

[DISCUSSION DRAFT]

118TH CONGRESS
1ST SESSION

H. R. _____

To provide for additional transparency with respect to the controlling documents of the Financial Crimes Enforcement Network and rulemaking and secretarial exceptions related to the Financial Crimes Enforcement Network, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the
Committee on _____

A BILL

To provide for additional transparency with respect to the controlling documents of the Financial Crimes Enforcement Network and rulemaking and secretarial exceptions related to the Financial Crimes Enforcement Network, 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 “FinCEN Record Keep-
5 ing Act of 2023”.

1 **SEC. 2. TRANSPARENCY WITH CONTROLLING DOCUMENTS.**

2 (a) DEFINITION OF CONTROLLING DOCUMENT.—As
3 used in this section, the term “controlling document” re-
4 fers to any record (as defined in section 3301 of title 44,
5 United States Code) issued by or under the authority of
6 the Secretary, Deputy Secretary, Under Secretary for En-
7 forcement, or any other officer or employee of the Depart-
8 ment of the Treasury, that delegates authority to the Fi-
9 nancial Crimes Enforcement Network or its Director, or
10 contains direction binding upon the Financial Crimes En-
11 forcement Network or its Director, in the implementation
12 of section 310 of title 31, United States Code, or the Bank
13 Secrecy Act, including delegations, prescriptions, regula-
14 tions, protocols, priorities, policies, standards, guidelines,
15 and requirements issued in accordance with subsections
16 (b)(2)(C), (b)(2)(E), (b)(2)(I), (b)(2)(J), (b)(2)(O), (c),
17 and (i)(2)(C)(ii) of section 310 of such title 31 and sub-
18 sections (b)(1), (b)(2), (b)(4), (c)(2)(A), (c)(2)(C), (c)(3),
19 (c)(5), (d)(3), and (h)(3)(C)(i)(I)(bb) of section 5336 of
20 such title 31.

21 (b) DISCLOSURE TO CONGRESS.—The Secretary of
22 the Treasury shall promptly provide to the Committee on
23 Financial Services of the House of Representatives and
24 the Committee on Banking, Housing, and Urban Affairs
25 of the Senate—

1 (1) controlling documents in force as of the en-
2 actment of this Act;

3 (2) any controlling documents issued thereafter;
4 and

5 (3) any changes to controlling documents de-
6 scribed in paragraphs (1) and (2) made thereafter,
7 including any revocations thereof.

8 (c) DISCLOSURE TO THE PUBLIC.—The Secretary of
9 the Treasury shall make available promptly to the public
10 the controlling documents and changes that the Secretary
11 is required to provide to the committees listed in sub-
12 section (b), excluding such reasonably segregable portions
13 of controlling documents or changes as would fall within
14 an exemption in section 552(b) of title 5, United States
15 Code.

16 **SEC. 3. TRANSPARENCY IN RULEMAKING AND SECRE-**
17 **TARIAL EXCEPTIONS.**

18 (a) RESERVATION TO THE SECRETARY OF AUTHOR-
19 ITY TO MAKE EXCEPTIONS.—No officer or employee of
20 the Department of the Treasury, except the Secretary of
21 the Treasury or the person performing the duties of the
22 Secretary of the Treasury when that office is vacant or
23 the Secretary is unable to perform the duties of that office,
24 shall, with respect to a proposed or final rule relating to

1 activities of the Financial Crimes Enforcement Network,
2 including implementation of the Bank Secrecy Act—

3 (1) make findings of good cause under sub-
4 section (b) or (d) of section 553 of title 5, United
5 States Code;

6 (2) exercise authority to certify, delay, or waive
7 under section 605 or 608 of title 5, United States
8 Code; or

9 (3) make findings of good cause under section
10 808(2) of title 5, United States Code.

11 (b) COVERED AGENCY STATUS FOR REGULATORY
12 FLEXIBILITY.—Section 310 of title 31, United States
13 Code, is amended by adding at the end thereof the fol-
14 lowing new subsection:

15 “(m) The Financial Crimes Enforcement Network
16 shall be a ‘covered agency’ for purposes of section 609(d)
17 of title 5.”.

18 **SEC. 4. BANK SECRECY ACT DEFINED.**

19 In this Act, the term “Bank Secrecy Act” means—

20 (1) section 21 of the Federal Deposit Insurance
21 Act (12 U.S.C. 1829b);

22 (2) chapter 2 of title I of Public Law 91–508
23 (12 U.S.C. 1951 et seq.); and

24 (3) subchapter II of chapter 53 of title 31,
25 United States Code.