

[DISCUSSION DRAFT]

115TH CONGRESS
1ST SESSION

H. R. _____

To update dollar amount thresholds for certain currency transaction reports and suspicious activity reports, to improve information sharing between financial institutions with respect to terrorism, money laundering, and other unlawful activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. PEARCE (for himself and Mr. LUETKEMEYER) introduced the following bill; which was referred to the Committee on

A BILL

To update dollar amount thresholds for certain currency transaction reports and suspicious activity reports, to improve information sharing between financial institutions with respect to terrorism, money laundering, and other unlawful activities, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Counter Terrorism and
5 Illicit Finance Act”.

1 **SEC. 2. UPDATING THRESHOLDS FOR CERTAIN CURRENCY**
2 **TRANSACTION REPORTS AND SUSPICIOUS**
3 **ACTIVITY REPORTS.**

4 (a) THRESHOLDS FOR CERTAIN CURRENCY TRANS-
5 ACTION REPORTS.—

6 (1) IN GENERAL.—Not later than the end of
7 the 180-day period beginning on the date of the en-
8 actment of this Act, the Secretary of the Treasury
9 shall revise regulations issued with respect to section
10 5313 of title 31, United States Code, to update each
11 \$10,000 threshold amount in such regulations to
12 \$30,000.

13 (2) THRESHOLD FOR REPORTS RELATING TO
14 COINS AND CURRENCY RECEIVED IN NONFINANCIAL
15 TRADE OR BUSINESS.—Section 5331 of title 31,
16 United States Code, is amended by striking
17 “\$10,000” each place such term appears in heading
18 or text and inserting “\$30,000”.

19 (b) THRESHOLDS FOR SUSPICIOUS ACTIVITY RE-
20 PORTS.—Not later than the end of the 180-day period be-
21 ginning on the date of the enactment of this Act, each
22 Federal department or agency that issues regulations with
23 respect to reports on suspicious transactions described
24 under section 5318(g) of title 31, United States Code,
25 shall update each \$5,000 threshold amount in such regula-
26 tions to \$10,000.

1 **SEC. 3. STREAMLINING REQUIREMENTS FOR CURRENCY**
2 **TRANSACTION REPORTS AND SUSPICIOUS**
3 **ACTIVITY REPORTS.**

4 (a) REVIEW.—The Secretary of the Treasury shall
5 undertake a formal review of the current financial institu-
6 tion reporting requirements under the Bank Secrecy Act
7 and its implementing regulations and propose changes to
8 further reduce reporting burdens and ensure that the in-
9 formation provided is of a “high degree of usefulness” to
10 law enforcement, as set forth under section 5311 of title
11 31, United States Code.

12 (b) CONTENTS.—The review required under sub-
13 section (a) shall include a study of—

14 (1) whether the timeframe for filing a sus-
15 picious activity report should be increased from 30
16 days;

17 (2) the feasibility of utilizing one form to cap-
18 ture both currency transaction report and suspicious
19 activity report information instead of two separate
20 forms;

21 (3) whether or not currency transaction report
22 and suspicious activity report thresholds should be
23 tied to inflation;

24 (4) whether the circumstances under which a fi-
25 nancial institution determines whether to file a “con-
26 tinuing suspicious activity report”, or the processes

1 followed by a financial institution in determining
2 whether to file a “continuing suspicious activity re-
3 port” (or both) can be narrowed;

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

7 (6) the categories, types, and characteristics of
8 suspicious activity reports and currency transaction
9 reports that are of the greatest value to, and that
10 best support, investigative priorities of law enforce-
11 ment and national security personnel;

12 (7) the increased use of exemption provisions to
13 reduce currency transaction reports that are of little
14 or no value to law enforcement efforts; and

15 (8) such other items as the Secretary deter-
16 mines appropriate.

17 (c) REPORT.—Not later than the end of the one year
18 period beginning on the date of the enactment of this Act,
19 the Secretary of the Treasury, in coordination with law
20 enforcement and persons subject to Bank Secrecy Act re-
21 quirements, shall issue a report to the Congress containing
22 all findings and determinations made in carrying out the
23 review required under subsection (a).

24 (d) BANK SECRECY ACT DEFINED.—For purposes of
25 this section, the term “Bank Secrecy Act” means—

- 1 (1) section 21 of the Federal Deposit Insurance
2 Act;
- 3 (2) chapter 2 of title I of Public Law 91-508;
4 and
- 5 (3) subchapter II of chapter 53 of title 31,
6 United States Code.

7 **SEC. 4. INFORMATION SHARING.**

8 (a) IN GENERAL.—Section 314 of the USA PA-
9 TRIOT Act (31 U.S.C. 5311 note) is amended—

10 (1) in subsection (b)—

11 (A) by striking “terrorist or money laun-
12 dering activities” and inserting “terrorist activi-
13 ties, money laundering activities, or a specified
14 unlawful activity (as defined under section
15 1956(c)(7) of title 18, United States Code)”;
16 and

17 (B) by striking “activities that may involve
18 terrorist acts or money laundering activities”
19 and inserting “activities that may involve ter-
20 rorist acts, money laundering activities, or a
21 specified unlawful activity”; and

22 (2) in subsection (c), by inserting “or a speci-
23 fied unlawful activity (as defined under section
24 1956(c)(7) of title 18, United States Code)” after
25 “terrorist acts or money laundering activities”.

