

[DISCUSSION DRAFT]

115TH CONGRESS
2^D SESSION

H. R. _____

To update dollar amount thresholds for certain currency transaction reports and suspicious activity reports, to improve the sharing of suspicious activity reports within a financial group, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M____. _____ 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 the sharing of suspicious activity reports within a financial group, 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-

1 tions to \$10,000 and each \$2,000 threshold amount in
2 such regulation to \$3,000.

3 **SEC. 3. STREAMLINING REQUIREMENTS FOR CURRENCY**
4 **TRANSACTION REPORTS AND SUSPICIOUS**
5 **ACTIVITY REPORTS.**

6 (a) REVIEW.—The Secretary of the Treasury (in con-
7 sultation with Federal law enforcement agencies, the Di-
8 rector of National Intelligence, and the Federal banking
9 agencies and in consultation with other relevant stake-
10 holders) shall undertake a formal review of the current
11 financial institution reporting requirements under the
12 Bank Secrecy Act and its implementing regulations and
13 propose changes to further reduce regulatory burdens, and
14 ensure that the information provided is of a “high degree
15 of usefulness” to law enforcement, as set forth under sec-
16 tion 5311 of title 31, United States Code.

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

19 (1) whether the timeframe for filing a sus-
20 picious activity report should be increased from 30
21 days;

22 (2) whether or not currency transaction report
23 and suspicious activity report thresholds should be
24 tied to inflation or otherwise periodically be ad-
25 justed;

1 (3) whether the circumstances under which a fi-
2 nancial institution determines whether to file a “con-
3 tinuing suspicious activity report”, or the processes
4 followed by a financial institution in determining
5 whether to file a “continuing suspicious activity re-
6 port” (or both) can be narrowed;

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

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

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

18 (7) the most appropriate ways to promote fi-
19 nancial inclusion and address the adverse con-
20 sequences of financial institutions de-risking entire
21 categories of high-risk relationships, including char-
22 ities, embassy accounts, money service businesses (as
23 defined under section 1010.100(ff) of title 31, Code
24 of Federal Regulations), and correspondent banks;
25 and

1 (8) such other items as the Secretary deter-
2 mines appropriate.

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

10 **SEC. 4. SHARING OF SUSPICIOUS ACTIVITY REPORTS WITH-**
11 **IN A FINANCIAL GROUP.**

12 (a) IN GENERAL.—

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

17 “(5) SHARING WITH FOREIGN BRANCHES AND
18 AFFILIATES.—

19 “(A) IN GENERAL.—Not later than 180
20 days after the date of the enactment of this
21 paragraph, the Secretary of the Treasury shall
22 issue rules permitting any financial institution
23 with a reporting obligation under this sub-
24 section to share information on reports under
25 this subsection with the institution’s foreign

1 branches and affiliates for the purposes of com-
2 bating illicit finance risks, notwithstanding any
3 other provision of law except subparagraph (B).

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

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

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

15 (2) NOTIFICATION PROHIBITIONS.—Section
16 5318(g)(2)(A) of title 31, United States Code, is
17 amended—

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

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

8 (b) RULEMAKING.—Not later than the end of the
9 180-day period beginning on the date of enactment of this
10 Act, the Secretary of the Treasury shall issue regulations
11 to carry out the amendments made by this section.

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

13 Section 310 of title 31, United States Code, is
14 amended—

15 (1) by redesignating subsection (d) as sub-
16 section (e); and

17 (2) by inserting after subsection (e) the fol-
18 lowing:

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

21 “(1) IN GENERAL.—The Director of FinCEN
22 shall issue regulations to establish a process for the
23 issuance of a no-action letter by FinCEN in re-
24 sponse to an inquiry from a person concerning the
25 application of the Bank Secrecy Act, the USA PA-

1 Patriot Act, or any other anti-money laundering and
2 counter terrorist financing law or regulation to spe-
3 cific conduct, which shall include a statement as to
4 whether or not FinCEN has any intention of taking
5 an enforcement action against the person with re-
6 spect to such conduct.

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

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

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

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 at least annu-
13 ally thereafter, the Secretary of the Treasury, acting
14 through the Office of Terrorism and Financial Intelligence
15 and the Financial Crimes Enforcement Network, in con-
16 sultation with relevant Federal law enforcement, the Di-
17 rector of National Intelligence, and any other Federal de-
18 partments and agencies that the Secretary of the Treasury
19 determines appropriate, shall establish and make public
20 its priorities for U.S. anti-money laundering and counter
21 terrorist financing 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) RULE OF CONSTRUCTION.—Nothing in sub-
7 section (a) may be construed as releasing financial institu-
8 tions from the requirement to comply with existing obliga-
9 tions under the Bank Secrecy Act and other Federal laws
10 and regulations.

11 (d) REPORT.—Not later than nine months after the
12 date of enactment of this Act, the Secretary of the Treas-
13 ury (in consultation with Federal law enforcement agen-
14 cies, the Director of National Intelligence, and the Federal
15 banking agencies) shall submit to the Committee on Fi-
16 nancial Services of the House of Representatives and the
17 Committee on Banking, Housing, and Urban Affairs of
18 the Senate a report containing—

19 (1) an analysis of the Secretary of the Treas-
20 ury's delegation of examination authority under the
21 Bank Secrecy Act, including the adequacy of the De-
22 partment of the Treasury's resources, capacity, ex-
23 pertise, and ability to effectively carry out the pur-
24 poses of the Bank Secrecy Act;

1 (2) an examination of whether the Secretary
2 should de-delegate that authority with regard to fi-
3 nancial institutions; and

4 (3) legislative, administrative, and other rec-
5 ommendations to strengthen the Department of the
6 Treasury's authority to ensure an effective U.S.
7 anti-money laundering and counter terrorist financ-
8 ing regime.

