

INTERNATIONAL COUNTER-MONEY LAUNDERING AND
FOREIGN ANTICORRUPTION ACT OF 2000

JULY 11, 2000.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed

Mr. LEACH, from the Committee on Banking and Financial
Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3886]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 3886) to combat international money laundering, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE.**—This Act may be cited as the “International Counter-Money Laundering and Foreign Anticorruption Act of 2000”.

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

Sec. 1. Short title; table of contents.

Sec. 2. Findings and purposes.

TITLE I—INTERNATIONAL COUNTER-MONEY LAUNDERING MEASURES

Sec. 101. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.

TITLE II—CURRENCY TRANSACTION REPORTING AMENDMENTS AND RELATED IMPROVEMENTS

Sec. 201. Amendments relating to reporting of suspicious activities.

Sec. 202. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders.

Sec. 203. Authorization to include suspicions of illegal activity in written employment references.

Sec. 204. Bank Secrecy Act Advisory Group.

Sec. 205. Agency reports on reconciling penalty amounts.

TITLE III—ANTICORRUPTION MEASURES

Sec. 301. Corruption of foreign governments and ruling elites.

Sec. 302. Support for the Financial Action Task Force on Money Laundering.

SEC. 2. FINDINGS AND PURPOSES.

(a) **FINDINGS.**—The Congress finds as follows:

(1) Money laundering, estimated by the International Monetary Fund to amount to between 2 and 5 percent of global gross domestic product which is at least \$600,000,000,000 annually, provides the financial fuel that permits transnational criminal enterprises to conduct and expand their operations to the detriment of the safety and security of American citizens.

(2) Money launderers subvert legitimate financial mechanisms and banking relationships by using them as protective covering for the movement of criminal proceeds and, by so doing, can undermine the integrity of our financial institutions and of the global financial and trading systems upon which our prosperity and growth depend.

(3) Money launderers rely upon the existence and use of certain jurisdictions outside the United States that offer bank secrecy and special tax or regulatory advantages to nonresidents, and often complement those advantages with weak financial supervisory and regulatory regimes.

(4) Certain kinds of transactions involving such offshore jurisdictions—for example, those transactions specifically designed to offer anonymity or the avoidance of regulatory scrutiny—make it difficult for law enforcement officials and regulators to follow the trail of money earned by criminals and organized international criminal enterprises that undermine United States national interests and traffic in human misery, whether they are narcotics dealers, terrorists, arms smugglers, traffickers in human beings, or those whose frauds prey upon law abiding citizens.

(5) Certain banking relationships between financial institutions in the United States and financial institutions located in such offshore jurisdictions, such as correspondent and payable-through accounts, are particularly vulnerable to abuse because of the difficulty in obtaining accurate information about the beneficial owners whose funds pass through such accounts.

(6) The ability to mount effective counter-measures to international money launderers requires national, as well as bilateral and multilateral action, using tools specially designed for that effort.

(7) The Basle Committee on Banking Regulation and Supervisory Practices and the Financial Action Task Force on Money Laundering, both of which the United States is a member, have each adopted international anti-money laundering principles and recommendations.

(b) **PURPOSES.**—The purposes of this Act are as follows:

(1) To ensure that banking transactions and financial relationships, the conduct of such transactions and relationships, or both, do not contravene the purposes of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act, and chapter 2 of title I of Public Law 91–508, or facilitate the evasion of any such provision, to ensure that the purposes of such subchapter II continue to be fulfilled, and to guard against international money laundering and other financial crimes.

(2) To provide a clear national mandate for subjecting to special scrutiny those foreign jurisdictions, financial institutions operating outside the United States, and classes of international transactions that pose particular, identifiable opportunities for money laundering.

(3) To provide the Secretary of the Treasury with broad discretionary authority to take certain measures tailored to the particular money laundering problems presented by specific foreign jurisdictions, financial institutions operating outside the United States, and classes of international transactions.

(4) To provide domestic financial institutions with guidance on particular foreign jurisdictions, financial institutions operating outside the United States, and classes of international transactions that are of primary money laundering concern to the United States government.

(5) To clarify the terms of the safe harbor from civil liability for filing suspicious activity reports.

(6) To strengthen the Secretary's authority to issue and administer geographic targeting orders, and to clarify that violations of such orders or any other requirement imposed under the authority contained in chapter 2 of title I of Public Law 91–508 and subchapters II and III of chapter 53 of title 31, United States Code, may result in criminal and civil penalties.

(7) To strengthen the ability of financial institutions to maintain the integrity of their employee population.

(8) To strengthen measures to prevent the use of the United States financial system for personal gain by corrupt foreign officials and to facilitate the repatriation of any stolen assets to the citizens of countries to whom such assets belong.

TITLE I—INTERNATIONAL COUNTER-MONEY LAUNDERING MEASURES

SEC. 101. SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5318 the following new section:

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

“(a) INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS.—

“(1) IN GENERAL.—The Secretary 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States is of primary money laundering concern, in accordance with subsection (c).

“(2) FORM OF REQUIREMENT.—The special measures described in subsection (b) may be imposed by regulation, order, or otherwise as permitted by law, and in such sequence or combination, as the Secretary shall determine.

“(3) PROCESS FOR SELECTING SPECIAL MEASURES.—

“(A) CONSULTATION.—In selecting which special measure or measures to take under this subsection, the Secretary shall consult with the Chairman of the Board of Governors of the Federal Reserve System and, in the Secretary’s sole discretion, such other agencies and interested parties as the Secretary may find to be appropriate.

“(B) FACTORS.—The Secretary also shall consider—

“(i) whether similar action has been or is being taken by other nations or multilateral groups;

“(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States; and

“(iii) the extent to which the action would have a significant adverse systemic impact on the international payment, clearance and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions.

“(4) NO LIMITATION ON OTHER AUTHORITY.—This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

“(b) SPECIAL MEASURES.—The special measures referred to in subsection (a), with respect to a jurisdiction outside the United States, financial institution operating outside the United States, or class of transaction within, or involving, a jurisdiction outside the United States, are as follows:

“(1) RECORDKEEPING AND REPORTING OF CERTAIN FINANCIAL TRANSACTIONS.—

“(A) IN GENERAL.—The Secretary may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States, if the Secretary finds any such jurisdiction, institution, or class of transactions 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) information concerning the beneficial ownership of the funds involved in any transaction, in accordance with steps the Secretary has determined to be reasonable and practicable to obtain and retain such information; and

“(iv) a description of any transaction.

“(2) INFORMATION RELATING TO BENEFICIAL OWNERSHIP.—In addition to any other requirement under any other 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States, if the Secretary finds any such jurisdiction, institution, or transaction to be of primary money laundering concern.

“(3) INFORMATION RELATING TO CERTAIN PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States 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 in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside the United States, or a payable-through account through which any such transaction may be conducted, as a condition of opening or maintaining such account, to—

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

“(B) obtain, with respect to each such customer (and each such representative), the same information that 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 ACCOUNTS.—If the Secretary finds a jurisdiction outside the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account, to—

“(A) 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) obtain, with respect to each such customer (and each such representative), the same information that the depository institution obtains in the ordinary course 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside 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, 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States is of primary money laundering concern so as to authorize the Secretary to invoke 1 or more of the special measures of subsection (b), the Secretary shall consult with the Secretary of State, the Attorney General, the Secretary of Commerce, and the United States Trade Representative.

“(2) INFORMATION.—The Secretary also shall consider such information as the Secretary considers to be relevant, including the following potentially relevant factors:

“(A) In the case of a particular jurisdiction—

“(i) the extent to which that jurisdiction or financial institutions operating therein offer bank secrecy or special tax or regulatory advantages to nonresidents or nondomiciliaries of such jurisdiction;

“(ii) the substance and quality of administration of that jurisdiction’s bank supervisory and counter-money laundering laws;

“(iii) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the jurisdiction’s economy;

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

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

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

“(B) In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to both, within, or involving, a particular jurisdiction—

“(i) the extent to which such financial institutions or transactions are used to facilitate or promote money laundering in or through the jurisdiction;

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

“(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving such jurisdiction and institutions operating in such 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.—Within 10 days after the date of any action taken by the Secretary under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Banking and 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, the following definitions shall apply:

“(1) DEFINED TERMS.—

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

“(i) ACCOUNT.—The term ‘account’—

“(I) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

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

“(ii) CORRESPONDENT ACCOUNT.—The term ‘correspondent account’ means an account established to receive deposits from and make payments on behalf of a foreign financial institution.

“(iii) PAYABLE-THROUGH ACCOUNT.—The term ‘payable-through account’ means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at 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 sub-account, in banking activities usual in connection with the business of banking in the United States.

“(B) DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.—With respect to any financial institution other than a bank, the Secretary shall define, by regulation, order, or otherwise as permitted by law, the term ‘account’ and shall include within the meaning of such term arrangements similar to payable-through and correspondent accounts.

“(2) OTHER TERMS.—The Secretary may, by regulation, order, or otherwise as permitted by law, further define the terms in paragraph (1) and define other terms for the purposes of this section, as the Secretary deems appropriate.”.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5318 the following new item:

“5318A. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern.”.

