 hours of annual training on anti-money laundering (AML) and the countering of the financing of terrorism (CFT), including—

(1) potential risk profiles and red flags that may be encountered during examinations;

(2) financial crime patterns and trends;

(3) the high-level context for why AML and CFT programs are necessary for law enforcement agencies and other national security agencies, and what risks the programs seek to mitigate; and

(4) de-risking and its effect on the provision of financial services.

(b) *TRAINING MATERIALS AND STANDARDS.*—*The Secretary of the Treasury shall, in consultation with the Financial Institutions Examination Council, the Financial Crimes Enforcement Network, and State, Federal, and Tribal law enforcement agencies, establish appropriate training materials and standards for use in the training required under subsection (a).*

§ 5334. Innovation Labs

(a) *ESTABLISHMENT.*—*There is established within the Department of the Treasury and each Federal functional regulator an Innovation Lab.*

(b) *DIRECTOR.*—*The head of each Innovation Lab shall be a Director, to be appointed by the Secretary of the Treasury or the head of the Federal functional regulator, as applicable.*

(c) *DUTIES.*—*The duties of the Innovation Lab shall be—*

(1) *to provide outreach to law enforcement agencies, financial institutions, and other persons (including vendors and technology companies) with respect to innovation and new technologies that may be used to comply with the requirements of the Bank Secrecy Act;*

(2) *to support the implementation of responsible innovation and new technology, in a manner that complies with the requirements of the Bank Secrecy Act;*

(3) *to explore opportunities for public-private partnerships; and*

(4) *to develop metrics of success.*

(d) *FINCEN LAB.*—*The Innovation Lab established under subsection (a) within the Department of the Treasury shall be a lab within the Financial Crimes Enforcement Network.*

(e) *FEDERAL FUNCTIONAL REGULATOR DEFINED.*—*In this subsection, the term “Federal functional regulator” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Securities and Exchange Commission, and the Commodity Futures Trading Commission.*

§ 5335. Innovation Council

(a) *ESTABLISHMENT.*—*There is established the Innovation Council (hereinafter in this section referred to as the “Council”), which shall consist of each Director of an Innovation Lab established under section 5334 and the Director of the Financial Crimes Enforcement Network.*

(b) *CHAIR.*—*The Director of the Innovation Lab of the Department of the Treasury shall serve as the Chair of the Council.*

(c) *DUTY.*—*The members of the Council shall coordinate on activities related to innovation under the Bank Secrecy Act, but may not supplant individual agency determinations on innovation.*

(d) *MEETINGS.*—*The meetings of the Council—*

(1) *shall be at the call of the Chair, but in no case may the Council meet less than semi-annually;*

(2) *may include open and closed sessions, as determined necessary by the Council; and*

(3) *shall include participation by public and private entities and law enforcement agencies.*

(e) REPORT.—The Council shall issue an annual report, for each of the 7 years beginning on the date of enactment of this section, to the Secretary of the Treasury on the activities of the Council during the previous year, including the success of programs as measured by metrics of success developed pursuant to section 5334(c)(4), and any regulatory or legislative recommendations that the Council may have.

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INTERNATIONAL FINANCIAL INSTITUTIONS ACT

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TITLE XVI—HUMAN WELFARE

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SEC. 1629. SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.

The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to support the increased use of the administrative budget of the Fund for technical assistance that strengthens the capacity of Fund members to prevent money laundering and the financing of terrorism.

【Section 105(c)(1) of H.R. 2514 (as reported) provides for an amendment to title XVI of the International Financial Institutions Act by adding at the end a new section 1629, which appears immediately above in italic typeface. Paragraph (3) of such section 105(c), provides: “effective on the date that is the end of the 4-year period beginning on the date of enactment of this Act, section 1629 of the International Financial Institutions Act, as added by paragraph (1), is repealed.”.】

【SEC. 1629. SUPPORT FOR CAPACITY OF THE INTERNATIONAL MONETARY FUND TO PREVENT MONEY LAUNDERING AND FINANCING OF TERRORISM.

【The Secretary of the Treasury shall instruct the United States Executive Director at the International Monetary Fund to support the increased use of the administrative budget of the Fund for technical assistance that strengthens the capacity of Fund members to prevent money laundering and the financing of terrorism.】

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INTERNAL REVENUE CODE OF 1986

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Subtitle A—Income Taxes

CHAPTER 1—NORMAL TAXES AND SURTAXES

Subchapter B—COMPUTATION OF TAXABLE INCOME

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PART VI—ITEMIZED DEDUCTIONS FOR INDIVIDUALS AND CORPORATIONS

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SEC. 162. TRADE OR BUSINESS EXPENSES.