9 **SEC. 7. ENCOURAGING THE USE OF TECHNOLOGICAL INNO-**
10 **VATIONS.**

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

13 “(4) ENCOURAGING THE USE OF TECHNO-
14 LOGICAL INNOVATIONS.—

15 “(A) IN GENERAL.—The Secretary of the
16 Treasury shall, in carrying out this subsection,
17 encourage the use of technological innovations
18 that improve anti-money laundering programs
19 described under paragraph (1).

20 “(B) SAFE HARBOR.—An anti-money laun-
21 dering program that meets the minimum re-
22 quirements described under paragraph (1) and
23 any minimum standards issued pursuant to
24 paragraph (2), shall not violate the require-
25 ments of this subsection by reason of any tech-

1 nological innovation used to carry out such pro-
2 gram.

3 “(C) RULE OF CONSTRUCTION.—Nothing
4 in subparagraph (A) may be construed as re-
5 leasing financial institutions from the require-
6 ment to comply with existing obligations under
7 the Bank Secrecy Act and other Federal laws
8 and regulations.”.

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 consultation with Federal law en-
14 forcement agencies and the Director of National Intel-
15 ligence, shall, to the extent practicable at the discretion
16 of the Attorney General, provide the Secretary of the
17 Treasury with statistics, metrics, and other information
18 on the use of such data, including—

19 (1) the extent to which such data is used for
20 terrorism versus non-terrorism related investigations
21 and, with respect to such non-terrorism related in-
22 vestigations, the most common types of laws to
23 which such investigations relate;

24 (2) the frequency with which such data contains
25 “actionable information” which leads to further law

1 enforcement procedures, including the use of a sub-
2 poena, warrant, or other legal process; and

3 (3) information on the extent to which arrests,
4 indictments, convictions, or plea bargains of actors
5 result from the use of such data.

6 (b) USE OF REPORT INFORMATION.—The Secretary
7 of the Treasury shall utilize the information reported
8 under subsection (a)—

9 (1) to help assess the usefulness of Bank Se-
10 crecy Act reporting to law enforcement;

11 (2) to enhance feedback and communications
12 with financial institutions and other entities subject
13 to Bank Secrecy Act requirements; and

14 (3) for such other purposes as the Secretary de-
15 termines appropriate.

16 **SEC. 9. 18 MONTH ENFORCEMENT SAFE HARBOR OF CDD**
17 **RULE.**

18 No person shall be liable for any violation of the final
19 rule of the Department of the Treasury titled “Customer
20 Due Diligence Requirements for Financial Institutions”
21 published May 11, 2016 (81 Fed. Reg. 29397) during the
22 18-month period beginning on May 11, 2018, so long as
23 such person has made a good faith effort to comply with
24 such requirements.

1 **SEC. 10. STUDIES AND REPORTS.**

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

6 (1) evaluating whether the lack of available
7 beneficial ownership information for partnerships,
8 trusts, or other legal entities—

9 (A) raises concerns about the involvement
10 of such entities in terrorism, money laundering,
11 tax evasion, securities fraud, or other mis-
12 conduct; and

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

15 (2) evaluating whether the failure of the United
16 States to require beneficial ownership information
17 for partnerships and trusts formed or registered in
18 the United States has elicited international criticism
19 and what steps, if any, the United States has taken
20 or is planning to take in response.

21 (b) EFFECTIVENESS OF INCORPORATION PRAC-
22 TICES.—Not later than 5 years after the date of enact-
23 ment of this Act, the Comptroller General of the United
24 States shall conduct a study and submit to the Congress
25 a report assessing the effectiveness of incorporation prac-

1 tices implemented under this Act and the amendments
2 made by this Act in—

3 (1) providing law enforcement agencies with
4 prompt access to reliable, useful, and complete bene-
5 ficial ownership information; and

6 (2) strengthening the capability of law enforce-
7 ment agencies to combat incorporation abuses, civil
8 and criminal misconduct, and detect, prevent, or
9 punish terrorism, money laundering, tax evasion, or
10 other misconduct.

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

15 (1) providing a comprehensive quantitative and
16 qualitative estimate of the annualized costs to the
17 private sector to comply with the statutory and regu-
18 latory requirements of the Bank Secrecy Act and re-
19 lated anti-money laundering laws and regulations;

20 (2) providing a comprehensive qualitative and
21 quantitative analysis of the effectiveness of the cur-
22 rent anti-money laundering and counter terrorist fi-
23 nancing framework in preventing, detecting, and
24 prosecuting terrorist and illicit financing; and

1 (3) providing a comprehensive qualitative and
2 quantitative analysis of the benefits to both the pri-
3 vate sector and the Government of the private sec-
4 tor’s compliance with the statutory and regulatory
5 requirements of the Bank Secrecy Act and related
6 anti-money laundering laws and regulations.

7 **SEC. 11. DEFINITIONS.**

8 For purposes of this Act:

9 (1) **BANK SECRECY ACT.**—The term “Bank Se-
10 crecy Act” means—

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

13 (B) chapter 2 of title I of Public Law 91-
14 508; and

15 (C) subchapter II of chapter 53 of title 31,
16 United States Code.

17 (2) **FEDERAL BANKING AGENCY.**—The term
18 “Federal banking agency”—

19 (A) has the meaning given that term under
20 section 3 of the Federal Deposit Insurance Act;
21 and

22 (B) includes the National Credit Union
23 Administration.

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