1 (b) DISCLOSURE LIABILITY.—Section 5318(g)(3)(B)
2 of title 31, United States Code, is amended—

3 (1) in clause (i), by striking “or” at the end;

4 (2) in clause (ii), by striking the period and in-
5 serting “; or”; and

6 (3) by adding at the end the following:

7 “(iii) any duty or requirement of a fi-
8 nancial institution or any director, officer,
9 employee, or agent of such institution to
10 demonstrate to any person, as used in such
11 subparagraph, that a disclosure referenced
12 in such subparagraph is made in good
13 faith.”.

14 (c) SHARING OF SUSPICIOUS ACTIVITY REPORTS
15 WITHIN A FINANCIAL GROUP.—

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

20 “(5) SHARING WITH FOREIGN BRANCHES AND
21 AFFILIATES.—

22 “(A) IN GENERAL.—Not later than 180
23 days after the date of the enactment of this
24 paragraph, the Secretary of the Treasury shall
25 issue rules permitting a financial institution to

1 share reports under this subsection with the in-
2 stitution's foreign branches and affiliates for
3 the purposes of combating illicit finance risks,
4 notwithstanding any other provision of law ex-
5 cept subparagraph (B).

6 “(B) EXCEPTION.—In issuing the regula-
7 tions required under subparagraph (A), the
8 Secretary may not permit a financial institution
9 to share information on reports under this sub-
10 section with a foreign branch or affiliate located
11 in a jurisdiction that—

12 “(i) is subject to countermeasures im-
13 posed by the Federal Government; or

14 “(ii) the Secretary has determined
15 cannot reasonably protect the privacy of
16 such information”.

17 (2) NOTIFICATION PROHIBITIONS.—Section
18 5318(g)(2)(A) of title 31, United States Code, is
19 amended—

20 (A) in clause (i), by inserting after “trans-
21 action has been reported” the following: “or
22 otherwise reveal any information that would re-
23 veal that the transaction has been reported, in-
24 cluding materials prepared or used by the fi-
25 nancial institution for the purpose of identifying

1 and detecting potentially suspicious activity”;
2 and

3 (B) in clause (ii), by inserting after “trans-
4 action has been reported,” the following: “or
5 otherwise reveal any information that would re-
6 veal that the transaction has been reported, in-
7 cluding materials prepared or used by the fi-
8 nancial institution for the purpose of identifying
9 and detecting potentially suspicious activity,”.

10 (d) RULEMAKING.—Not later than the end of the
11 180-day period beginning on the date of enactment of this
12 Act, the Secretary of the Treasury shall issue regulations
13 to carry out the amendments made by this section.

14 **SEC. 5. FINCEN NO-ACTION LETTERS.**

15 Section 310 of title 31, United States Code, is
16 amended—

17 (1) by redesignating subsection (d) as sub-
18 section (e); and

19 (2) by inserting after subsection (c) the fol-
20 lowing:

21 “(d) NO-ACTION LETTERS WITH RESPECT TO SPE-
22 CIFIC CONDUCT.—

23 “(1) IN GENERAL.—The Director of FinCEN
24 shall issue regulations to establish a process for the
25 issuance of a no-action letter by FinCEN in re-

1 sponse to an inquiry from a person concerning the
2 application of the Bank Secrecy Act, the USA PA-
3 TRIOT Act, or any other anti-money laundering and
4 counter terrorist financing law or regulation to spe-
5 cific conduct, which shall include a statement as to
6 whether or not FinCEN has any intention of taking
7 an enforcement action against the person with re-
8 spect to such conduct.

9 “(2) CONSULTATION.—In issuing the regula-
10 tions described under paragraph (1), the Secretary
11 shall consult with the appropriate Federal banking
12 agencies and such other Federal departments and
13 agencies as the Secretary determines appropriate.

14 “(3) RELIANCE ON NO-ACTION LETTER.—

15 “(A) LIABILITY.—Notwithstanding any
16 other provisions of law, except for paragraph
17 (5)(B), a person described under subparagraph
18 (B) who relies upon a no-action letter issued
19 under this subsection in accordance with the
20 provisions and findings of such letter shall not,
21 as a result of any such act, be liable to any per-
22 son under the Bank Secrecy Act, the USA PA-
23 TRIOT Act, or any other anti-money laun-
24 dering and counter terrorist financing law or
25 regulation.

1 “(B) PERSONS COVERED.—A person de-
2 scribed in this paragraph is—

3 “(i) any person involved in the specific
4 conduct that is the subject of the no-action
5 letter; and

6 “(ii) any person involved in conduct
7 which is indistinguishable in all its mate-
8 rial aspects from the specific conduct that
9 is the subject of the no-action letter.