(a) IN GENERAL.—There shall be allowed as a deduction all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including—

(1) a reasonable allowance for salaries or other compensation for personal services actually rendered;

(2) traveling expenses (including amounts expended for meals and lodging other than amounts which are lavish or extravagant under the circumstances) while away from home in the pursuit of a trade or business; and

(3) rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

For purposes of the preceding sentence, the place of residence of a Member of Congress (including any Delegate and Resident Commissioner) within the State, congressional district, or possession which he represents in Congress shall be considered his home, but amounts expended by such Members within each taxable year for living expenses shall not be deductible for income tax purposes. For purposes of paragraph (2), the taxpayer shall not be treated as being temporarily away from home during any period of employment if such period exceeds 1 year. The preceding sentence shall not apply to any Federal employee during any period for which such employee is certified by the Attorney General (or the designee thereof) as traveling on behalf of the United States in temporary duty status to investigate or prosecute, or provide support services for the investigation or prosecution of, a Federal crime.

(b) CHARITABLE CONTRIBUTIONS AND GIFTS EXCEPTED.—No deduction shall be allowed under subsection (a) for any contribution or gift which would be allowable as a deduction under section 170 were it not for the percentage limitations, the dollar limitations, or the requirements as to the time of payment, set forth in such section.

(c) ILLEGAL BRIBES, KICKBACKS, AND OTHER PAYMENTS.—

(1) ILLEGAL PAYMENTS TO GOVERNMENT OFFICIALS OR EMPLOYEES.—No deduction shall be allowed under subsection (a) for any payment made, directly or indirectly, to an official or employee of any government, or of any agency or instrumentality of any government, if the payment constitutes an illegal bribe or kickback or, if the payment is to an official or em-

ployee of a foreign government, the payment is unlawful under the Foreign Corrupt Practices Act of 1977. The burden of proof in respect of the issue, for the purposes of this paragraph, as to whether a payment constitutes an illegal bribe or kickback (or is unlawful under the Foreign Corrupt Practices Act of 1977) shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(2) OTHER ILLEGAL PAYMENTS.—No deduction shall be allowed under subsection (a) for any payment (other than a payment described in paragraph (1)) made, directly or indirectly, to any person, if the payment constitutes an illegal bribe, illegal kickback, or other illegal payment under any law of the United States, or under any law of a State (but only if such State law is generally enforced), which subjects the payor to a criminal penalty or the loss of license or privilege to engage in a trade or business. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer. The burden of proof in respect of the issue, for purposes of this paragraph, as to whether a payment constitutes an illegal bribe, illegal kickback, or other illegal payment shall be upon the Secretary to the same extent as he bears the burden of proof under section 7454 (concerning the burden of proof when the issue relates to fraud).

(3) KICKBACKS, REBATES, AND BRIBES UNDER MEDICARE AND MEDICAID.—No deduction shall be allowed under subsection (a) for any kickback, rebate, or bribe made by any provider of services, supplier, physician, or other person who furnishes items or services for which payment is or may be made under the Social Security Act, or in whole or in part out of Federal funds under a State plan approved under such Act, if such kickback, rebate, or bribe is made in connection with the furnishing of such items or services or the making or receipt of such payments. For purposes of this paragraph, a kickback includes a payment in consideration of the referral of a client, patient, or customer.

(d) CAPITAL CONTRIBUTIONS TO FEDERAL NATIONAL MORTGAGE ASSOCIATION.—For purposes of this subtitle, whenever the amount of capital contributions evidenced by a share of stock issued pursuant to section 303(c) of the Federal National Mortgage Association Charter Act (12 U.S.C., sec. 1718) exceeds the fair market value of the stock as of the issue date of such stock, the initial holder of the stock shall treat the excess as ordinary and necessary expenses paid or incurred during the taxable year in carrying on a trade or business.

(e) DENIAL OF DEDUCTION FOR CERTAIN LOBBYING AND POLITICAL EXPENDITURES.—

(1) IN GENERAL.—No deduction shall be allowed under subsection (a) for any amount paid or incurred in connection with—

- (A) influencing legislation,
- (B) participation in, or intervention in, any political campaign on behalf of (or in opposition to) any candidate for public office,

(C) any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums, or

(D) any direct communication with a covered executive branch official in an attempt to influence the official actions or positions of such official.

(2) APPLICATION TO DUES OF TAX-EXEMPT ORGANIZATIONS.—No deduction shall be allowed under subsection (a) for the portion of dues or other similar amounts paid by the taxpayer to an organization which is exempt from tax under this subtitle which the organization notifies the taxpayer under section 6033(e)(1)(A)(ii) is allocable to expenditures to which paragraph (1) applies.

(3) INFLUENCING LEGISLATION.—For purposes of this subsection—

(A) IN GENERAL.—The term “influencing legislation” means any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation.

(B) LEGISLATION.—The term “legislation” has the meaning given such term by section 4911(e)(2).

(4) OTHER SPECIAL RULES.—

(A) EXCEPTION FOR CERTAIN TAXPAYERS.—In the case of any taxpayer engaged in the trade or business of conducting activities described in paragraph (1), paragraph (1) shall not apply to expenditures of the taxpayer in conducting such activities directly on behalf of another person (but shall apply to payments by such other person to the taxpayer for conducting such activities).