TITLE II—CURRENCY TRANSACTION REPORTING AMENDMENTS AND RELATED IMPROVEMENTS

SEC. 201. AMENDMENTS RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.

(a) AMENDMENT RELATING TO CIVIL LIABILITY IMMUNITY FOR DISCLOSURES.—Section 5318(g)(3) of title 31, United States Code, is amended to read as follows:

“(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 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.”.

(b) PROHIBITION ON NOTIFICATION OF DISCLOSURES.—Section 5318(g)(2) of title 31, United States Code, is amended to read as follows:

“(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) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

“(ii) no officer or employee of the Federal Government or of 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 other than as necessary to fulfill the official duties of such officer or employee.

“(B) DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.—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, in a written employment reference that is provided in accordance with sec-

tion 18(v) of the Federal Deposit Insurance Act in response to a request from another financial institution or a written termination notice or employment reference that is provided in accordance with the rules of the self-regulatory organizations registered with the Securities and Exchange Commission, information that was included in a report to which subparagraph (A) applies, but such written employment reference may not disclose that such information was also included in any such report or that such report was made.”.

SEC. 202. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORDKEEPING REQUIREMENTS, AND LENGTHENING EFFECTIVE PERIOD OF GEOGRAPHIC TARGETING ORDERS.

(a) **CIVIL PENALTY FOR VIOLATION OF TARGETING ORDER.**—Section 5321(a)(1) of title 31, United States Code, is amended—

(1) by inserting “or order issued” after “subchapter or a regulation prescribed”; and

(2) by inserting “, or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “section 5314 and 5315”).

(b) **CRIMINAL PENALTIES FOR VIOLATION OF TARGETING ORDER.**—Section 5322 of title 31, United States Code, is amended—

(1) in subsection (a)—

(A) by inserting “or order issued” after “willfully violating this subchapter or a regulation prescribed”; and

(B) by inserting “, or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “under section 5315 or 5324”;

(2) in subsection (b)—

(A) by inserting “or order issued” after “willfully violating this subchapter or a regulation prescribed”; and

(B) by inserting “or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “under section 5315 or 5324”).

(c) **STRUCTURING TRANSACTIONS TO EVADE TARGETING ORDER OR CERTAIN RECORDKEEPING REQUIREMENTS.**—Section 5324(a) of title 31, United States Code, is amended—

(1) by inserting a comma after “shall”;

(2) by striking “section—” and inserting “section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508—”;

(3) in paragraph (1) by inserting “, to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508” after “regulation prescribed under any such section”; and

(4) in paragraph (2) by inserting “, to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,” after “regulation prescribed under any such section”.

(d) **LENGTHENING EFFECTIVE PERIOD OF GEOGRAPHIC TARGETING ORDERS.**—Section 5326(d) of title 31, United States Code, is amended by striking “60” after “shall be effective for more than” and inserting “180”.

SEC. 203. AUTHORIZATION TO INCLUDE SUSPICIONS OF ILLEGAL ACTIVITY IN WRITTEN EMPLOYMENT REFERENCES.

Section 18 of the Federal Deposit Insurance Act (12 U.S.C. 1828) is amended by adding at the end the following new paragraph:

“(v) **WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.**—

“(1) **IN GENERAL.**—Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.

“(2) DEFINITION.—For purposes of this subsection, the term ‘insured depository institution’ includes any uninsured branch or agency of a foreign bank.”.

SEC. 204. BANK SECRECY ACT ADVISORY GROUP.

Section 1564 of the Annunzio-Wylie Anti-Money Laundering Act (31 U.S.C. 5311 note) is amended—

- (1) in subsection (a), by inserting “, of nongovernmental organizations advocating financial privacy,” after “Drug Control Policy”; and
- (2) in subsection (c), by inserting “, other than subsections (a) and (d) of such Act which shall apply” before the period at the end.

SEC. 205. AGENCY REPORTS ON RECONCILING PENALTY AMOUNTS.

Before the end of the 1-year period beginning on the date of the enactment of this Act, the Secretary of the Treasury and the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act) shall each submit their respective reports to the Congress containing recommendations on possible legislation to conform the penalties imposed on depository institutions (as defined in section 3 of the Federal Deposit Insurance Act) for violations of subchapter II of chapter 53 of title 31, United States Code, to the penalties imposed on such institutions under section 8 of the Federal Deposit Insurance Act.

TITLE III—ANTICORRUPTION MEASURES

SEC. 301. CORRUPTION OF FOREIGN GOVERNMENTS AND RULING ELITES.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that, in deliberations between the United States Government and any other country on money laundering and corruption issues, the United States Government should—

- (1) emphasize an approach that addresses not only the laundering of the proceeds of traditional criminal activity but also the increasingly endemic problem of governmental corruption and the corruption of ruling elites;
- (2) encourage the enactment and enforcement of laws in such country to prevent money laundering and systemic corruption;
- (3) make clear that the United States will take all steps necessary to identify the proceeds of foreign government corruption which have been deposited in United States financial institutions and return such proceeds to the citizens of the country to whom such assets belong; and
- (4) advance policies and measures to promote good government and to prevent and reduce corruption and money laundering, including through instructions to the United States Executive Director of each international financial institution (as defined in section 1701(c) of the International Financial Institutions Act) to advocate such policies as a systematic element of economic reform programs and advice to member governments.

(b) GUIDANCE TO FINANCIAL INSTITUTIONS OPERATING IN THE UNITED STATES ON TRANSACTIONS BY OR ON BEHALF OF CORRUPT FOREIGN OFFICIALS.—The Secretary of the Treasury, in consultation with the Attorney General of the United States and the Federal functional regulators (as defined in section 509(2) of the Gramm-Leach-Bliley Act), shall, before the end of the 180-day period beginning on the date of the enactment of this Act, issue guidance to financial institutions operating in the United States on appropriate practices and procedures to reduce the risk that such institutions may become depositories for, or transmitters of, the proceeds of corruption by or on behalf of senior foreign officials and their close associates.

SEC. 302. SUPPORT FOR THE FINANCIAL ACTION TASK FORCE ON MONEY LAUNDERING.

It is the sense of the Congress that—

- (1) the United States should continue to actively and publicly support the objectives of the Financial Action Task Force on Money Laundering (hereafter in this section referred to as the “FATF”) with regard to combating international money laundering;
- (2) the FATF should identify noncooperative jurisdictions in as expeditious a manner as possible and publicly release a list directly naming those jurisdictions identified;
- (3) the United States should support the public release of the list naming noncooperative jurisdictions identified by the FATF;
- (4) the United States should encourage the adoption of the necessary international action to encourage compliance by the identified noncooperative jurisdictions; and
- (5) the United States should take the necessary countermeasures to protect the United States economy against money of unlawful origin and encourage other nations to do the same.

Amend the title so as to read:

A bill to combat international money laundering and protect the United States financial system, and for other purposes.

PURPOSE AND SUMMARY

The purpose of H.R. 3886, the International Counter-Money Laundering and Foreign Anticorruption Act of 2000, is to provide the United States with new tools to combat foreign money laundering threats and to prevent the use of the domestic financial system by money launderers and corrupt foreign officials.

The bill, as amended by the Committee, does the following: (1) authorizes the Secretary of the Treasury to impose one or more of five new special measures upon finding a jurisdiction, financial institution operating outside the United States, or class of international transactions to be of “primary money laundering concern”; (2) requires the Secretary, in selecting a measure, to consult with the Federal Reserve and consider several factors of concern to domestic financial institutions; (3) outlines the special measures to include enhanced recordkeeping and reporting; collection of information on beneficial ownership of certain accounts; conditions on opening so-called payable-through and correspondent accounts; and prohibition of payable-through or correspondent accounts; (4) requires the Secretary to consult with selected Federal officials and consider a number of factors in making a finding relative to a primary money laundering concern; (5) requires the Secretary to notify Congress within 10 days of taking a special measure; (6) authorizes banks to share suspicions of employee misconduct in employment references with other banks without fear of civil liability, and clarifies prohibitions against disclosure of a suspicious activity report to the subject of the report; (7) clarifies penalties for violating Geographic Targeting Orders issued by the Secretary to combat money laundering in designated geographical areas; (8) requires the Bank Secrecy Act Advisory Group to include a privacy advocate among its membership and to operate under the “sunshine” provisions of the Federal Advisory Committee Act; (9) requires reports from the Treasury Department and banking agencies regarding penalties for Bank Secrecy Act and safety-and-soundness violations; (10) expresses the sense of the Congress that the U.S. should press foreign governments to take action against money laundering and corruption, and make clear that the United States will work to return the proceeds of foreign corruption to the citizens of countries to whom such assets belong; (11) requires the Secretary of the Treasury to issue guidance to domestic financial institutions on how to avoid transactions involving foreign corruption; and (12) expresses the sense of the Congress that the U.S. should support the efforts of the Financial Action Task Force, an international anti-money laundering organization, to identify jurisdictions that do not cooperate with international efforts to combat money laundering.