10 “(4) FEES.—

11 “(A) IN GENERAL.—The Director of
12 FinCEN shall develop a system to charge a fee
13 for each request for a no-action letter made
14 under this subsection in an amount sufficient,
15 in the aggregate, to pay for the cost of carrying
16 out this subsection. Such system shall provide
17 for a lower fee for small business concerns com-
18 pared to other persons.

19 “(B) NOTICE AND COMMENT.—Not later
20 than 45 days after the date of the enactment of
21 this paragraph, the Director of FinCEN shall
22 publish a description of the fee system de-
23 scribed in subparagraph (A) in the Federal
24 Register and shall solicit comments from the
25 public for a period of 60 days after publication.

1 “(C) FINALIZATION.—The Director of
2 FinCEN shall publish a final description of the
3 fee system and implement such fee system not
4 later than 30 days after the end of the public
5 comment period described in subparagraph (B).

6 “(5) MODIFYING OR RESCINDING A NO-ACTION
7 LETTER.—

8 “(A) IN GENERAL.—The Director of
9 FinCEN may modify or rescind any no-action
10 letter issued under this subsection if—

11 “(i) in light of changes in statute or
12 regulations, the letter no longer sets forth
13 the interpretation of FinCEN with respect
14 to the content of the letter; or

15 “(ii) any fact or statement submitted
16 in the original inquiry is found to be mate-
17 rially inaccurate or incomplete.

18 “(B) NO RELIANCE ON RESCINDED LET-
19 TER.—Paragraph (3) shall not apply to the any
20 actions taken after the date that a no-action
21 letter is rescinded.

22 “(C) RETROACTIVE MODIFICATION OR RE-
23 SCISSION.—A no-action letter may be modified
24 or rescinded retroactively with respect to one or

1 more parties to the original inquiry if the Direc-
2 tor of FinCEN determines that—

3 “(i) a fact or statement in the original
4 inquiry was materially inaccurate or in-
5 complete;

6 “(ii) the requestor failed to notify in
7 writing FinCEN of a material change to
8 any fact or statement in the original re-
9 quest; or

10 “(iii) a party to the original inquiry
11 acted in bad faith when relying upon the
12 no-action letter.

13 “(6) DEFINITIONS.—For purposes of this sub-
14 section:

15 “(A) APPROPRIATE FEDERAL BANKING
16 AGENCY.—The term ‘appropriate Federal bank-
17 ing agency’ has the meaning given that term
18 under section 3 of the Federal Deposit Insur-
19 ance Act.

20 “(B) BANK SECRECY ACT.—The term
21 ‘Bank Secrecy Act’ means—

22 “(i) section 21 of the Federal Deposit
23 Insurance Act;

24 “(ii) chapter 2 of title I of Public Law
25 91-508; and

1 “(iii) subchapter II of chapter 53 of
2 this title.

3 “(C) SMALL BUSINESS CONCERN.—The
4 term ‘small business concern’ has the meaning
5 given under section 3 of the Small Business
6 Act.”.

7 **SEC. 6. REQUIRING TREASURY TO TAKE A MORE PROMI-**
8 **NENT ROLE IN COORDINATING AML/CFT POL-**
9 **ICY AND EXAMINATIONS ACROSS THE GOV-**
10 **ERNMENT.**

11 (a) PRIORITIES.—Not later than nine months after
12 the date of the enactment of this Act, and annually there-
13 after, the Secretary of the Treasury, acting through the
14 Office of Terrorism and Financial Intelligence and the Fi-
15 nancial Crimes Enforcement Network, in consultation
16 with relevant Federal law enforcement and national secu-
17 rity agencies and any other Federal departments and
18 agencies that the Secretary of the Treasury determines
19 appropriate, shall establish and make public its priorities
20 for U.S. anti-money laundering and counter terrorist fi-
21 nancing policy.

22 (b) SUPERVISION AND EXAMINATION.—The incorpo-
23 ration by financial institutions of the priorities established
24 pursuant to subsection (a) into the programs established
25 by those financial institutions to meet obligations under

1 the Bank Secrecy Act, the USA PATRIOT Act, and other
2 anti-money laundering and counter terrorist financing
3 laws and regulations shall form the basis on which the
4 financial institutions are supervised and examined for
5 compliance with those obligations.

6 (c) REPORT.—Not later than nine months after the
7 date of enactment of this Act, the Secretary of the Treas-
8 ury shall submit to the Committee on Financial Services
9 of the House of Representatives and the Committee on
10 Banking, Housing, and Urban Affairs of the Senate a re-
11 port containing—

12 (1) an analysis of the Secretary of the Treas-
13 ury's delegation of examination authority under the
14 Bank Secrecy Act, which shall include a determina-
15 tion as to whether the Secretary should de-delegate
16 its authority for financial institutions that submit a
17 significant percentage of reports under the Bank Se-
18 crecy Act or raise complex cross-border U.S. anti-
19 money laundering and counter terrorist financing
20 policy issues for which such a review would be bene-
21 ficial; and

22 (2) legislative, administrative, and other rec-
23 ommendations to strengthen the Department of the
24 Treasury's authority to ensure an effective U.S.

1 anti-money laundering and counter terrorist financ-
2 ing regime.