(B) DE MINIMIS EXCEPTION.—

(i) IN GENERAL.—Paragraph (1) shall not apply to any in-house expenditures for any taxable year if such expenditures do not exceed \$2,000. In determining whether a taxpayer exceeds the \$2,000 limit under this clause, there shall not be taken into account overhead costs otherwise allocable to activities described in paragraphs (1)(A) and (D).

(ii) IN-HOUSE EXPENDITURES.—For purposes of clause (i), the term “in-house expenditures” means expenditures described in paragraphs (1)(A) and (D) other than—

(I) payments by the taxpayer to a person engaged in the trade or business of conducting activities described in paragraph (1) for the conduct of such activities on behalf of the taxpayer, or

(II) dues or other similar amounts paid or incurred by the taxpayer which are allocable to activities described in paragraph (1).

(C) EXPENSES INCURRED IN CONNECTION WITH LOBBYING AND POLITICAL ACTIVITIES.—Any amount paid or incurred for research for, or preparation, planning, or coordination of, any activity described in paragraph (1) shall be treated as paid or incurred in connection with such activity.

(5) COVERED EXECUTIVE BRANCH OFFICIAL.—For purposes of this subsection, the term “covered executive branch official” means—

(A) the President,

(B) the Vice President,

(C) any officer or employee of the White House Office of the Executive Office of the President, and the 2 most senior level officers of each of the other agencies in such Executive Office, and

(D)(i) any individual serving in a position in level I of the Executive Schedule under section 5312 of title 5, United States Code, (ii) any other individual designated by the President as having Cabinet level status, and (iii) any immediate deputy of an individual described in clause (i) or (ii).

(6) CROSS REFERENCE.—For reporting requirements and alternative taxes related to this subsection, see section 6033(e).

(f) FINES, PENALTIES, AND OTHER AMOUNTS.—

(1) IN GENERAL.—Except as provided in the following paragraphs of this subsection, no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred (whether by suit, agreement, or otherwise) to, or at the direction of, a government or governmental entity in relation to the violation of any law or the investigation or inquiry by such government or entity into the potential violation of any law.

(2) EXCEPTION FOR AMOUNTS CONSTITUTING RESTITUTION OR PAID TO COME INTO COMPLIANCE WITH LAW.—

(A) IN GENERAL.—Paragraph (1) shall not apply to any amount that—

(i) the taxpayer establishes—

(I) constitutes restitution (including remediation of property) for damage or harm which was or may be caused by the violation of any law or the potential violation of any law, or

(II) is paid to come into compliance with any law which was violated or otherwise involved in the investigation or inquiry described in paragraph (1),

(ii) is identified as restitution or as an amount paid to come into compliance with such law, as the case may be, in the court order or settlement agreement, and

(iii) in the case of any amount of restitution for failure to pay any tax imposed under this title in the same manner as if such amount were such tax, would have been allowed as a deduction under this chapter if it had been timely paid.

The identification under clause (ii) alone shall not be sufficient to make the establishment required under clause (i).

(B) LIMITATION.—Subparagraph (A) shall not apply to any amount paid or incurred as reimbursement to the government or entity for the costs of any investigation or litigation.

(3) EXCEPTION FOR AMOUNTS PAID OR INCURRED AS THE RESULT OF CERTAIN COURT ORDERS.—Paragraph (1) shall not apply to any amount paid or incurred by reason of any order of a court in a suit in which no government or governmental entity is a party.

(4) EXCEPTION FOR TAXES DUE.—Paragraph (1) shall not apply to any amount paid or incurred as taxes due.

(5) TREATMENT OF CERTAIN NONGOVERNMENTAL REGULATORY ENTITIES.—For purposes of this subsection, the following nongovernmental entities shall be treated as governmental entities:

(A) Any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) in connection with a qualified board or exchange (as defined in section 1256(g)(7)).

(B) To the extent provided in regulations, any nongovernmental entity which exercises self-regulatory powers (including imposing sanctions) as part of performing an essential governmental function.

(6) VIOLATIONS OF THE BANK SECRECY ACT.—*In the case of a payment described in paragraph (1) that is in relation to any violation of the Bank Secrecy Act (as defined under section 5312 of title 31, United States Code), no deduction shall be allowed under this chapter for attorney's fees related to such payment.*

(g) TREBLE DAMAGE PAYMENTS UNDER THE ANTITRUST LAWS.—If in a criminal proceeding a taxpayer is convicted of a violation of the antitrust laws, or his plea of guilty or nolo contendere to an indictment or information charging such a violation is entered or accepted in such a proceeding, no deduction shall be allowed under subsection (a) for two-thirds of any amount paid or incurred—

(1) on any judgment for damages entered against the taxpayer under section 4 of the Act entitled “An Act to supplement existing laws against unlawful restraints and monopolies, and for other purposes”, approved October 15, 1914 (commonly known as the Clayton Act), on account of such violation or any related violation of the antitrust laws which occurred prior to the date of the final judgment of such conviction, or

(2) in settlement of any action brought under such section 4 on account of such violation or related violation.