BACKGROUND AND NEED FOR LEGISLATION

A former Managing Director of the International Monetary Fund has estimated that the scale of global money laundering is between two and five percent of global gross domestic product, or at least

\$600 billion annually. Any meaningful strategy for combating international narcotics dealers, terrorists, arms smugglers, traffickers in human beings and other global criminal enterprises must include strong legal mechanisms for detecting and seizing the flows of their illicit proceeds. Left unchecked, money laundering has debilitating consequences for the integrity and stability of financial and governmental institutions around the world.

The vulnerability of the U.S. financial system to dirty money was underscored by revelations in August of last year that Federal investigators were reviewing the flow of billions of dollars of suspicious origin through the Bank of New York, one of America's oldest and most venerated financial institutions. The Committee convened two days of hearings on the Bank of New York matter in September 1999, as part of its ongoing review of issues related to global corruption and money laundering.

According to testimony elicited by the Committee and court papers filed in connection with the Federal criminal probe, a substantial portion of the \$7 billion that passed through the Bank of New York pipeline was routed through accounts maintained in so-called offshore secrecy jurisdictions. For example, in pleading guilty to money laundering and other charges, the central figures in the Bank of New York case acknowledged that banks registered in various remote South Pacific islands were used as "fronts to facilitate the illegal transfer of money out of Russia," and to conceal the Russian provenance of the money flowing through the Bank of New York.

Astonishingly, the deputy chairman of the Russian central bank was later quoted as estimating that in 1998 alone, \$70 billion was transferred from Russian banks to accounts of banks chartered in the tiny South Pacific island of Nauru (population 10,850), one of the jurisdictions named in the Bank of New York guilty pleas as a conduit for the laundering. Nauru's non-resident banks, operating under strict secrecy laws and subject to minimal regulatory oversight, were described in a 2000 State Department report as "ideal mechanisms in money laundering schemes."

As illustrated by the Bank of New York case and other recent evidence, offshore bank secrecy jurisdictions exist which exert little or no supervisory control over their financial sectors, permit banks and other corporate entities to operate in almost total secrecy, and refuse cooperation with law enforcement inquiries by authorities in other countries. These jurisdictions play a prominent role in international money laundering schemes and the serious crimes that underlie them. Particularly troublesome from an anti-money laundering standpoint are so-called "brass plate" banks and other corporate vehicles designed to provide anonymity to their owners and customers and insulation from legitimate law enforcement and regulatory scrutiny.

"Brass plate" banks often consist of nothing more than a nameplate on an office suite, a computer modem, and, increasingly, an Internet site. Such institutions are typically barred from accepting deposits from residents of the jurisdiction in which they are licensed, existing purely to service non-residents. What makes such offshore banks especially attractive to those seeking a platform from which to enter illicit proceeds into the global financial system are the legal regimes in many offshore havens that criminalize the

release of any information about a customer's identity or transactions to law enforcement or regulatory authorities. U.S. investigators who follow money trails to some of these offshore bank secrecy jurisdictions thus often run into "dead ends"; even in those instances where cooperation from the local authorities is ultimately forthcoming, it is typically only achieved after a period of delay and foot-dragging sufficient to permit the target of the investigation to transfer the relevant assets and records to another secrecy haven.

A related corporate creature of the offshore market is the so-called international business corporation (IBC) or personal (or private) investment company (PIC)—shell companies that use nominees as shareholders, officers, and directors, thereby concealing the beneficial ownership of the entity from law enforcement and regulatory authorities. As with brass-plate banks, IBCs are typically exempt from both taxation and any meaningful regulatory constraints in the licensing jurisdiction. By cloaking their ownership and activities in almost complete anonymity, IBCs provide an ideal vehicle for those seeking to conceal assets from creditors in other countries and launder money generated from drug trafficking, international terrorism, financial fraud, corruption and other criminal activity.

The existence of jurisdictions that have stubbornly resisted calls for greater transparency and legal cooperation with other countries creates a sizable "black hole" in the international anti-money laundering regime. Although estimates vary—and some of the offending secrecy jurisdictions are reluctant to disclose data about the scale of the activities taking place under their auspices—it is apparent that the past decade has witnessed an explosion in both legal and illegal commerce taking place offshore. For example, the Cayman Islands, with an extremely large offshore sector and strict confidentiality, is now believed to be the fifth largest financial center in the world—eclipsed only by New York, London, Tokyo and Hong Kong. According to the State Department's 2000 report cited above, there are "approximately 584 offshore banks on the Islands, including a number of the world's 50 largest banks." It is reported that such banks maintain in the neighborhood of \$600 billion in deposits from foreign banks. The State Department report also discloses that more than 44,000 IBCs are registered in the Caymans, and that its financial sector provides a wide range of services, including private banking, brokering, mutual funds, and trusts.

Unfortunately, as the Bank of New York case boldly underscores, the U.S. banking system is hardly immune from the dirty money that flows all too freely through the global economy. For someone seeking to confer the appearance of legitimacy on illicitly derived profits, the U.S. and other established financial centers are attractive destinations. Indeed, there is little doubt that funds representing the proceeds of foreign crime, corruption, or illegal flight capital enter the U.S. system in large volumes on a daily basis.

The methods by which criminals and others use offshore secrecy havens to access the U.S. financial system were described in detail at a March 9, 2000, Committee hearing by Kenneth Rijock, a former career criminal who assisted major narco-trafficking organizations in laundering the profits of their operations. Rijock, now a financial crime consultant to law enforcement, testified how off-

shore banks have served as conduits for drug and other criminal money seeking entry to the U.S. financial system:

The offshore banks, shielded from American law enforcement inquiry, have operated with impunity, and with great success due to one feature: they all have correspondent relationships with many of New York's major banks, allowing them to deposit obscene amounts of cash anonymously, and in the offshore bank's name. The faceless client is never identified.

Where U.S. financial institutions accept sizable deposits and wire transfers from overseas, particularly where those transactions originate in countries with minimal regulatory controls or high levels of private or public corruption, it is critically important that U.S. financial institutions exercise due diligence in knowing who their customers are and determining whether their transactions are legitimate. To do otherwise risks making the western financial system complicit in international drug trafficking, terrorism, other crimes, and the endemic corruption that has victimized so many across the globe.

Because of the ease by which criminal and corrupt funds can traverse the globe, there is increasing recognition in the international community of the importance of transparency and openness in the global financial system. This growing consensus is reflected, for example, in a statement of anti-money laundering principles issued by the Basle Committee on Banking Regulations and Supervisory Practices. The highly regarded Basle Committee was established in 1974 by the central bank governors of the Group of Ten industrialized countries, including the United States. Similarly, the "Forty Recommendations" issued by the 26-member nation Financial Action Task Force on Money Laundering (FATF), to which the United States and the other major financial center countries of Europe, North America, and Asia belong, provide an effective framework for anti-money laundering efforts, covering issues related to law enforcement, financial institution supervision, and international cooperation.

Not all offshore financial centers are havens for money laundering, of course, and indeed, there are many legitimate reasons for corporations and citizens from other countries to transact business in such jurisdictions, including minimization of tax exposure, freedom from exchange controls, and concerns over personal privacy or security. Offshore financial centers are also an integral part of a capital markets system in which funds are transferred electronically around the globe in search of the highest rate of return. For example, many U.S. banks wire funds daily to accounts in the Cayman Islands and other offshore financial centers, as a way of avoiding a Federal Reserve requirement that a certain percentage of deposits held in the U.S. must be placed in a non-interest bearing Federal Reserve account each evening.

To their credit, some offshore jurisdictions have, in recent years, responded to international pressure to introduce transparency and openness into their offshore financial sectors. Some countries, previously notorious for offering safe haven to criminal proceeds, have executed Mutual Legal Assistance Treaties with the United States, authorizing the exchange of information and evidence in criminal

investigations. A growing number of offshore jurisdictions have enacted meaningful anti-money laundering statutes that conform to internationally recognized standards. But even with laws on the books, the poor record of enforcement among some jurisdictions raises serious questions as to whether there exists either the political will or the legal and judicial infrastructure to ensure an effective anti-money laundering regime, particularly given the sheer volume of activity being conducted offshore.

It is self-evident that in an interdependent global economy with lightning-speed technology and declining barriers to capital flows, an international anti-money laundering regime is only as strong as its weakest link. Accordingly, the U.S. and its allies in the anti-money laundering effort must embrace aggressive multilateral and bilateral strategies to encourage the adoption of necessary anti-money laundering legal reforms and the dedication of adequate law enforcement and supervisory resources to tracking suspicious fund flows.

H.R. 3886 is designed to supplement and reinforce existing U.S. money laundering laws by expanding the strategies the United States can employ to combat international money laundering threats. Under this proposal, the Treasury Secretary would have the discretion to take new measures to address threats emanating from a rogue jurisdiction, a corrupt foreign financial institution, or a type of international transaction that is being abused by money launderers. The measures include imposing transparency requirements on domestic institutions that are doing business with the affected entity, and barring domestic institutions from opening or maintaining correspondent accounts with countries or institutions determined to be of primary money laundering concern. The approach taken in H.R. 3886 is designed to fill a gap in existing law between Treasury Advisories, which call on financial institutions to apply enhanced scrutiny to certain identified transactions, and blocking orders under the International Emergency Economic Powers Act (IEEPA), which require a Presidential finding of a national emergency and which broadly bar Americans from engaging in trade or financial transactions with designated entities. This intermediate approach allows the United States to target major money laundering threats while, at the same time, minimizing any collateral burden on domestic financial institutions or interference with legitimate financial activities.