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

4 (1) FINANCIAL INSTITUTION.—The term “fi-
5 nancial institution” has the meaning given that term
6 under section 5312 of title 31, United States Code.

7 (2) BANK SECRECY ACT.—The term “Bank Se-
8 crecy Act” means—

9 (A) section 21 of the Federal Deposit In-
10 surance Act;

11 (B) chapter 2 of title I of Public Law 91-
12 508; and

13 (C) subchapter II of chapter 53 of title 31,
14 United States Code.

15 **SEC. 7. ENCOURAGING THE USE OF TECHNOLOGICAL INNO-**
16 **VATIONS.**

17 Section 5318(h) of title 31, United States Code, is
18 amended by adding at the end the following:

19 “(4) ENCOURAGING THE USE OF TECHNO-
20 LOGICAL INNOVATIONS.—

21 “(A) IN GENERAL.—The Secretary of the
22 Treasury shall, in carrying out this subsection,
23 encourage the use of technological innovations
24 that improve anti-money laundering programs
25 described under paragraph (1).

1 “(B) SAFE HARBOR.—An anti-money laun-
2 dering program that meets the minimum re-
3 quirements described under paragraph (1) and
4 any minimum standards issued pursuant to
5 paragraph (2), shall not violate the require-
6 ments of this subsection by reason of any tech-
7 nological innovation used to carry out such pro-
8 gram.”.

9 **SEC. 8. ASSESSING THE USEFULNESS OF BANK SECRECY**
10 **ACT REPORTING.**

11 (a) ANNUAL REPORT.—Not later than one year after
12 the date of enactment of this Act, and annually thereafter,
13 the Attorney General, in coordination with Federal law en-
14 forcement agencies and national security agencies, shall
15 provide the Secretary of the Treasury with statistics,
16 metrics, and other information on the use of Bank Secrecy
17 Act data.

18 (b) USE OF REPORT INFORMATION.—The Secretary
19 of the Treasury shall utilize the information reported
20 under subsection (a)—

- 21 (1) to help assess the usefulness of Bank Se-
22 crecy Act reporting to law enforcement;
- 23 (2) to enhance feedback and communications
24 with financial institutions and other entities subject
25 to Bank Secrecy Act requirements; and

1 (3) for such other purposes as the Secretary de-
2 termines appropriate.

3 (c) DEFINITIONS.—For purposes of this section, the
4 terms “financial institution” and “Bank Secrecy Act”
5 have the meaning given those terms, respectively, under
6 section 6(d).

7 **SEC. 9. TRANSPARENT INCORPORATION PRACTICES.**

8 (a) IN GENERAL.—

9 (1) AMENDMENT TO THE BANK SECRECY
10 ACT.—Chapter 53 of title 31, United States Code, is
11 amended by inserting after section 5332 the fol-
12 lowing new section:

13 **“§ 5333. Transparent incorporation practices**

14 **“(a) REPORTING REQUIREMENTS.—**

15 **“(1) BENEFICIAL OWNERSHIP REPORTING.—**

16 **“(A) IN GENERAL.—**Each applicant to
17 form a corporation or limited liability company
18 formed under the laws of a State shall file a re-
19 port with FinCEN containing a list of the bene-
20 ficial owners of the corporation or limited liabil-
21 ity company that—

22 **“(i) except as provided in paragraph**
23 **(3), and subject to paragraph (2), identi-**
24 **fies each beneficial owner by—**

25 **“(I) name;**

1 “(II) current residential or busi-
2 ness street address; and

3 “(III) a unique identifying num-
4 ber from a non-expired passport
5 issued by the United States or a non-
6 expired driver’s license issued by a
7 State; and

8 “(ii) if the applicant is not a bene-
9 ficial owner, provides the identification in-
10 formation described in clause (i) relating
11 to such applicant.

12 “(B) UPDATED INFORMATION.—Each cor-
13 poration or limited liability company formed
14 under the laws of a State shall—

15 “(i) update the list of the beneficial
16 owners of the corporation or limited liabil-
17 ity company by providing the information
18 described in subparagraph (A) to FinCEN
19 not later than 60 days after the date of
20 any change in the list of beneficial owners
21 or the information required to be provided
22 relating to each beneficial owner; and

23 “(ii) submit to FinCEN an annual fil-
24 ing containing the list of the beneficial
25 owners of the corporation or limited liabil-

1 ity company and the information described
2 in subparagraph (A) for each such bene-
3 ficial owner.