(h) STATE LEGISLATORS' TRAVEL EXPENSES AWAY FROM HOME.—

(1) IN GENERAL.—For purposes of subsection (a), in the case of any individual who is a State legislator at any time during the taxable year and who makes an election under this subsection for the taxable year—

(A) the place of residence of such individual within the legislative district which he represented shall be considered his home,

(B) he shall be deemed to have expended for living expenses (in connection with his trade or business as a legislator) an amount equal to the sum of the amounts determined by multiplying each legislative day of such individual during the taxable year by the greater of—

(i) the amount generally allowable with respect to such day to employees of the State of which he is a legislator for per diem while away from home, to the

extent such amount does not exceed 110 percent of the amount described in clause (ii) with respect to such day, or

(ii) the amount generally allowable with respect to such day to employees of the executive branch of the Federal Government for per diem while away from home but serving in the United States, and

(C) he shall be deemed to be away from home in the pursuit of a trade or business on each legislative day.

(2) LEGISLATIVE DAYS.—For purposes of paragraph (1), a legislative day during any taxable year for any individual shall be any day during such year on which—

(A) the legislature was in session (including any day in which the legislature was not in session for a period of 4 consecutive days or less), or

(B) the legislature was not in session but the physical presence of the individual was formally recorded at a meeting of a committee of such legislature.

(3) ELECTION.—An election under this subsection for any taxable year shall be made at such time and in such manner as the Secretary shall by regulations prescribe.

(4) SECTION NOT TO APPLY TO LEGISLATORS WHO RESIDE NEAR CAPITOL.—This subsection shall not apply to any legislator whose place of residence within the legislative district which he represents is 50 or fewer miles from the capitol building of the State.

(j) CERTAIN FOREIGN ADVERTISING EXPENSES.—

(1) IN GENERAL.—No deduction shall be allowed under subsection (a) for any expenses of an advertisement carried by a foreign broadcast undertaking and directed primarily to a market in the United States. This paragraph shall apply only to foreign broadcast undertakings located in a country which denies a similar deduction for the cost of advertising directed primarily to a market in the foreign country when placed with a United States broadcast undertaking.

(2) BROADCAST UNDERTAKING.—For purposes of paragraph (1), the term “broadcast undertaking” includes (but is not limited to) radio and television stations.

(k) STOCK REACQUISITION EXPENSES.—

(1) IN GENERAL.—Except as provided in paragraph (2), no deduction otherwise allowable shall be allowed under this chapter for any amount paid or incurred by a corporation in connection with the reacquisition of its stock or of the stock of any related person (as defined in section 465(b)(3)(C)).

(2) EXCEPTIONS.—Paragraph (1) shall not apply to—

(A) CERTAIN SPECIFIC DEDUCTIONS.—Any—

(i) deduction allowable under section 163 (relating to interest),

(ii) deduction for amounts which are properly allocable to indebtedness and amortized over the term of such indebtedness, or

(iii) deduction for dividends paid (within the meaning of section 561).

(B) STOCK OF CERTAIN REGULATED INVESTMENT COMPANIES.—Any amount paid or incurred in connection with the

redemption of any stock in a regulated investment company which issues only stock which is redeemable upon the demand of the shareholder.

(1) SPECIAL RULES FOR HEALTH INSURANCE COSTS OF SELF-EMPLOYED INDIVIDUALS.—

(1) ALLOWANCE OF DEDUCTION.—In the case of a taxpayer who is an employee within the meaning of section 401(c)(1), there shall be allowed as a deduction under this section an amount equal to the amount paid during the taxable year for insurance which constitutes medical care for—

(A) the taxpayer,

(B) the taxpayer's spouse,

(C) the taxpayer's dependents, and

(D) any child (as defined in section 152(f)(1)) of the taxpayer who as of the end of the taxable year has not attained age 27.

(2) LIMITATIONS.—

(A) DOLLAR AMOUNT.—No deduction shall be allowed under paragraph (1) to the extent that the amount of such deduction exceeds the taxpayer's earned income (within the meaning of section 401(c)) derived by the taxpayer from the trade or business with respect to which the plan providing the medical care coverage is established.

(B) OTHER COVERAGE.—Paragraph (1) shall not apply to any taxpayer for any calendar month for which the taxpayer is eligible to participate in any subsidized health plan maintained by any employer of the taxpayer or of the spouse of, or any dependent, or individual described in subparagraph (D) of paragraph (1) with respect to, the taxpayer. The preceding sentence shall be applied separately with respect to—

(i) plans which include coverage for qualified long-term care services (as defined in section 7702B(c)) or are qualified long-term care insurance contracts (as defined in section 7702B(b)), and

(ii) plans which do not include such coverage and are not such contracts.