H.R. 3886 is drawn from a bipartisan bill—H.R. 2896, the Foreign Money Laundering Deterrence and Anticorruption Act—introduced in September 1999, by Chairman Leach and Ranking Member LaFalce, and cosponsored by 13 other members of the Committee.

HEARINGS

The full Committee held a series of three hearings on money laundering, the first two of which focused on allegations of Russian money laundering and the Bank of New York. Witnesses at the first hearing, held on September 21, 1999, included the Honorable Lawrence Summers, Secretary of the Treasury; James Woolsey, Shea and Gardner, former Director of Central Intelligence; Fritz W. Ermarth, former CIA chief Russian analyst and National Security Council official; Paul Saunders, Director of the Nixon Center;

Vladimir Brovkin, American University professor, Transnational Crime and Corruption Center; Yuri Shvets, consultant, former KGB agent; Ann Williamson, author; Arnaud de Borchgrave, Center for Strategic and International Studies; and Richard Palmer, Cachet International, Inc., and a former CIA station chief. Written statements were also submitted by Carla del Ponte, Federal Prosecutor of the Swiss Confederation; and Yuri Skuratov, Prosecutor-General of the Russian Federation.

The second hearing was held on September 22, 1999, and featured the following witnesses: the Honorable James Robinson, Assistant Attorney General, Criminal Division, U.S. Department of Justice; Yuri Shchekochikhin, Member of the Russian Duma and editor of Moscow newspaper *Novaya Gazeta*; Thomas Renyi, Chairman and CEO of Bank of New York; Anne Vitale, Managing Director and Deputy General Counsel, Republic National Bank of New York; and Karon von Gerhke-Thompson, First Columbia Company, Inc.

On March 9, 2000, the Committee held a hearing that focused on the money laundering vulnerabilities associated with offshore secrecy jurisdictions and on H.R. 3886. Witnesses at this third hearing included the Honorable Stuart Eizenstat, Deputy Secretary of the Treasury; Senator Charles E. Schumer; Raymond Baker, Guest Scholar, Brookings Institution; the Honorable Robert E. Bauman, former Member of Congress; Kenneth W. Rijock, former money launderer; and Jonathan Winer, Alston & Bird, former Deputy Assistant Secretary, Bureau of International Narcotics and Law, Department of State.

COMMITTEE CONSIDERATION AND VOTES

On June 8, 2000, the full Committee met in open session to mark up H.R. 3886. The Committee called up a Committee Print as original text for purposes of amendment.

The Committee Print, developed in close consultation with Ranking Member LaFalce and representatives of the Treasury Department, closely followed the original text of H.R. 3886, but with the following modifications: (1) changed the title of the bill to include foreign corruption as well as money laundering; (2) added a finding on multilateral anti-money laundering initiatives; (3) added, as one of the purposes, strengthening measures to prevent the use of the U.S. financial system by corrupt foreign officials; (4) authorized the Secretary of the Treasury to consult with agencies and interested parties besides the Federal Reserve on special measures to counter money laundering threats posed by foreign jurisdictions; (5) explicitly provided that in selecting which special measures to take, the Secretary shall consider the compliance costs or burdens on domestic financial institutions; (6) modified the special measure relating to beneficial ownership information for accounts held by foreign persons to make clear that the Secretary will require steps that are "reasonable" and "practicable"; (7) added the Secretary of Commerce and the U.S. Trade Representative to the list of those to be consulted on decisions by the Secretary to find a foreign jurisdiction, institution, or class of transactions to be of primary money laundering concern; (8) added corruption as a factor that the Secretary must consider in determining whether a foreign jurisdiction represents a primary money laundering concern; (9) required the

Secretary to notify Congress within 10 days of special measures taken under this bill; (10) added a definition of the term “payable-through account”; (11) dropped provisions relating to suspicious activity reports filed by independent auditors; (12) added a title III to the bill on anti-corruption measures, to include a sense of the Congress that the United States should emphasize to foreign governments the need to prevent public corruption and make clear that the United States will work to return any proceeds of foreign corruption that are deposited in domestic financial institutions to the citizens to whom those proceeds belong, and to require the Secretary to issue guidance to domestic financial institutions on how to reduce the risk that they will become depositories for the proceeds of corruption by foreign officials.

During the markup, several amendments were offered. Chairman Leach offered a manager’s amendment consisting of technical corrections as well as language to clarify that before imposing the special measures to combat primary money laundering threats, the Secretary of the Treasury should consider any potential competitive disadvantages to unincorporated, but separately licensed, U.S. branches and agencies of international banks. The amendment also clarified that uninsured branches and agencies of international banks would be entitled to the same protection as depository institutions when sharing information concerning potentially illegal conduct by a former employee in an employment reference situation. The manager’s amendment was adopted by voice vote.

An amendment offered by Messrs. Campbell, Paul, Barr, and Metcalf included three provisions: (1) a sense of the Congress that the term “know your customer” should be stricken from the Bank Secrecy Act examination manuals used by the federal banking agencies; (2) a requirement that a financial privacy advocate from a non-governmental organization be included among the members of the Bank Secrecy Act Advisory Group, and that the Group be subject to the “sunshine” provisions of the Federal Advisory Committee Act; and (3) a directive to the Secretary of the Treasury and the federal banking agencies to submit reports to Congress containing recommendations on possible legislation to conform BSA penalties to those imposed for safety and soundness violations. Following Committee debate on the germaneness of the first provision concerning the term “know your customer,” Congressman Campbell withdrew that portion of the amendment and the Committee proceeded to adopt the remaining two provisions by voice vote.

An amendment offered by Mrs. Roukema making it a criminal offense to smuggle bulk currency in excess of \$10,000 into or out of the United States was withdrawn.

Mrs. Roukema and Mr. Bereuter offered an amendment expressing the sense of the Congress that the United States should support an initiative undertaken by the 26-nation Financial Action Task Force on Money Laundering to identify noncooperative jurisdictions and publicly release a list of such jurisdictions. The amendment was adopted by voice vote.

The Committee Print, as amended, was adopted by voice vote. Subsequently, H.R. 3886, as amended, was ordered reported by a vote of 31–1.

YEAS

Mr. Leach
 Mrs. Roukema
 Mr. Bereuter
 Mr. Bachus
 Mr. Castle
 Mr. Campbell
 Mr. Lucas
 Mr. Metcalf
 Mr. Ryun
 Mr. Riley
 Mrs. Biggert
 Mr. Terry
 Mr. Green
 Mr. LaFalce
 Mr. Kanjorski
 Ms. Waters
 Mr. Sanders
 Mrs. Maloney
 Ms. Velazquez
 Mr. Watt
 Mr. Bentsen
 Mr. Maloney
 Ms. Hooley
 Mr. Wygand
 Mr. Sherman
 Ms. Lee
 Mr. Inslee
 Ms. Schakowsky
 Mr. Moore
 Mr. Gonzalez
 Mr. Capuano

NAYS

Dr. Paul

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 2(l)(4) of rule XI of the Rules of the House of the Representatives, the constitutional authority for Congress to enact this legislation is derived from the interstate commerce clause (Clause 3, Section 8, Article I) and the foreign commerce clause (Clause 3, Section 8, Article I). In addition, the power “to provide for the punishment of counterfeiting . . . current coin of the U.S.” (Clause 6, Section 8, Article I) and to “coin money” and

“regulate the value thereof” (Clause 5, Section 8, Article I) has been broadly construed to allow for the Federal regulation of the provision of credit, financial institutions and money.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

ADVISORY COMMITTEE STATEMENT

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

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L.104-1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND UNFUNDED MANDATES ANALYSIS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, July 6, 2000.

Hon. JAMES A. LEACH,
Chairman, Committee on Banking and Financial Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3886, the International Counter-Money Laundering and Foreign Anticorruption Act of 2000.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Hadley (for federal costs) and Patrice Gordon (for the private-sector impact).

Sincerely,

BARRY B. ANDERSON
(For Dan L. Crippen, Director).

Enclosure.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

H.R. 3886—International Counter-Money Laundering and Foreign Anticorruption Act of 2000

Summary: H.R. 3886 would authorize the Secretary of the Treasury to impose special measures on U.S. financial institutions if the Secretary suspects the transactions of their foreign clients are tied to money laundering. Such measures could include increasing recordkeeping and reporting requirements and regulating or prohibiting certain types of financial accounts. The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), the National Credit Union Administration (NCUA), the Commodity Futures Trading

Commission (CFTC), and the Securities and Exchange Commission (SEC) would enforce the provisions of H.R. 3886 as it applies to the financial institutions that those agencies now regulate.

The bill would impose criminal and civil fines on violators of recordkeeping requirements in Geographic Targeting Orders (GTOs) that may be issued by the Secretary of the Treasury under current law. The bill also would impose criminal and civil penalties on individuals or firms for structuring currency transactions to evade certain financial reporting requirements.