4 “(2) CERTAIN BENEFICIAL OWNERS.—If an ap-
5 plicant to form a corporation or limited liability com-
6 pany or a beneficial owner, officer, director, or simi-
7 lar agent of a corporation or limited liability com-
8 pany who is required to provide identification infor-
9 mation under this subsection does not have a non-
10 expired passport issued by the United States or a
11 non-expired driver’s license or identification card
12 issued by a State, each application described in
13 paragraph (1)(A) and each update described in
14 paragraph (1)(B) shall include a certification by an
15 applicant residing in the State that the applicant—

16 “(A) has obtained for each such person a
17 current residential or business street address
18 and a legible and credible copy of the pages of
19 a non-expired passport issued by the govern-
20 ment of a foreign country bearing a photo-
21 graph, date of birth, and unique identifying in-
22 formation for the person;

23 “(B) has verified the name, address, and
24 identity of each such person;

1 “(C) will provide the information described
2 in subparagraph (A) and the proof of
3 verification described in subparagraph (B) upon
4 request of FinCEN; and

5 “(D) will retain the information and proof
6 of verification under this paragraph in the
7 State in which the corporation or limited liabil-
8 ity company is being or has been formed until
9 the end of the 5-year period beginning on the
10 date that the corporation or limited liability
11 company terminates under the laws of the
12 State.

13 “(3) EXEMPT ENTITIES.—

14 “(A) IN GENERAL.—With respect to an ap-
15 plicant to form a corporation or limited liability
16 company formed under the laws of a State, if
17 such applicant is described in subparagraph (C)
18 or (D) of subsection (d)(2) and will be exempt
19 from the beneficial ownership disclosure re-
20 quirements under this subsection, such appli-
21 cant, or a prospective officer, director, or simi-
22 lar agent of the applicant, shall file a certifi-
23 cation with FinCEN—

24 “(i) identifying the specific provision
25 of subsection (d)(2) under which the entity

1 proposed to be formed would be exempt
2 from the beneficial ownership disclosure re-
3 quirements under paragraphs (1) and (2);

4 “(ii) stating that the entity proposed
5 to be formed meets the requirements for
6 an entity described under such provision of
7 subsection (d)(2); and

8 “(iii) providing identification informa-
9 tion for the applicant or prospective offi-
10 cer, director, or similar agent making the
11 certification in the same manner as pro-
12 vided under paragraph (1) or (2).

13 “(B) EXISTING CORPORATIONS OR LIM-
14 ITED LIABILITY COMPANIES.—On and after the
15 date that is 2 years after the final regulations
16 are issued to carry out this section, a corpora-
17 tion or limited liability company formed under
18 the laws of the State before such date shall be
19 subject to the requirements of this subsection
20 unless an officer, director, or similar agent of
21 the entity submits to FinCEN a certification—

22 “(i) identifying the specific provision
23 of subsection (d)(2) under which the entity
24 is exempt from the requirements under
25 paragraphs (1) and (2);

1 “(ii) stating that the entity meets the
2 requirements for an entity described under
3 such provision of subsection (d)(2); and

4 “(iii) providing identification informa-
5 tion for the officer, director, or similar
6 agent making the certification in the same
7 manner as provided under paragraph (1)
8 or (2).

9 “(C) EXEMPT ENTITIES HAVING OWNER-
10 SHIP INTEREST.—If an entity described in sub-
11 paragraph (C) or (D) of subsection (d)(2) has
12 or will have an ownership interest in a corpora-
13 tion or limited liability company formed or to be
14 formed under the laws of a State, the applicant,
15 corporation, or limited liability company in
16 which the entity has or will have the ownership
17 interest shall provide the information required
18 under this subsection relating to the entity, ex-
19 cept that the entity shall not be required to pro-
20 vide information regarding any natural person
21 who has an ownership interest in, exercises sub-
22 stantial control over, or receives substantial eco-
23 nomic benefits from the entity.

24 “(4) RETENTION AND DISCLOSURE OF BENE-
25 FICIAL OWNERSHIP INFORMATION BY FINCEN.—

1 “(A) RETENTION OF INFORMATION.—Ben-
2 eficial ownership information relating to each
3 corporation or limited liability company formed
4 under the laws of the State shall be maintained
5 by the FinCEN until the end of the 5-year pe-
6 riod beginning on the date that the corporation
7 or limited liability company terminates.

8 “(B) DISCLOSURE OF INFORMATION.—
9 Beneficial ownership information reported to
10 FinCEN pursuant to paragraph (1) shall be
11 provided by FinCEN upon receipt of—

12 “(i) a criminal subpoena from a Fed-
13 eral agency;

14 “(ii) a request made by a Federal
15 agency on behalf of a law enforcement
16 agency of another country under an inter-
17 national treaty, agreement, or convention,
18 or an order under section 3512 of title 18,
19 United States Code, or section 1782 of
20 title 28, United States Code, issued in re-
21 sponse to a request for assistance in a ter-
22 rorism or criminal investigation by such
23 foreign country, subject to the requirement
24 that such other country agrees to prevent
25 the public disclosure of such beneficial

1 ownership information or to use it for any
2 purpose other than the specified terrorism
3 or criminal investigation; or

4 “(iii) a request made by a financial
5 institution, with customer consent, as part
6 of the institution’s compliance with due
7 diligence requirements imposed under the
8 Bank Secrecy Act, the USA PATRIOT
9 Act, or other applicable Federal or State
10 law.

11 “(b) NO BEARER SHARE CORPORATIONS OR LIM-
12 ITED LIABILITY COMPANIES.—A corporation or limited li-
13 ability company formed under the laws of the State may
14 not issue a certificate in bearer form evidencing either a
15 whole or fractional interest in the corporation or limited
16 liability company.