(C) LONG-TERM CARE PREMIUMS.—In the case of a qualified long-term care insurance contract (as defined in section 7702B(b)), only eligible long-term care premiums (as defined in section 213(d)(10)) shall be taken into account under paragraph (1).

(3) COORDINATION WITH MEDICAL DEDUCTION.—Any amount paid by a taxpayer for insurance to which paragraph (1) applies shall not be taken into account in computing the amount allowable to the taxpayer as a deduction under section 213(a).

(4) DEDUCTION NOT ALLOWED FOR SELF-EMPLOYMENT TAX PURPOSES.—The deduction allowable by reason of this subsection shall not be taken into account in determining an individual's net earnings from self-employment (within the meaning of section 1402(a)) for purposes of chapter 2 for taxable years beginning before January 1, 2010, or after December 31, 2010.

(5) TREATMENT OF CERTAIN S CORPORATION SHAREHOLDERS.—This subsection shall apply in the case of any individual treated as a partner under section 1372(a), except that—

(A) for purposes of this subsection, such individual's wages (as defined in section 3121) from the S corporation shall be treated as such individual's earned income (within the meaning of section 401(c)(1)), and

(B) there shall be such adjustments in the application of this subsection as the Secretary may by regulations prescribe.

(m) CERTAIN EXCESSIVE EMPLOYEE REMUNERATION.—

(1) IN GENERAL.—In the case of any publicly held corporation, no deduction shall be allowed under this chapter for applicable employee remuneration with respect to any covered employee to the extent that the amount of such remuneration for the taxable year with respect to such employee exceeds \$1,000,000.

(2) PUBLICLY HELD CORPORATION.—For purposes of this subsection, the term “publicly held corporation” means any corporation which is an issuer (as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c))—

(A) the securities of which are required to be registered under section 12 of such Act (15 U.S.C. 78l), or

(B) that is required to file reports under section 15(d) of such Act (15 U.S.C. 78o(d)).

(3) COVERED EMPLOYEE.—For purposes of this subsection, the term “covered employee” means any employee of the taxpayer if—

(A) such employee is the principal executive officer or principal financial officer of the taxpayer at any time during the taxable year, or was an individual acting in such a capacity,

(B) the total compensation of such employee for the taxable year is required to be reported to shareholders under the Securities Exchange Act of 1934 by reason of such employee being among the 3 highest compensated officers for the taxable year (other than any individual described in subparagraph (A)), or

(C) was a covered employee of the taxpayer (or any predecessor) for any preceding taxable year beginning after December 31, 2016.

Such term shall include any employee who would be described in subparagraph (B) if the reporting described in such subparagraph were required as so described.

(4) APPLICABLE EMPLOYEE REMUNERATION.—For purposes of this subsection—

(A) IN GENERAL.—Except as otherwise provided in this paragraph, the term “applicable employee remuneration” means, with respect to any covered employee for any taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration for services performed by such employee (whether or not during the taxable year).

(B) EXCEPTION FOR EXISTING BINDING CONTRACTS.—The term “applicable employee remuneration” shall not include any remuneration payable under a written binding contract which was in effect on February 17, 1993, and which was not modified thereafter in any material respect before such remuneration is paid.

(C) REMUNERATION.—For purposes of this paragraph, the term “remuneration” includes any remuneration (including benefits) in any medium other than cash, but shall not include—

(i) any payment referred to in so much of section 3121(a)(5) as precedes subparagraph (E) thereof, and

(ii) any benefit provided to or on behalf of an employee if at the time such benefit is provided it is reasonable to believe that the employee will be able to exclude such benefit from gross income under this chapter.

For purposes of clause (i), section 3121(a)(5) shall be applied without regard to section 3121(v)(1).

(D) COORDINATION WITH DISALLOWED GOLDEN PARACHUTE PAYMENTS.—The dollar limitation contained in paragraph (1) shall be reduced (but not below zero) by the amount (if any) which would have been included in the applicable employee remuneration of the covered employee for the taxable year but for being disallowed under section 280G.

(E) COORDINATION WITH EXCISE TAX ON SPECIFIED STOCK COMPENSATION.—The dollar limitation contained in paragraph (1) with respect to any covered employee shall be reduced (but not below zero) by the amount of any payment (with respect to such employee) of the tax imposed by section 4985 directly or indirectly by the expatriated corporation (as defined in such section) or by any member of the expanded affiliated group (as defined in such section) which includes such corporation.

(F) SPECIAL RULE FOR REMUNERATION PAID TO BENEFICIARIES, ETC.—Remuneration shall not fail to be applicable employee remuneration merely because it is includible in the income of, or paid to, a person other than the covered employee, including after the death of the covered employee.