CBO estimates that implementing H.R. 3886 would cost about \$2 million a year over the 2001–2005 period. Such costs would be subject to the availability of appropriated funds. H.R. 3886 would affect direct spending and receipts; therefore, pay-as-you-go procedures would apply, but CBO estimates that any such effects would be less than \$500,000 a year over the 2001–2005 period.

H.R. 3886 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would place certain requirements on some state and local agencies. CBO estimates that the cost of complying with these mandates would be small, and would not exceed the statutory threshold of that act (\$55 million in 2000, adjusted annually for inflation).

H.R. 3886 also would impose private-sector mandates, as defined by UMRA, on financial institutions and other financial organizations as defined in the bill. CBO expects that the direct costs of those mandates would not exceed the annual threshold established by UMRA for private-sector mandates (\$109 million in 2000, adjusted for inflation) for any of the first five years that mandates are in effect. Because the costs of complying with new requirements on financial institutions would depend on specific measures that would be established by the Secretary of the Treasury, CBO cannot make that determination with confidence.

Estimated cost to the Federal Government: For this estimate, CBO assumes that the bill be enacted by or near the start of fiscal year 2001 and that the necessary amounts will be appropriated for each year. The estimated budgetary impact of H.R. 3886 is shown in the following table. The costs of this legislation fall within budget function 370 (commerce and housing credit).

	By fiscal year, in million of dollars				
	2001	2002	2003	2004	2005
CHANGES IN SPENDING SUBJECT TO APPROPRIATION ¹					
Estimated authorization level	2	2	2	2	2
Estimated outlays	2	2	2	2	2

¹ The bill also would affect direct spending and revenues, but CBO estimates that those changes would each be less than \$500,000 a year.

BASIS OF ESTIMATE

CBO estimates that implementing H.R. 3886 would increase administrative costs at agencies that regulate financial institutions by about \$2 million a year. In addition to this effect on discretionary spending, the bill also would have a negligible effect on the collection and spending of civil and criminal penalties. Finally, the legislation would have a small effect on the operating costs of the FDIC.

Spending subject to appropriation

H.R. 3886 would authorize the Secretary of the Treasury to impose special measures on U.S. financial institutions if the Secretary suspects the transaction of their foreign clients are tied to money laundering. Because we expect few such measures would be imposed, CBO estimates that implementing H.R. 3886 would increase the costs of the Department of the Treasury, the SEC, the CFTC, and the NCUA by a total of about \$2 million a year over the 2001–2005 period. Such costs would primarily be for the SEC to provide guidance to the National Association of Securities Dealers on examining the records of brokers of securities for transactions that may involve money laundering.

Under current law, the Secretary of the Treasury may impose more stringent recordkeeping requirements on financial service providers within a specified geographic area by issuing GTOs. H.R. 3886 would impose criminal penalties for violating GTOs, or structuring currency transactions to evade federal reporting requirements. As a result, the federal government would be able to pursue cases that it otherwise would not be able to prosecute. CBO expects that the government probably would not pursue many such cases, so we estimate that any increase in federal costs for law enforcement, court proceedings, or prison operations would not be significant. Any such additional costs would be subject to the availability of appropriated funds.

Direct spending and revenues

Both the OTS and the OCC charge fees to cover all their administrative costs; therefore, any additional spending by these agencies to implement the bill would have no net budget effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill would cause a small increase in FDIC spending, but would probably not affect its premium income. In any case, CBO estimates that H.R. 3886 would increase direct spending and offsetting receipts for those agencies by less than \$500,000 a year over the 2001–2005 period.

Budgetary effects on the Federal Reserve are recorded as changes in revenues (governmental receipts). Based on information from the Federal Reserve, CBO estimates that enacting H.R. 3886 would reduce such revenues by less than \$500,000 a year over the 2001–2005 period.

Because those prosecuted and convicted under H.R. 3886 could be subject to penalties, the federal government might collect additional fines if the bill is enacted. Collections of such fines are recorded in the budget as governmental receipts, which are deposited in the Crime Victims Fund and spent in subsequent years. CBO expects that any additional collections from enacting H.R. 3886 would be negligible, however, because of the small number of cases likely to be involved. Because any increase in direct spending would equal the fines collected, the additional direct spending also would be negligible.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. CBO estimates that

enacting H.R. 3886 would affect direct spending and governmental receipts but that there would be no significant impact in any year.

Estimated impact on State, local, and tribal governments: Title I of the bill would place new reporting requirements on certain state and local agencies that act like financial institutions. Title II would prohibit employees of state, local, tribal, and territorial agencies from disclosing certain reported information to the individual involved in the report. The prohibition would be a mandate under UMRA because it would effectively be placed on the governmental employer as well as the employee. CBO estimates that the costs of complying with these mandates would be small, and would not exceed the statutory threshold established in UMRA (\$55 million in 2000, adjusted annually for inflation).

Estimated impact on the private sector: H.R. 3886 would impose private-sector mandates, as defined by UMRA, on financial institutions and other financial organizations as defined in the bill. CBO expects that the direct costs of those mandates would not exceed the annual threshold established by UMRA for private-sector mandates (\$109 million in 2000, adjusted for inflation) for any of the first five years that mandates are in effect.

H.R. 3886 would authorize the Secretary of the Treasury to impose new recordkeeping and recording requirements regarding the identity, beneficial ownership, and transaction record of accounts opened and maintained by foreign financial institutions and persons. In addition, the bill would, in extreme cases, allow the Secretary to impose conditions upon, or prohibit outright, the opening or maintaining of correspondent or payable-through accounts. (Payable-through accounts, as defined in the bill, allow customers of a foreign bank to conduct banking operations through a U.S. bank just as if they were its own customers.)

According to industry sources, at least two aspects of the reporting requirements under H.R. 3886 could impose new burdens that could result in significant costs of compliance to the private sector. First, the bill would authorize the Secretary to require domestic financial institutions to take steps to obtain and retain information concerning the beneficial ownership of an account. This requirement could constitute a more stringent standard than current requirements, depending on how it was imposed by the Secretary, since it may require the institution to delve into the underlying ownership of the account. Financial institutions expect that they would have to make adjustments in current practices to comply with new standards regarding beneficial owners and are particularly concerned if such a standard would apply to trust departments. (Most securities are not registered in the name of beneficial holders but are held in securities depositories for banks and brokerage firms that hold securities for their customers.)

Second, possible prohibitions and conditions on the opening or maintaining of correspondent and payable-through accounts could impose a direct loss of business and profit on the affected firms. The extent of these conditions and prohibitions, and hence the resulting cost, would hinge on the frequency and severity of their imposition. This in turn would depend on the number of foreign jurisdictions and institutions identified as primary money laundering concerns, the economic importance of these jurisdictions and insti-

tutions to domestic financial institutions, and the severity of the possible conditions.

Based on information from the Department of the Treasury and industry experts in the area of money laundering, CBO expects that the likelihood that the Treasury would impose broad-based special measures on the industry is small. Most experts expect that a series of actions would be taken—increased enforcement under the Bank Secrecy Act, consultations with various groups, and so forth—before the Secretary would impose new requirements under H.R. 3886. CBO believes that direct costs of the mandates in the bill would be below the annual threshold established in UMRA. Because compliance costs would depend directly on specific standards that would be established by the Secretary of the Treasury, CBO cannot make that determination with confidence.

Estimate prepared by: Federal costs: Mark Hadley and Mark Grabowicz; revenues: Carolyn Lynch; impact on State, local, and tribal governments: Susan Sieg Thompkins; and impact on the private sector: Patrice Gordon.

Estimate approved by: Peter H. Fontaine, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

Section 1. Short title; table of contents

The short title of the bill is the “International Counter-Money Laundering and Foreign Anticorruption Act of 2000”.

Section 2. Findings and purposes

The findings outline the impact that international money laundering has on U.S. national interests and the importance of multilateral as well as bilateral action in anti-money laundering efforts. The findings further note the role of offshore secrecy jurisdictions in facilitating international money laundering and the vulnerability of correspondent and payable-through accounts to abuse by money launderers.

The purposes of the bill include ensuring the integrity of financial transactions and relationships, providing a clear mandate for taking bilateral action against international money laundering threats, clarifying existing law on Geographic Targeting Orders (GTOs) and Suspicious Activity Reports (SARs), and strengthening measures to prevent the use of the American banking system by corrupt foreign officials.

Title I—International Counter-Money Laundering Measures

Section 101. Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern

Section 101 adds a new section 5318A to the Bank Secrecy Act, authorizing the Secretary of the Treasury to require domestic financial institutions and agencies to take one or more of five “special measures” if the Secretary finds that reasonable grounds exist to conclude that a foreign jurisdiction, a financial institution operating outside the United States, and/or a class of international transactions are/is of “primary money laundering concern.” The

Secretary may impose the measure by regulation, order, or as otherwise permitted by law, and in any sequence or combination.