17 “(c) PENALTIES.—

18 “(1) IN GENERAL.—It shall be unlawful for—

19 “(A) any person to affect interstate or for-
20 eign commerce by—

21 “(i) knowingly providing, or attempt-
22 ing to provide, false or fraudulent bene-
23 ficial ownership information, including a
24 false or fraudulent identifying photograph,
25 to FinCEN in accordance with this section;

1 “(ii) willfully failing to provide com-
2 plete or updated beneficial ownership infor-
3 mation to FinCEN in accordance with this
4 section; or

5 “(iii) knowingly disclosing the exist-
6 ence of a subpoena, summons, or other re-
7 quest for beneficial ownership information
8 reported pursuant to this section, except—

9 “(I) to the extent necessary to
10 fulfill the authorized request; or

11 “(II) as authorized by the entity
12 that issued the subpoena, summons,
13 or other request.

14 “(2) CIVIL AND CRIMINAL PENALTIES.—Any
15 person who violates paragraph (1)—

16 “(A) shall be liable to the United States
17 for a civil penalty of not more than \$10,000;
18 and

19 “(B) may be fined under title 18, United
20 States Code, imprisoned for not more than 3
21 years, or both.

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

23 “(1) BENEFICIAL OWNER.—

24 “(A) IN GENERAL.—Except as provided in
25 subparagraph (B), the term ‘beneficial owner’

1 means a natural person who, directly or indi-
2 rectly, through any contract, arrangement, un-
3 derstanding, relationship, or otherwise—

4 “(i) exercises substantial control over
5 a corporation or limited liability company;
6 or

7 “(ii) owns 25 percent or more of the
8 equity interests of a corporation or limited
9 liability company or receives substantial
10 economic benefits from the assets of a cor-
11 poration or limited liability company.

12 “(B) EXCEPTIONS.—The term ‘beneficial
13 owner’ shall not include—

14 “(i) a minor child;

15 “(ii) a person acting as a nominee,
16 intermediary, custodian, or agent on behalf
17 of another person;

18 “(iii) a person acting solely as an em-
19 ployee of a corporation or limited liability
20 company and whose control over or eco-
21 nomic benefits from the corporation or lim-
22 ited liability company derives solely from
23 the employment status of the person;

1 “(iv) a person whose only interest in
2 a corporation or limited liability company
3 is through a right of inheritance; or

4 “(v) a creditor of a corporation or
5 limited liability company.

6 “(C) SUBSTANTIAL ECONOMIC BENEFITS
7 DEFINED.—For purposes of subparagraph
8 (A)(ii), a natural person receives substantial
9 economic benefits from the assets of a corpora-
10 tion or limited liability company if the person
11 has an entitlement to the funds or assets of the
12 corporation or limited liability company that, as
13 a practical matter, enables the person, directly
14 or indirectly, to control, manage, or direct the
15 corporation or limited liability company.

16 “(2) CORPORATION; LIMITED LIABILITY COM-
17 PANY.—The terms ‘corporation’ and ‘limited liability
18 company’—

19 “(A) have the meanings given such terms
20 under the laws of the applicable State;

21 “(B) include any non-United States entity
22 eligible for registration or registered to do busi-
23 ness as a corporation or limited liability com-
24 pany under the laws of the applicable State;

1 “(C) do not include any entity that is, and
2 discloses in the application by the entity to
3 form under the laws of the State or, if the enti-
4 ty was formed before the date of the enactment
5 of this section, in a filing with the State under
6 State law—

7 “(i) a business concern that is an
8 issuer of a class of securities registered
9 under section 12 of the Securities Ex-
10 change Act of 1934 (15 U.S.C. 781) or
11 that is required to file reports under sec-
12 tion 15(d) of that Act (15 U.S.C. 78o(d));

13 “(ii) a business concern constituted or
14 sponsored by a State, a political subdivi-
15 sion of a State, under an interstate com-
16 pact between two or more States, by a de-
17 partment or agency of the United States,
18 or under the laws of the United States;

19 “(iii) a depository institution (as de-
20 fined in section 3 of the Federal Deposit
21 Insurance Act (12 U.S.C. 1813));

22 “(iv) a credit union (as defined in sec-
23 tion 101 of the Federal Credit Union Act
24 (12 U.S.C. 1752));

1 “(v) a bank holding company (as de-
2 fined in section 2 of the Bank Holding
3 Company Act of 1956 (12 U.S.C. 1841));

4 “(vi) a broker or dealer (as defined in
5 section 3 of the Securities Exchange Act of
6 1934 (15 U.S.C. 78c)) that is registered
7 under section 15 of the Securities Ex-
8 change Act of 1934 (15 U.S.C. 78o);

9 “(vii) an exchange or clearing agency
10 (as defined in section 3 of the Securities
11 Exchange Act of 1934 (15 U.S.C. 78c))
12 that is registered under section 6 or 17A
13 of the Securities Exchange Act of 1934
14 (15 U.S.C. 78f and 78q-1);

15 “(viii) an investment company (as de-
16 fined in section 3 of the Investment Com-
17 pany Act of 1940 (15 U.S.C. 80a-3)) or
18 an investment adviser (as defined in sec-
19 tion 202(11) of the Investment Advisers
20 Act of 1940 (15 U.S.C. 80b-2(11))), if the
21 company or adviser is registered with the
22 Securities and Exchange Commission, or
23 has filed an application for registration
24 which has not been denied, under the In-
25 vestment Company Act of 1940 (15 U.S.C.