(5) SPECIAL RULE FOR APPLICATION TO EMPLOYERS PARTICIPATING IN THE TROUBLED ASSETS RELIEF PROGRAM.—

(A) IN GENERAL.—In the case of an applicable employer, no deduction shall be allowed under this chapter—

(i) in the case of executive remuneration for any applicable taxable year which is attributable to services performed by a covered executive during such applicable taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

(ii) in the case of deferred deduction executive remuneration for any taxable year for services performed during any applicable taxable year by a covered executive, to the extent that the amount of such remunera-

tion exceeds \$500,000 reduced (but not below zero) by the sum of—

(I) the executive remuneration for such applicable taxable year, plus

(II) the portion of the deferred deduction executive remuneration for such services which was taken into account under this clause in a preceding taxable year.

(B) APPLICABLE EMPLOYER.—For purposes of this paragraph—

(i) IN GENERAL.—Except as provided in clause (ii), the term “applicable employer” means any employer from whom 1 or more troubled assets are acquired under a program established by the Secretary under section 101(a) of the Emergency Economic Stabilization Act of 2008 if the aggregate amount of the assets so acquired for all taxable years exceeds \$300,000,000.

(ii) DISREGARD OF CERTAIN ASSETS SOLD THROUGH DIRECT PURCHASE.—If the only sales of troubled assets by an employer under the program described in clause (i) are through 1 or more direct purchases (within the meaning of section 113(c) of the Emergency Economic Stabilization Act of 2008), such assets shall not be taken into account under clause (i) in determining whether the employer is an applicable employer for purposes of this paragraph.

(iii) AGGREGATION RULES.—Two or more persons who are treated as a single employer under subsection (b) or (c) of section 414 shall be treated as a single employer, except that in applying section 1563(a) for purposes of either such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(C) APPLICABLE TAXABLE YEAR.—For purposes of this paragraph, the term “applicable taxable year” means, with respect to any employer—

(i) the first taxable year of the employer—

(I) which includes any portion of the period during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), and

(II) in which the aggregate amount of troubled assets acquired from the employer during the taxable year pursuant to such authorities (other than assets to which subparagraph (B)(ii) applies), when added to the aggregate amount so acquired for all preceding taxable years, exceeds \$300,000,000, and

(ii) any subsequent taxable year which includes any portion of such period.

(D) COVERED EXECUTIVE.—For purposes of this paragraph—

(i) IN GENERAL.—The term “covered executive” means, with respect to any applicable taxable year, any employee—

(I) who, at any time during the portion of the taxable year during which the authorities under section 101(a) of the Emergency Economic Stabilization Act of 2008 are in effect (determined under section 120 thereof), is the chief executive officer of the applicable employer or the chief financial officer of the applicable employer, or an individual acting in either such capacity, or

(II) who is described in clause (ii).

(ii) HIGHEST COMPENSATED EMPLOYEES.—An employee is described in this clause if the employee is 1 of the 3 highest compensated officers of the applicable employer for the taxable year (other than an individual described in clause (i)(I)), determined—

(I) on the basis of the shareholder disclosure rules for compensation under the Securities Exchange Act of 1934 (without regard to whether those rules apply to the employer), and

(II) by only taking into account employees employed during the portion of the taxable year described in clause (i)(I).

(iii) EMPLOYEE REMAINS COVERED EXECUTIVE.—If an employee is a covered executive with respect to an applicable employer for any applicable taxable year, such employee shall be treated as a covered executive with respect to such employer for all subsequent applicable taxable years and for all subsequent taxable years in which deferred deduction executive remuneration with respect to services performed in all such applicable taxable years would (but for this paragraph) be deductible.

(E) EXECUTIVE REMUNERATION.—For purposes of this paragraph, the term “executive remuneration” means the applicable employee remuneration of the covered executive, as determined under paragraph (4) without regard to subparagraph (B) thereof. Such term shall not include any deferred deduction executive remuneration with respect to services performed in a prior applicable taxable year.

(F) DEFERRED DEDUCTION EXECUTIVE REMUNERATION.—For purposes of this paragraph, the term “deferred deduction executive remuneration” means remuneration which would be executive remuneration for services performed in an applicable taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(G) COORDINATION.—Rules similar to the rules of subparagraphs (D) and (E) of paragraph (4) shall apply for purposes of this paragraph.

(H) REGULATORY AUTHORITY.—The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph and the Emergency Economic Stabilization Act of 2008, including the extent to which this paragraph applies in the case of any ac-

quisition, merger, or reorganization of an applicable employer.