Prior to invoking any of the special measures contained in Section 5318A(b), the Secretary is required by subsection 5318A(a)(3)(A) to consult with the Chairman of the Board of Governors of the Federal Reserve System. Among other things, this consultation is designed to ensure that the Secretary possesses information on the effect that any particular special measure may have on the domestic and international banking system. Under this subsection, the Secretary is required also to consult with “such other agencies and interested parties as the Secretary may find to be appropriate.” Recognizing that it is not possible to predict what consultations will be appropriate in any particular circumstance, the Committee encourages the Secretary to consult with other Federal banking agencies as well as with Federal agencies that possess regulatory authority over institutions that will be affected by a particular special measure (for example, the Securities and Exchange Commission (SEC) if securities firms will be subject to a regulation or order issued by the Secretary, and the Commodity Futures Trading Commission (CFTC) if CFTC-registered firms will be affected) to better understand the impact of any particular special measure on those entities. In addition, the Committee encourages the Secretary to consult with non-governmental “interested parties,” including, for example, the Bank Secrecy Act Advisory Group, to obtain input from those who may be subject to a regulation or order under Section 5318A(b).

Moreover, prior to invoking any of the special measures contained in Section 5318A(b), the Secretary shall consider three discrete factors, namely (i) whether other countries or multilateral groups are taking similar actions; (ii) whether the imposition of the measure would create a significant competitive disadvantage, including any significant cost or burden associated with compliance, for firms organized or licensed in the United States; and (iii) the extent to which the action would have an adverse systemic impact on the payment system or legitimate business transactions.

Finally, subsection (a) makes clear that this new authority shall not be construed as superseding or restricting any other authority of the Secretary or any other agency.

Subsection (b) of the new Section 5318A outlines the five “special measures” the Secretary may invoke against a foreign jurisdiction, financial institution operating outside the U.S., and/or class of transaction within, or involving, a jurisdiction outside the U.S., that he finds to be of primary money laundering concern.

The first such measure would require domestic financial institutions¹ to maintain records and/or file reports on certain transactions involving the primary money laundering concern, to include any information the Secretary requires, such as the identity and address of participants in a transaction, the legal capacity in which the participant is acting, the beneficial ownership of the funds (in accordance with steps that the Secretary determines to be reasonable and practicable to obtain such information), and a description of the transaction. The records and/or reports authorized by this

¹ The term “domestic financial institution” means a financial institution, wherever organized, that operates in the United States, but only to the extent of its U.S. operations. See 31 U.S.C. § 5312(b)(2).

section must involve transactions from a foreign jurisdiction, a financial institution operating outside the United States, or class of international transactions within, or involving, a foreign jurisdiction, and are not to include transactions that both originate and terminate in, and only involve, domestic financial institutions.

The second measure would require domestic financial institutions to take such steps as the Secretary determines to be “reasonable” and “practicable” to ascertain beneficial ownership of accounts opened or maintained in the U.S. by a foreign person (excluding publicly traded foreign corporations) associated with what has been determined to be a primary money laundering concern.

In both Section 5318A(b)(1)(B)(iii) and (b)(2), the Secretary is given the authority to require steps the Secretary determines to be “reasonable and practicable” to identify the “beneficial ownership” of funds or accounts. Neither the phrase “beneficial ownership” nor the phrase “reasonable and practicable steps” is defined in the legislation, and there is no single accepted statutory or common-law meaning of either phrase that the legislation is meant to incorporate. As this legislation was being developed and at the Committee’s markup of H.R. 3886, the concern was expressed that this lack of statutory definition conceivably could result in a rule or order under either Section 5318A(b)(1)(B)(iii) or (b)(2) that requires financial institutions to identify all beneficial owners of funds or of an account, which in turn might result in some circumstances in clearly excessive and unjustifiable burdens. The Committee is sensitive to this concern, and expects the Secretary to address it when implementing this Act, including when making determinations under the following provisions: (1) Section 5318A(a)(3)(B)(ii), which requires the Secretary to consider, in selecting which special measure to take, “whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States;” and (2) those above-referenced provisions that permit only those steps that the Secretary determines to be “reasonable and practicable” to identify the beneficial ownership of accounts or funds, which provisions impose an enforceable constraint on the substance of any rule or order under either Section 5318A(b)(1)(B)(iii) or (b)(2).

In addition, Section 5318A(e)(2) gives the Secretary the authority, *inter alia*, to “define . . . terms for the purposes of” Section 5318A “by regulation, order or otherwise as permitted by law.” The Secretary is encouraged to exercise this authority to define the meaning of the phrases “beneficial ownership” and “reasonable and practicable steps” for the purposes of Sections 5318A(b)(1)(B)(iii) and (b)(2), either through formal notice-and-comment rulemaking or by the issuance of informal guidance, and to consult informally with interested parties in the event the Secretary takes the latter approach.

In this regard, the Committee notes that several agencies have issued regulations or supervisory guidance defining the term “beneficial owner” or outlining what constitute reasonable steps to obtain beneficial ownership information, in each instance for the issuing agency’s own purposes. See, e.g., 17 C.F.R. § 228.403; 26 C.F.R. § 1.1441–1(c)(6); 28 C.F.R. § 9.2(e); Letter re: *Public Securities Association* (Sept. 29, 1995) (SEC staff “no action” letter addressing 17

C.F.R. § 240.10b–10); *Guidance on Sound Risk Management Practices Governing Private Banking Activities*, prepared by the Federal Reserve Bank of New York (July 1997); and Office of the Comptroller of the Currency Bank Secrecy Act Handbook (September 1996). These sources may be instructive for the Secretary in providing definitions of the phrases “beneficial ownership” and “reasonable and practicable steps.”

The third special measure the Secretary could impose in the case of a primary money laundering concern would require domestic financial institutions, as a condition of opening or maintaining a “payable-through account” for a foreign financial institution, to identify each customer (and representative of the customer) who is permitted to use or whose transactions flow through such an account, and to obtain for each customer (and representative) the same information that it would obtain with respect to its own customers. A “payable-through account” is defined for purposes of the legislation as an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at 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 sub-account, in banking activities usual in connection with the business of banking in the United States.

The fourth special measure the Secretary could impose in the case of a primary money laundering concern would require domestic financial institutions, as a condition of opening or maintaining a “correspondent” account for a foreign financial institution, to identify each customer (and representative of the customer) who is permitted to use or whose transactions flow through such an account, and to obtain for each customer (and representative) the same information that it would obtain with respect to its own customers. The term “correspondent account” means an account established to receive deposits from and make payments on behalf of a foreign financial institution.

The fifth measure the Secretary could impose in the case of a primary money laundering concern would prohibit or impose conditions (beyond those already provided for in the third and fourth measures) on domestic financial institutions’ correspondent or payable-through accounts with foreign banking institutions. In addition to the required consultation with the Chairman of the Board of Governors of the Federal Reserve, prior to imposing this measure the Secretary is also directed to consult with the Secretary of State and the Attorney General.

Section 5318A(c) guides the Secretary’s determination whether reasonable grounds exist to conclude that a jurisdiction, financial institution or class of international transactions is of “primary money laundering concern.” In determining whether reasonable grounds exist for reaching this conclusion regarding a particular jurisdiction, the Secretary is to consider such information as the Secretary considers to be relevant, including: (1) the extent to which the jurisdiction offers bank, tax or other regulatory advantages to nonresidents; (2) the quality of its bank supervision and anti-money laundering laws; (3) the volume of financial transactions occurring in the jurisdiction relative to its economic size; (4) whether credible international entities characterize the jurisdiction as a tax

or bank secrecy haven; (5) whether the United States has a mutual legal assistance treaty with the jurisdiction and what the U.S. experience in obtaining information from the jurisdiction has been; and (6) the extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

In deciding whether reasonable grounds exist to conclude that an institution and/or class of transactions represent a primary money laundering concern, the Secretary is to consider: (1) the extent to which the institution or transaction facilitates money laundering; (2) the extent to which either is used for legitimate business; and (3) the extent to which the finding will be effective in guarding against money laundering.

To ensure that the Secretary is apprised of pertinent diplomatic, law enforcement, commercial, and trade implications of determinations made pursuant to this section, subsection (c)(1) requires the Secretary to consult with the Secretary of State, the Attorney General, the Secretary of Commerce and the United States Trade Representative. The Committee expects that the Secretary will not routinely determine that reasonable grounds exist to conclude that a jurisdiction, financial institution or class of international transactions is of primary money laundering concern, but instead will exercise this authority only to combat identified and significant money laundering threats.

Subsection (d) of the new Section 5318A requires the Secretary to notify the Banking Committees in the House and Senate within 10 days of taking a special measure to address a primary money laundering concern.

Subsection (e) of the new Section 5318A defines the terms “account,” “correspondent account,” and “payable-through account” for banks, and requires the Secretary to define these terms for application to non-bank financial institutions.

Title II—Bank Secrecy Act and Related Improvements

Section 201. Amendments relating to reporting of suspicious activities

Subsection (a) of Section 201 makes certain technical and clarifying amendments to 31 U.S.C. § 5318(g)(3), the Bank Secrecy Act’s “safe harbor” provision, which protects financial institutions that disclose possible violations of law or regulation from civil liability for reporting their suspicions and for not alerting those identified in the reports. The safe harbor is directed at Suspicious Activity Reports (SARs) and similar reports to the government and regulatory authorities under the Bank Secrecy Act.

First, Section 201(a) of the bill amends Section 5318(g)(3) to make clear that the safe harbor from civil liability applies in arbitration, as well as judicial, proceedings.