1 80a–1 et seq.) or the Investment Adviser
2 Act of 1940 (15 U.S.C. 80b–1 et seq.);

3 “(ix) an insurance company (as de-
4 fined in section 2 of the Investment Com-
5 pany Act of 1940 (15 U.S.C. 80a–2));

6 “(x) a registered entity (as defined in
7 section 1a of the Commodity Exchange Act
8 (7 U.S.C. 1a)), or a futures commission
9 merchant, introducing broker, commodity
10 pool operator, or commodity trading advi-
11 sor (as defined in section 1a of the Com-
12 modity Exchange Act (7 U.S.C. 1a)) that
13 is registered with the Commodity Futures
14 Trading Commission;

15 “(xi) a public accounting firm reg-
16 istered in accordance with section 102 of
17 the Sarbanes-Oxley Act (15 U.S.C. 7212);

18 “(xii) a public utility that provides
19 telecommunications service, electrical
20 power, natural gas, or water and sewer
21 services, within the United States;

22 “(xiii) a church, charity, or nonprofit
23 entity that is described in section 501(c),
24 527, or 4947(a)(1) of the Internal Revenue
25 Code of 1986, that has not been denied tax

1 exempt status, and that has filed the most
2 recently due annual information return
3 with the Internal Revenue Service, if re-
4 quired to file such a return;

5 “(xiv) any business concern that—

6 “(I) employs more than 20 em-
7 ployees on a full-time basis in the
8 United States;

9 “(II) files income tax returns in
10 the United States demonstrating more
11 than \$5,000,000 in gross receipts or
12 sales; and

13 “(III) has an operating presence
14 at a physical office within the United
15 States; or

16 “(xv) any corporation or limited liabil-
17 ity company formed and owned by an enti-
18 ty described in clause (i), (ii), (iii), (iv),
19 (v), (vi), (vii), (viii), (ix), (x), (xi), (xii),
20 (xiii), or (xiv); and

21 “(D) do not include any individual busi-
22 ness concern or class of business concerns
23 which the Secretary of the Treasury, with the
24 written concurrence of the Attorney General of
25 the United States, has determined in writing

1 should be exempt from the requirements of sub-
2 section (a), because requiring beneficial owner-
3 ship information from the business concern
4 would not serve the public interest and would
5 not assist law enforcement efforts to detect,
6 prevent, or punish terrorism, money laundering,
7 tax evasion, or other misconduct.

8 “(3) BANK SECRECY ACT.—The term ‘Bank Se-
9 crecy Act’ means—

10 “(A) section 21 of the Federal Deposit In-
11 surance Act;

12 “(B) chapter 2 of title I of Public Law 91–
13 508; and

14 “(C) this subchapter.

15 “(4) FINCEN.—The term ‘FinCEN’ means the
16 Financial Crimes Enforcement Network of the De-
17 partment of the Treasury.”.

18 (2) RULEMAKING.—Not later than the begin-
19 ning of fiscal year 2019, the Secretary of the Treas-
20 ury shall issue regulations to carry out this Act and
21 the amendments made by this Act.

22 (3) REVISION TO EXISTING RULE.—

23 (A) IN GENERAL.—The Secretary of the
24 Treasury shall, simultaneously with issuing the
25 regulations described under paragraph (2), re-

1 vise the final rule titled “Customer Due Dili-
2 gence Requirements for Financial Institutions”
3 (May 11, 2016; 81 Fed. Reg. 29397) as nec-
4 essary to conform with this Act, the amend-
5 ments made by this Act, and the regulations
6 issued under paragraph (2).

7 (B) SUSPENSION OF RULE UNTIL REVI-
8 SION.—The final rule described under subpara-
9 graph (A) shall have no force or effect until the
10 rule is revised, as required under subparagraph
11 (A).

12 (4) CONFORMING AMENDMENTS.—Title 31,
13 United States Code, is amended—

14 (A) in section 5321(a)—

15 (i) in paragraph (1), by striking “sec-
16 tions 5314 and 5315” each place it ap-
17 pears and inserting “sections 5314, 5315,
18 and 5333”; and

19 (ii) in paragraph (6), by inserting
20 “(except section 5333)” after “sub-
21 chapter” each place it appears; and

22 (B) in section 5322, by striking “section
23 5315 or 5324” each place it appears and insert-
24 ing “section 5315, 5324, or 5333”.

1 (5) TABLE OF CONTENTS.—The table of con-
2 tents of chapter 53 of title 31, United States Code,
3 is amended by inserting after the item relating to
4 section 5332 the following:

“Sec. 5333. Transparent incorporation practices.”.