(6) SPECIAL RULE FOR APPLICATION TO CERTAIN HEALTH INSURANCE PROVIDERS.—

(A) IN GENERAL.—No deduction shall be allowed under this chapter—

(i) in the case of applicable individual remuneration which is for any disqualified taxable year beginning after December 31, 2012, and which is attributable to services performed by an applicable individual during such taxable year, to the extent that the amount of such remuneration exceeds \$500,000, or

(ii) in the case of deferred deduction remuneration for any taxable year beginning after December 31, 2012, which is attributable to services performed by an applicable individual during any disqualified taxable year beginning after December 31, 2009, to the extent that the amount of such remuneration exceeds \$500,000 reduced (but not below zero) by the sum of—

(I) the applicable individual remuneration for such disqualified taxable year, plus

(II) the portion of the deferred deduction remuneration for such services which was taken into account under this clause in a preceding taxable year (or which would have been taken into account under this clause in a preceding taxable year if this clause were applied by substituting “December 31, 2009” for “December 31, 2012” in the matter preceding subclause (I)).

(B) DISQUALIFIED TAXABLE YEAR.—For purposes of this paragraph, the term “disqualified taxable year” means, with respect to any employer, any taxable year for which such employer is a covered health insurance provider.

(C) COVERED HEALTH INSURANCE PROVIDER.—For purposes of this paragraph—

(i) IN GENERAL.—The term “covered health insurance provider” means—

(I) with respect to taxable years beginning after December 31, 2009, and before January 1, 2013, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and which receives premiums from providing health insurance coverage (as defined in section 9832(b)(1)), and

(II) with respect to taxable years beginning after December 31, 2012, any employer which is a health insurance issuer (as defined in section 9832(b)(2)) and with respect to which not less than 25 percent of the gross premiums received from providing health insurance coverage (as defined in section 9832(b)(1)) is from minimum essential coverage (as defined in section 5000A(f)).

(ii) AGGREGATION RULES.—Two or more persons who are treated as a single employer under subsection (b), (c), (m), or (o) of section 414 shall be treated as a single employer, except that in applying section 1563(a)

for purposes of any such subsection, paragraphs (2) and (3) thereof shall be disregarded.

(D) APPLICABLE INDIVIDUAL REMUNERATION.—For purposes of this paragraph, the term “applicable individual remuneration” means, with respect to any applicable individual for any disqualified taxable year, the aggregate amount allowable as a deduction under this chapter for such taxable year (determined without regard to this subsection) for remuneration (as defined in paragraph (4) without regard to subparagraph (B) thereof) for services performed by such individual (whether or not during the taxable year). Such term shall not include any deferred deduction remuneration with respect to services performed during the disqualified taxable year.

(E) DEFERRED DEDUCTION REMUNERATION.—For purposes of this paragraph, the term “deferred deduction remuneration” means remuneration which would be applicable individual remuneration for services performed in a disqualified taxable year but for the fact that the deduction under this chapter (determined without regard to this paragraph) for such remuneration is allowable in a subsequent taxable year.

(F) APPLICABLE INDIVIDUAL.—For purposes of this paragraph, the term “applicable individual” means, with respect to any covered health insurance provider for any disqualified taxable year, any individual—

(i) who is an officer, director, or employee in such taxable year, or

(ii) who provides services for or on behalf of such covered health insurance provider during such taxable year.

(G) COORDINATION.—Rules similar to the rules of subparagraphs (D) and (E) of paragraph (4) shall apply for purposes of this paragraph.

(H) REGULATORY AUTHORITY.—The Secretary may prescribe such guidance, rules, or regulations as are necessary to carry out the purposes of this paragraph.

(n) SPECIAL RULE FOR CERTAIN GROUP HEALTH PLANS.—

(1) IN GENERAL.—No deduction shall be allowed under this chapter to an employer for any amount paid or incurred in connection with a group health plan if the plan does not reimburse for inpatient hospital care services provided in the State of New York—

(A) except as provided in subparagraphs (B) and (C), at the same rate as licensed commercial insurers are required to reimburse hospitals for such services when such reimbursement is not through such a plan,

(B) in the case of any reimbursement through a health maintenance organization, at the same rate as health maintenance organizations are required to reimburse hospitals for such services for individuals not covered by such a plan (determined without regard to any government-supported individuals exempt from such rate), or

(C) in the case of any reimbursement through any corporation organized under Article 43 of the New York State

Insurance Law, at the same rate as any such corporation is required to reimburse hospitals for such services for individuals not covered by such a plan.

(2) STATE LAW EXCEPTION.—Paragraph (1) shall not apply to any group health plan which is not required under the laws of the State of New York (determined without regard to this subsection or other provisions of Federal law) to reimburse at the rates provided in paragraph (1).

(3) GROUP HEALTH PLAN.—For purposes of this subsection, the term “group health plan” means a plan of, or contributed to by, an employer or employee organization (including a self-insured plan) to provide health care (directly or otherwise) to any employee, any former employee, the employer, or any other individual associated or formerly associated with the employer in a business relationship, or any member of their family.