Second, Section 201(a) of the bill amends Section 5318(g)(3) to clarify the safe harbor’s coverage of voluntary disclosures (that is, those not covered by the SAR regulatory reporting requirement). The language in Section 5318(g)(3)(A)(i) and (ii) stating “any financial institution that . . . makes a disclosure pursuant to . . . any other authority . . . shall not be liable to any person” is not intended to avoid the application of the reporting and disclosure provisions of the federal securities laws to any person, or to insulate

any issuers from private rights of actions for disclosures made under the federal securities laws.

Subsection (b) of Section 201 amends Section 5318(g)(2) of Title 31—which currently prohibits notification of any person involved in a transaction reported in a SAR that a SAR has been filed—to clarify (1) that any government officer or employee who learns that a SAR has been filed may not disclose that fact to any person identified in the SAR, except as necessary to fulfill the officer or employee’s official duties, and (2) that disclosure by a financial institution of potential wrongdoing in a written employment reference provided in response to a request from another financial institution pursuant to section 18(v) of the Federal Deposit Insurance Act, or in a written termination notice or employment reference provided in accordance with the rules of a securities self-regulatory organization, is not prohibited simply because the potential wrongdoing was also reported in a SAR.

Section 202. Penalties for violations of geographic targeting orders and certain recordkeeping requirements, and lengthening effective period of geographic targeting orders

This section clarifies the application of certain penalties to violations of Geographic Targeting Orders (GTOs) issued pursuant to authority granted the Secretary of the Treasury by 31 U.S.C. § 5326. A GTO allows the Secretary to impose stricter recordkeeping requirements—such as lower dollar thresholds—on specified financial services providers in a designated geographic area. Sections 5321 and 5322 of title 31 impose civil and criminal penalties, respectively, for violations of the Bank Secrecy Act and attendant regulations. Section 5324 creates additional criminal offenses for failing to file a report, filing a false or incomplete report, and structuring currency transactions in order to evade a reporting requirement under the BSA. Those statutes, however, do not specifically refer to reports required by GTOs issued under section 5326. Subsections (a) and (b) of Section 202 eliminate any possible doubt concerning the applicability of section 5321 and 5322 to GTOs by inserting specific references to section 5326 in the necessary statutory sections.

Subsection (c) of Section 202 also makes clear that structuring transactions to avoid a reporting requirement imposed by a GTO is a criminal offense.

Subsection (d) extends the effective period for GTOs from 60 to 180 days.

Section 203. Authorization to include suspicions of illegal activity in written employment references

This section deals with the same employment reference issue addressed in Section 201 but with respect to Title 12. Occasionally banks develop suspicions that a bank officer or employee has engaged in potentially unlawful activity. These suspicions typically result in the bank filing a SAR. Under present law, however, the ability of banks to share these suspicions in written employment references with other banks when such an officer or employee seeks new employment is unclear. Section 203 would amend 12 U.S.C. § 1828 to permit a bank, upon request by another bank, to share information in a written employment reference concerning the pos-

sible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information.

Section 204. Bank Secrecy Advisory Group

This section requires the membership of the Bank Secrecy Act (BSA) Advisory Group, established by statute in 1992, to include a financial privacy advocate from the non-governmental sector. The purpose of the BSA Advisory Group is, inter alia, to provide a means by which the Secretary of the Treasury may inform the private sector on how BSA reports have been used, and receive advice on the manner in which the reporting requirements of the BSA can be modified to benefit law enforcement authorities.

This section also imposes on the BSA Advisory Group the same open meeting or “sunshine” standards applied to federal advisory committees under the Federal Advisory Committee Act (FACA). Whenever the BSA Advisory Group needs to consider sensitive information, existing law provides ample authority to close the meeting under exceptions in FACA relating to law enforcement matters, privileged and confidential financial information, pending agency actions, and the like. See 5 U.S.C. § 552b.

Section 205. Agency reports on reconciling penalty amounts

This section requires the Secretary of the Treasury and the federal banking agencies to submit reports to Congress within one year of enactment on legislative recommendations to conform the penalties for Bank Secrecy Act violations to penalties for violations of safety and soundness standards.

Title III. Anticorruption Measures

Section 301. Corruption of foreign governments and ruling elites

Subsection (a) of this section states the sense of the Congress that in deliberations with foreign governments on money laundering and corruption issues, the United States should emphasize not only money laundering related to the proceeds of traditional criminal activity, but also laundering related to foreign corruption, and encourage the enactment and enforcement of laws on money laundering and corruption. It also expresses the sense of the Congress that the United States should make clear that it will take all steps necessary to identify the proceeds of foreign corruption that are deposited in domestic financial institutions and return such proceeds to the citizens of the country to whom such assets belong. Finally, the subsection expresses the sense of the Congress that the U.S. should advance policies to prevent corruption, including through instructions to its Executive Directors at the various international financial institutions.

Subsection (b) requires the Secretary of the Treasury, in consultation with the Attorney General and the federal banking regulators, to issue guidance to domestic financial institutions within 180 days on how to reduce the risk that such institutions will become depositories or transfer agents for the proceeds of foreign corruption.

Section 302. Support for the financial action task force on money laundering

This section expresses the sense of the Congress that the Financial Action Task Force (FATF) should identify—and publicly release a list of—noncooperative jurisdictions in the fight against money laundering as expeditiously as possible, and that the United States should support FATF’s efforts; encourage international action to prompt noncompliant jurisdictions to adhere to anti-money laundering standards; and take countermeasures to protect the United States economy against money of unlawful origin and encourage other nations to do the same.

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 *italic*, existing law in which no change is proposed is shown in roman):

CHAPTER 53 OF TITLE 31, UNITED STATES CODE

CHAPTER 53—MONETARY TRANSACTIONS

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

5311. Declaration of purpose.

* * * * *

5318. Compliance, exemptions, and summons authority.

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

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

* * * * *

§ 5318. Compliance, exemptions, and summons authority

(a) * * *

* * * * *

(g) REPORTING OF SUSPICIOUS TRANSACTIONS.—

(1) * * *

[(2) NOTIFICATION PROHIBITED.—A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any other authority, may not notify any person involved in the transaction that the transaction has been reported.

[(3) LIABILITY FOR DISCLOSURES.—Any financial institution that makes a disclosure of any possible violation of law or regulation or a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution, shall not be liable to any person under any law or regulation of the United States or any constitution, law, or reg-

ulation of any State or political subdivision thereof, for such disclosure or for any failure to notify the person involved in the transaction or any other person of such disclosure.】

(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) the financial institution, director, officer, employee, or agent may not notify any person involved in the transaction that the transaction has been reported; and

(ii) no officer or employee of the Federal Government or of 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 other than as necessary to fulfill the official duties of such officer or employee.

(B) *DISCLOSURES IN CERTAIN EMPLOYMENT REFERENCES.*—*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, in a written employment reference that is provided in accordance with section 18(v) of the Federal Deposit Insurance Act in response to a request from another financial institution or a written termination notice or employment reference that is provided in accordance with the rules of the self-regulatory organizations registered with the Securities and Exchange Commission, information that was included in a report to which subparagraph (A) applies, but such written employment reference may not disclose that such information was also included in any such report or that such report was made.*

(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 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.

* * * * *

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

(a) **INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS.**—

(1) **IN GENERAL.**—The Secretary 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States is of primary money laundering concern, in accordance with subsection (c).

(2) **FORM OF REQUIREMENT.**—The special measures described in subsection (b) may be imposed by regulation, order, or otherwise as permitted by law, and in such sequence or combination, as the Secretary shall determine.

(3) **PROCESS FOR SELECTING SPECIAL MEASURES.**—

(A) **CONSULTATION.**—In selecting which special measure or measures to take under this subsection, the Secretary shall consult with the Chairman of the Board of Governors of the Federal Reserve System and, in the Secretary's sole discretion, such other agencies and interested parties as the Secretary may find to be appropriate.

(B) **FACTORS.**—The Secretary also shall consider—

(i) whether similar action has been or is being taken by other nations or multilateral groups;

(ii) whether the imposition of any particular special measure would create a significant competitive disadvantage, including any undue cost or burden associated with compliance, for financial institutions organized or licensed in the United States; and

(iii) the extent to which the action would have a significant adverse systemic impact on the international payment, clearance and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions.

(4) **NO LIMITATION ON OTHER AUTHORITY.**—This section shall not be construed as superseding or otherwise restricting any other authority granted to the Secretary, or to any other agency, by this subchapter or otherwise.

(b) **SPECIAL MEASURES.**—The special measures referred to in subsection (a), with respect to a jurisdiction outside the United States, financial institution operating outside the United States, or class of transaction within, or involving, a jurisdiction outside the United States, are as follows:

(1) *RECORDKEEPING AND REPORTING OF CERTAIN FINANCIAL TRANSACTIONS.*—

(A) *IN GENERAL.*—*The Secretary may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States, if the Secretary finds any such jurisdiction, institution, or class of transactions 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) information concerning the beneficial ownership of the funds involved in any transaction, in accordance with steps the Secretary has determined to be reasonable and practicable to obtain and retain such information; and

(iv) a description of any transaction.

