§ 5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern

(a) INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS.—The Secretary of the Treasury may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, class of financial institution, class of transactions, or type of account; and

(1) review and enhance training and examination procedures to improve the identification of money laundering schemes involving depository institutions; and

(2) review and enhance procedures for referring cases to any appropriate law enforcement agency.

(b) IMPROVED REPORTING OF CRIMINAL SCHEMES BY LAW ENFORCEMENT AGENCIES.—The Secretary of the Treasury and each appropriate law enforcement agency shall provide, on a regular basis, information regarding money laundering schemes and activities involving depository institutions to each appropriate Federal banking agency in order to enhance each agency’s ability to examine for and identify money laundering activity.

(c) REPORT TO CONGRESS.—The Financial Institutions Examination Council shall submit a report on the progress made in carrying out subsection (a) and the usefulness of information received pursuant to subsection (b) to the Congress by the end of the 1-year period beginning on the date of enactment of this Act.

(d) DEFINITION.—For purposes of this section, 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).

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accounts if the Secretary finds any such jurisdiction, institution, class of transactions, or type of account to be of primary money laundering concern.

(B) Form of Records and Reports.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

(ii) the legal capacity in which a participant in any transaction is acting;

(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

(iv) a description of any transaction.

(2) Information Relating to Beneficial Ownership.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern.

(3) Information Relating to Certain Payable-Through Accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or transaction or type of account to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a payable-through account, as a condition of opening or maintaining such account—

(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(4) Information Relating to Certain Correspondent or Payable-Through Accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more financial institutions operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

(A) to identify each customer (and representative of such customer) of any such financial institution who is permitted to use, or whose transactions are routed through, such correspondent account; and

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(5) Prohibitions or Conditions on Opening or Maintaining Certain correspondent or payable-through accounts.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable-through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

(c) Consultations and Information To Be Considered in Finding Jurisdictions, Institutions, Types of Accounts, or Transactions To Be of Primary Money Laundering Concern.

(1) In General.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of
transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary of the Treasury to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State and the Attorney General.

(2) ADDITIONAL CONSIDERATIONS.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

(A) JURISDICTIONAL FACTORS.—In the case of a particular jurisdiction—

(i) evidence that organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles have transacted business in that jurisdiction;

(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

(v) the extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

(vi) whether the United States has a mutual legal assistance treaty with that jurisdiction, and the experience of United States law enforcement officials and regulatory officials in obtaining information about transactions originating in or routed through or to such jurisdiction; and

(vii) the extent to which that jurisdiction is characterized by high levels of official or institutional corruption.

(B) INSTITUTIONAL FACTORS.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles;

(ii) the extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and

(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

(d) NOTIFICATION OF SPECIAL MEASURES INVOKED BY THE SECRETARY.—Not later than 10 days after the date of any action taken by the Secretary of the Treasury under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

(e) DEFINITIONS.—Notwithstanding any other provision of this subchapter, for purposes of this section and subsections (i) and (j) of section 5318, the following definitions shall apply:

(1) BANK DEFINITIONS.—The following definitions shall apply with respect to a bank:

(A) ACCOUNT.—The term "account" means:

(i) a demand deposit, savings deposit, or other transaction or asset account and a credit account or other extension of credit.

(B) CORRESPONDENT ACCOUNT.—The term "correspondent account" means a demand deposit, savings deposit, or other transaction or asset account established to receive deposits from, make payments on behalf of, or otherwise provide financial services, dealings, and other financial transactions and related to such institution.

(C) PAYABLE-THROUGH ACCOUNT.—The term "payable-through account" means an account, including a transaction account and a credit account or other extension of credit, established to receive deposits from, make payments on behalf of, or otherwise provide financial services, dealings, and other financial transactions and related to such institution.

(2) DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.—With respect to any financial institution other than a bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 19(b)(1)(C) of the Federal Reserve Act), open a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(3) REGULATORY DEFINITION OF BENEFICIAL OWNERSHIP.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this section and subsections (i) and (j) of section 5318. Such regulations shall address issues related to an individual's authority to fund, direct, or manage the account (including, without limitation, the power to direct payments into or out of the account), and an individual's material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section or subsection (i) or (j)
of section 531B does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

(4) OTHER TERMS.—The Secretary may, by regulation, further define the terms in paragraphs (1), (2), and (3) and define other terms for the purposes of this section, as the Secretary deems appropriate.

(f) CLASSIFIED INFORMATION.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern, mentioned in section 5312(a)(1) or section 5313(a)(1), if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.), such information may be submitted by the Secretary to the reviewing court ex parte and in camera. This subsection does not confer any right to judicial review of any finding made or any requirement imposed under this section.


Editorial Notes

REFERENCES IN TEXT

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (a)(4)(A), is classified to section 1813 of Title 12, Banks and Banking.

Section 16(b)(1)(C) of the Federal Reserve Act, referred to in subsec. (e)(1)(C), is classified to section 461(b)(1)(C) of Title 12, Banks and Banking.

Section 909 of the Gramm-Leach-Bliley Act, referred to in subsec. (e)(2), is classified to section 6809 of Title 15, Commerce and Trade.

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (f), is section 1(a) of Pub. L. 96–545, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

AMENDMENTS

2006—Subsec. (e)(3). Pub. L. 108–458, §6203(f)(4), inserted “or subsection (i) or (j) of section 5318” after “identification of individuals under this section”.


Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2004 AMENDMENT

Amendment by Pub. L. 108–458 effective as if included in Pub. L. 107–56, as of the date of enactment of such Act, and no amendment made by Pub. L. 107–56 that is inconsistent with such amendment to be deemed to have taken effect, see section 6205 of Pub. L. 108–458, set out as a note under section 1828 of Title 12, Banks and Banking.

DETERMINATION WITH RESPECT TO PRIMARY MONEY LAUNDERING CONCERN OF RUSSIAN ILICIT FINANCE


“(a) DETERMINATION.—If the Secretary of the Treasury determines that reasonable grounds exist for concluding that one or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts within, or involving, a jurisdiction outside of the United States is of primary money laundering concern in connection with Russian illicit finance, the Secretary of the Treasury may, by order, regulation, or otherwise as permitted by law—

“(1) require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in section 5318A(b) of title 31, United States Code; or

“(2) prohibit, or impose conditions upon, certain transmittals of funds (to be defined by the Secretary) by any domestic financial institution or domestic financial agency, if such transmittal of funds involves any such institution, class of transaction, or type of account.”

“FEDERAL FUNCTIONAL REGULATOR” INCLUDES COMMODITY FUTURES TRADING COMMISSION


§5319. Availability of reports

The Secretary of the Treasury shall make information in a report filed under this subchapter available to an agency, including any State financial institutions supervisory agency, United States intelligence agency or self-regulatory organization registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission, upon request of the head of the agency or organization. The report shall be available for a purpose that is consistent with this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from search and disclosure under section 502 of title 5, and may not be disclosed under any State, local, tribal, or territorial “freedom of information”, “open government”, or similar law.