(o) TREATMENT OF CERTAIN EXPENSES OF RURAL MAIL CARRIERS.—

(1) GENERAL RULE.—In the case of any employee of the United States Postal Service who performs services involving the collection and delivery of mail on a rural route and who receives qualified reimbursements for the expenses incurred by such employee for the use of a vehicle in performing such services—

(A) the amount allowable as a deduction under this chapter for the use of a vehicle in performing such services shall be equal to the amount of such qualified reimbursements; and

(B) such qualified reimbursements shall be treated as paid under a reimbursement or other expense allowance arrangement for purposes of section 62(a)(2)(A) (and section 62(c) shall not apply to such qualified reimbursements).

(2) SPECIAL RULE WHERE EXPENSES EXCEED REIMBURSEMENTS.—Notwithstanding paragraph (1)(A), if the expenses incurred by an employee for the use of a vehicle in performing services described in paragraph (1) exceed the qualified reimbursements for such expenses, such excess shall be taken into account in computing the miscellaneous itemized deductions of the employee under section 67.

(3) DEFINITION OF QUALIFIED REIMBURSEMENTS.—For purposes of this subsection, the term “qualified reimbursements” means the amounts paid by the United States Postal Service to employees as an equipment maintenance allowance under the 1991 collective bargaining agreement between the United States Postal Service and the National Rural Letter Carriers’ Association. Amounts paid as an equipment maintenance allowance by such Postal Service under later collective bargaining agreements that supersede the 1991 agreement shall be considered qualified reimbursements if such amounts do not exceed the amounts that would have been paid under the 1991 agreement, adjusted by increasing any such amount under the 1991 agreement by an amount equal to—

(A) such amount, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for the calendar year in which the taxable year

begins, by substituting “calendar year 1990” for “calendar year 2016” in subparagraph (A)(ii) thereof.

(p) TREATMENT OF EXPENSES OF MEMBERS OF RESERVE COMPONENT OF ARMED FORCES OF THE UNITED STATES.—For purposes of subsection (a)(2), in the case of an individual who performs services as a member of a reserve component of the Armed Forces of the United States at any time during the taxable year, such individual shall be deemed to be away from home in the pursuit of a trade or business for any period during which such individual is away from home in connection with such service.

(q) PAYMENTS RELATED TO SEXUAL HARASSMENT AND SEXUAL ABUSE.—No deduction shall be allowed under this chapter for—

(1) any settlement or payment related to sexual harassment or sexual abuse if such settlement or payment is subject to a nondisclosure agreement, or

(2) attorney’s fees related to such a settlement or payment.

(r) DISALLOWANCE OF FDIC PREMIUMS PAID BY CERTAIN LARGE FINANCIAL INSTITUTIONS.—

(1) IN GENERAL.—No deduction shall be allowed for the applicable percentage of any FDIC premium paid or incurred by the taxpayer.

(2) EXCEPTION FOR SMALL INSTITUTIONS.—Paragraph (1) shall not apply to any taxpayer for any taxable year if the total consolidated assets of such taxpayer (determined as of the close of such taxable year) do not exceed \$10,000,000,000.

(3) APPLICABLE PERCENTAGE.—For purposes of this subsection, the term “applicable percentage” means, with respect to any taxpayer for any taxable year, the ratio (expressed as a percentage but not greater than 100 percent) which—

(A) the excess of—

(i) the total consolidated assets of such taxpayer (determined as of the close of such taxable year), over

(ii) \$10,000,000,000, bears to

(B) \$40,000,000,000.

(4) FDIC PREMIUMS.—For purposes of this subsection, the term “FDIC premium” means any assessment imposed under section 7(b) of the Federal Deposit Insurance Act (12 U.S.C. 1817(b)).

(5) TOTAL CONSOLIDATED ASSETS.—For purposes of this subsection, the term “total consolidated assets” has the meaning given such term under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (12 U.S.C. 5365).

(6) AGGREGATION RULE.—

(A) IN GENERAL.—Members of an expanded affiliated group shall be treated as a single taxpayer for purposes of applying this subsection.

(B) EXPANDED AFFILIATED GROUP.—

(i) IN GENERAL.—For purposes of this paragraph, the term “expanded affiliated group” means an affiliated group as defined in section 1504(a), determined—

(I) by substituting “more than 50 percent” for “at least 80 percent” each place it appears, and

(II) without regard to paragraphs (2) and (3) of section 1504(b).

(ii) CONTROL OF NON-CORPORATE ENTITIES.—A partnership or any other entity (other than a corporation) shall be treated as a member of an expanded affiliated group if such entity is controlled (within the meaning of section 954(d)(3)) by members of such group (including any entity treated as a member of such group by reason of this clause).

(s) CROSS REFERENCE.—

(1) For special rule relating to expenses in connection with subdividing real property for sale, see section 1237.

(2) For special rule relating to the treatment of payments by a transferee of a franchise, trademark, or trade name, see section 1253.

(3) For special rules relating to—

(A) funded welfare benefit plans, see section 419, and

(B) deferred compensation and other deferred benefits, see section 404.

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