(2) *INFORMATION RELATING TO BENEFICIAL OWNERSHIP.*—*In addition to any other requirement under any other 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States, if the Secretary finds any such jurisdiction, institution, or transaction to be of primary money laundering concern.*

(3) *INFORMATION RELATING TO CERTAIN PAYABLE-THROUGH ACCOUNTS.*—*If the Secretary finds a jurisdiction outside the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States 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 in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating*

outside the United States, or a payable-through account through which any such transaction may be conducted, as a condition of opening or maintaining such account, to—

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

(B) obtain, with respect to each such customer (and each such representative), the same information that 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 ACCOUNTS.—If the Secretary finds a jurisdiction outside the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account, to—

(A) 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) obtain, with respect to each such customer (and each such representative), the same information that the depository institution obtains in the ordinary course 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 the United States, 1 or more financial institutions operating outside the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside 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, 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 the United States, 1 or more financial institutions operating outside

the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside the United States is of primary money laundering concern so as to authorize the Secretary to invoke 1 or more of the special measures of subsection (b), the Secretary shall consult with the Secretary of State, the Attorney General, the Secretary of Commerce, and the United States Trade Representative.

(2) *INFORMATION.*—*The Secretary also shall consider such information as the Secretary considers to be relevant, including the following potentially relevant factors:*

(A) *In the case of a particular jurisdiction—*

(i) *the extent to which that jurisdiction or financial institutions operating therein offer bank secrecy or special tax or regulatory advantages to nonresidents or nondomiciliaries of such jurisdiction;*

(ii) *the substance and quality of administration of that jurisdiction's bank supervisory and counter-money laundering laws;*

(iii) *the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the jurisdiction's economy;*

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

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

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

(B) *In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to both, within, or involving, a particular jurisdiction—*

(i) *the extent to which such financial institutions or transactions are used to facilitate or promote money laundering in or through the jurisdiction;*

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

(iii) *the extent to which such action is sufficient to ensure, with respect to transactions involving such jurisdiction and institutions operating in such 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.*—*Within 10 days after the date of any action taken by the Secretary under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Banking and 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, the following definitions shall apply:

(1) *DEFINED TERMS.*—

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

(i) *ACCOUNT.*—The term “account”—

(I) means a formal banking or business relationship established to provide regular services, dealings, and other financial transactions; and

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

(ii) *CORRESPONDENT ACCOUNT.*—The term “correspondent account” means an account established to receive deposits from and make payments on behalf of a foreign financial institution.

(iii) *PAYABLE-THROUGH ACCOUNT.*—The term “payable-through account” means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at 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 sub-account, in banking activities usual in connection with the business of banking in the United States.

(B) *DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.*—With respect to any financial institution other than a bank, the Secretary shall define, by regulation, order, or otherwise as permitted by law, the term “account” and shall include within the meaning of such term arrangements similar to payable-through and correspondent accounts.

(2) *OTHER TERMS.*—The Secretary may, by regulation, order, or otherwise as permitted by law, further define the terms in paragraph (1) and define other terms for the purposes of this section, as the Secretary deems appropriate.

* * * * *

§ 5321. Civil penalties

(a)(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, 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.

* * * * *

§ 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.

* * * * *

§ 5324. Structuring transactions to evade reporting requirement prohibited

(a) DOMESTIC COIN AND CURRENCY TRANSACTIONS.—No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such [section—] *section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508—*

(1) cause or attempt to cause a domestic financial institution to fail to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, *to file a report or to maintain a record required by an order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508;*

(2) cause or attempt to cause a domestic financial institution to file a report required under section 5313(a) or 5325 or any regulation prescribed under any such section, *to file a report or to maintain a record required by any order issued under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 5326, or to maintain a record required pursuant to any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508*, that contains a material omission or misstatement of fact; or

* * * * *

§ 5326. Records of certain domestic coin and currency transactions

(a) * * *

* * * *

(d) **MAXIMUM EFFECTIVE PERIOD FOR ORDER.**—No order issued under subsection (a) shall be effective for more than **[60]** 180 days unless renewed pursuant to the requirements of subsection (a).

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SECTION 18 OF THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 18. (a) * * *

* * * *

(v) **WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.**—

(1) **IN GENERAL.**—*Notwithstanding any other provision of law, any insured depository institution, and any director, officer, employee, or agent of such institution, may disclose in any written employment reference relating to a current or former institution-affiliated party of such institution which is provided to another insured depository institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in potentially unlawful activity.*

(2) **DEFINITION.**—*For purposes of this subsection, the term “insured depository institution” includes any uninsured branch or agency of a foreign bank.*

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SECTION 1564 OF THE ANNUNZIO-WYLLIE ANTI-MONEY LAUNDERING ACT

SEC. 1564. ADVISORY GROUP ON REPORTING REQUIREMENTS.

(a) **ESTABLISHMENT.**—Not later than 90 days after the date of the enactment of this Act, the Secretary of the Treasury shall establish a Bank Secrecy Act Advisory Group consisting of representatives of the Department of the Treasury, the Department of Justice, and the Office of National Drug Control Policy, *of nongovernmental organizations advocating financial privacy*, and of other interested persons and financial institutions subject to the reporting requirements of subchapter II of chapter 53 of title 31, United States Code, or section 6050I of the Internal Revenue Code of 1986.

* * * *

(c) **INAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**—The Federal Advisory Committee Act shall not apply to the Bank Secrecy Act Advisory Group established pursuant to subsection (a), *other than subsections (a) and (d) of such Act which shall apply.*

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DISSENTING VIEW

We are pleased that the committee adopted the Campbell-Paul-Barr-Metcalf amendment adding a privacy advocate to the Bank Secrecy Act Advisory Group, opening up their meetings and seeking the advice of regulators concerning BSA penalties. Our preference would have been for the committee to strike the existing “Know Your Customer” requirements in the compliance manuals of the Bank Secrecy Act. The provision was voluntarily dropped by Mr. Campbell in committee after objections were raised. The rationale for offering this proposal in committee was the overwhelming public opposition to the KYC proposal.

The Bank Secrecy Act violates consumer financial privacy by requiring financial institutions to collect private, personal information. Bankers then use sophisticated computer software to make “profiles” of customers that some institutions then share with affiliates or sell to third parties in order to recover the regulatory cost of collecting the information in the first place. Explains a Thomson Financial Publishing letter last year trying to sell its Bank Secrecy Act compliance software, “You have to sell aggressively while complying with numerous regulations. To enhance profitability, you must sell more to your current client base.”

Granting so much “discretion” to the executive branch in this bill raises other concerns. Congress would shirk its responsibility to address the issues and act accordingly by passing legislation rather than cede all authority to the executive branch. There is no limit on the size of transactions that could trigger retribution by the secretary of the Treasury. While it is one thing to expand regulation in a stealth manner through inflation such as the minimum transaction triggers for the Currency Transaction Reports, it is another to begin authorization without such limits.

Actions of the Financial Act Task Force and the Organization for Economic Cooperation and Development indicate that they are more interested in combating “harmful tax competition” rather than the drug trade. While Israel has no anti-money laundering laws, focus has been on the Caribbean and Pacific states—many of which do have anti-money laundering laws and cooperate with international investigations—but have lower taxes. Perhaps the reminder in Israel how bank secrecy saved Jews during the Nazi terror gives them a “free pass” with the multilateral organizations. Perhaps we should be as respectful of all individuals escaping persecution.

“Institutions in the developed world that have no authority under any treaty, convention, agreement or legal instrument known in international law, are simply attempting to bend the course of developing countries to their will by the use of crude threats and stigmas,” said Barbados Premier Owen Arthur; he calls it “institutional imperialism.” Barbados offers quality banking supervision

and cooperates with international investigations, according to the OECD ("Reno To Hear Caribbean Complaints On Money Laundering," June 12, 2000, Dow Jones).

The most constructive and beneficial change we could have made to our money laundering laws would have been to pass the Barr-Paul-Campbell-Metcalf amendment to raise the threshold of Currency Transaction Reports. According to Treasury's Financial Crimes Enforcement Network (FinCEN), financial institutions filed nearly 13 million CTRs last year. Each CTR requires an average of 19 minutes per report to fill out (in addition to another average of five minutes of record keeping time) in compliance time (and money). these CTRs constituted about 95% of the \$110 million regulatory burden imposed by just the BSA last year. The \$10,000 limit has never been raised or adjusted for inflation since it was imposed in 1970 and would be about \$45,000 today. By reducing the number of forms, it is likely that the percentage of forms that are actually useful to law enforcement would rise. Currently fewer than $\frac{1}{1000}$ of one percent of the CTR forms are ever used in a money laundering conviction, according to former Federal Reserve Board Governor Larry Lindsey citing Department of Justice figures.

In short, the bill shifts the institutional balance too far from the legislative branch in favor of the executive branch. The new requirements in the bill will further erode protections for consumer financial privacy. The current reporting requirements impose a large regulatory burden on financial institutions with little benefit to law enforcement, and the current approach of the multilateral organizations threatens diplomatic cooperation with our friends and allies which could reduce, rather than aid, the efforts to stem the problems associated money laundering. For these reasons, we oppose the bill.

RON PAUL.
TOM CAMPBELL.
BOB BARR.
WALTER B. JONES.