5 (b) FUNDING AUTHORIZATION.—

6 (1) IN GENERAL.—To carry out section 5333 of
7 title 31, United States Code, as added by subsection
8 (a), during the 3-year period beginning on the date
9 of enactment of this Act, funds shall be made avail-
10 able to the Financial Crimes Enforcement Network
11 (in this subsection referred to as “FinCEN”) to pay
12 reasonable costs relating to compliance with the re-
13 quirements of such section.

14 (2) FUNDING SOURCES.—Funds shall be pro-
15 vided to FinCEN to carry out the purposes de-
16 scribed in paragraph (1) from one or more of the
17 following sources:

18 (A) Upon application by FinCEN, and
19 without further appropriation, the Secretary of
20 the Treasury shall make available to the
21 FinCEN unobligated balances described in sec-
22 tion 9703(g)(4)(B) of title 31, United States
23 Code, in the Department of the Treasury For-
24 feiture Fund established under section 9703(a)
25 of title 31, United States Code.

1 (B) Upon application by FinCEN, after
2 consultation with the Secretary of the Treasury,
3 and without further appropriation, the Attorney
4 General of the United States shall make avail-
5 able to FinCEN excess unobligated balances (as
6 defined in section 524(c)(8)(D) of title 28,
7 United States Code) in the Department of Jus-
8 tice Assets Forfeiture Fund established under
9 section 524(c) of title 28, United States Code.

10 (3) MAXIMUM AMOUNTS.—

11 (A) DEPARTMENT OF THE TREASURY.—

12 The Secretary of the Treasury may not make
13 available to FinCEN a total of more than
14 \$30,000,000 under paragraph (2)(A).

15 (B) DEPARTMENT OF JUSTICE.—The At-

16 torney General of the United States may not
17 make available to FinCEN a total of more than
18 \$10,000,000 under paragraph (2)(B).

19 (c) FEDERAL CONTRACTORS.—Not later than the
20 first day of the first full fiscal year beginning at least one
21 year after the date of the enactment of this Act, the Ad-
22 ministrator for Federal Procurement Policy shall revise
23 the Federal Acquisition Regulation maintained under sec-
24 tion 1303(a)(1) of title 41, United States Code, to require
25 any contractor who is subject to the requirement to dis-

1 close beneficial ownership information under section 5333
2 of title 31, United States Code, to provide the information
3 required to be disclosed under such section to the Federal
4 Government as part of any bid or proposal for a contract
5 with a value threshold in excess of the simplified acquisi-
6 tion threshold under section 134 of title 41, United States
7 Code.

8 **SEC. 10. STUDIES AND REPORTS.**

9 (a) OTHER LEGAL ENTITIES.—Not later than 2
10 years after the date of enactment of this Act, the Comp-
11 troller General of the United States shall conduct a study
12 and submit to the Congress a report—

13 (1) evaluating whether the lack of available
14 beneficial ownership information for partnerships,
15 trusts, or other legal entities—

16 (A) raises concerns about the involvement
17 of such entities in terrorism, money laundering,
18 tax evasion, securities fraud, or other mis-
19 conduct; and

20 (B) has impeded investigations into enti-
21 ties suspected of such misconduct; and

22 (2) evaluating whether the failure of the United
23 States to require beneficial ownership information
24 for partnerships and trusts formed or registered in
25 the United States has elicited international criticism

1 and what steps, if any, the United States has taken
2 or is planning to take in response.

3 (b) EFFECTIVENESS OF INCORPORATION PRAC-
4 TICES.—Not later than 5 years after the date of enact-
5 ment of this Act, the Comptroller General of the United
6 States shall conduct a study and submit to the Congress
7 a report assessing the effectiveness of incorporation prac-
8 tices implemented under this Act and the amendments
9 made by this Act in—

10 (1) providing law enforcement agencies with
11 prompt access to reliable, useful, and complete bene-
12 ficial ownership information; and

13 (2) strengthening the capability of law enforce-
14 ment agencies to combat incorporation abuses, civil
15 and criminal misconduct, and detect, prevent, or
16 punish terrorism, money laundering, tax evasion, or
17 other misconduct.

18 (c) COMPREHENSIVE COST-BENEFIT ANALYSIS.—
19 Not later than 2 years after the date of enactment of this
20 Act, the Comptroller General of the United States shall
21 conduct a study and submit to the Congress a report—

22 (1) providing a comprehensive quantitative and
23 qualitative estimate of the annualized costs to the
24 private sector to comply with the statutory and regu-
25 latory requirements of the Bank Secrecy Act (as de-

1 fined under section 6(d)) and related anti-money
2 laundering laws and regulations;

3 (2) providing a comprehensive qualitative and
4 quantitative analysis of the effectiveness of the cur-
5 rent anti-money laundering and counter terrorist fi-
6 nancing framework in preventing, detecting, and
7 prosecuting terrorist and illicit financing; and

8 (3) providing a comprehensive qualitative and
9 quantitative analysis of the benefits to both the pri-
10 vate sector and the Government of the private sec-
11 tor's compliance with the statutory and regulatory
12 requirements of the Bank Secrecy Act and related
13 anti-money laundering laws and regulations.