

106TH CONGRESS
1ST SESSION

S. 1663

To combat money laundering and protect the United States financial system,
and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 29, 1999

Mr. SCHUMER (for himself and Mr. COVERDELL) introduced the following bill;
which was referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To combat money laundering and protect the United States
financial system, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Foreign Money Laun-
5 dering Deterrence and Anticorruption Act”.

6 **SEC. 2. FINDINGS.**

7 The Congress finds as follows:

8 (1) Money laundering enables international or-
9 ganized crime groups to control and legitimize pro-
10 ceeds from a wide variety of illegal activities includ-

1 ing theft, racketeering, terrorism, tax evasion, fraud,
2 insider trading, and traffic in narcotics, arms, and
3 other contraband. In many instances, these activities
4 impact United States citizens and territory and frus-
5 trate United States foreign policy.

6 (2) Money laundering by international criminal
7 enterprises challenges the legitimate authority of na-
8 tional governments, corrupts officials and profes-
9 sionals, endangers the financial and economic sta-
10 bility of nations, diminishes the efficiency of global
11 interest rate markets, and routinely violates legal
12 norms, property rights, and human rights.

13 (3) In some countries, such as Colombia, Mex-
14 ico, and Russia, the wealth and power of organized
15 criminal enterprises rival the wealth and power of
16 the government of the country.

17 (4) Organized criminal enterprises, such as the
18 Colombian and Mexican cartels, the Russian
19 “*mafia*”, Sicilian crime families, and Chinese
20 gangs, are highly resistant to conventional law en-
21 forcement techniques, and the financial management
22 and organizational infrastructure of such enterprises
23 are highly sophisticated and difficult to track be-
24 cause of the globalization of the financial services in-
25 dustry.

1 (5) In addition to organized crime enterprises,
2 corrupt government officials around the world in-
3 creasingly employ sophisticated money laundering
4 schemes to conceal wealth they have plundered or
5 extorted from their nations or received as bribes,
6 and these practices weaken the legitimacy of foreign
7 states, threaten the integrity of international finan-
8 cial markets, and harm foreign populations—some-
9 times to the point of impoverishment.

10 (6) The existence of “offshore financial cen-
11 ters” (nations, regions, zones, and cities that in
12 many instances have virtually impenetrable financial
13 secrecy laws and weak financial regulatory and re-
14 porting regimes, which are tailored to violate or cir-
15 cumvent the laws of other nations) facilitates global
16 money laundering and, as some of the long-estab-
17 lished offshore financial centers begin to respond to
18 international pressure to implement internationally
19 acceptable standards, money-laundering transactions
20 have started migrating to new centers that have
21 been rapidly proliferating.

22 (7) Recent advances in communications and in-
23 formation technology, particularly in the fields of on-
24 line transactions, have meant that offshore financial
25 centers, originally concentrated near the “onshore”

1 nations whose rules they circumvented, are being es-
 2 tablished in increasingly remote locations that are
 3 difficult and costly for law enforcement and super-
 4 visory authorities to monitor and visit.

5 **SEC. 3. REQUIREMENTS RELATING TO TRANSACTIONS AND**
 6 **ACCOUNTS WITH OR ON BEHALF OF FOREIGN**
 7 **ENTITIES.**

8 (a) IN GENERAL.—Subchapter II of chapter 53 of
 9 title 31, United States Code, is amended by adding at the
 10 end the following new section:

11 **“§ 5331. Requirements relating to transactions and**
 12 **accounts with or on behalf of foreign en-**
 13 **tities.**

14 “(a) PROHIBITION ON OPENING OR MAINTAINING
 15 ACCOUNTS BELONGING TO OR FOR THE BENEFIT OF UN-
 16 IDENTIFIED OWNERS.—A financial institution may not
 17 open or maintain any account in the United States for
 18 a foreign entity or a representative of a foreign entity,
 19 unless—

20 “(1) the institution identifies, and maintains a
 21 record of the identity of, each person having a direct
 22 or beneficial ownership interest in the account; or

23 “(2) some or all of the shares of the foreign en-
 24 tity are publicly traded.

1 “(b) PROHIBITION ON OPENING OR MAINTAINING
2 CORRESPONDENT ACCOUNTS OR CORRESPONDENT BANK
3 RELATIONSHIP WITH CERTAIN FOREIGN BANKS.—

4 “(1) IN GENERAL.—A depository institution
5 may not open or maintain a correspondent account
6 in the United States for or on behalf of a foreign
7 banking institution, or establish or maintain a cor-
8 respondent bank relationship with a foreign banking
9 institution, that—

10 “(A) is organized under the laws of a juris-
11 diction outside the United States but is not li-
12 censed or permitted to offer, or is not offering,
13 any banking service to any resident of such ju-
14 risdiction; and

15 “(B) is not subject to comprehensive su-
16 pervision or regulation on a consolidated basis
17 by the appropriate authorities in such jurisdic-
18 tion.

19 “(2) EXCEPTION.—Paragraph (1) shall not
20 apply to a foreign banking institution, if the institu-
21 tion is an affiliate of—

22 “(A) a depository institution; or

23 “(B) a foreign bank (as defined in section
24 1(b)(7) of the International Banking Act of
25 1978) that is subject to comprehensive super-

1 vision or regulation on a consolidated basis by
 2 the appropriate authorities in the foreign juris-
 3 diction under whose laws it is organized.

4 “(c) PROHIBITION ON OPENING OR MAINTAINING
 5 PAYABLE-THROUGH ACCOUNTS FOR FOREIGN BANKING
 6 INSTITUTIONS.—A depository institution may not open or
 7 maintain a payable-through account in the United States
 8 for a foreign banking institution, unless the depository in-
 9 stitution is able—

10 “(1) to identify each customer of the foreign
 11 banking institution who is permitted to use the ac-
 12 count; and

13 “(2) with respect to each such customer, to ob-
 14 tain the same information about the customer that
 15 it obtains, in the ordinary course, with respect to a
 16 customer residing in the United States who opens or
 17 maintains an account through which they are au-
 18 thorized to conduct the same transactions as may
 19 be conducted through the payable-through account.

20 “(d) DEFINITIONS.—Notwithstanding any other pro-
 21 vision of this subchapter, for purposes of this section, the
 22 following definitions shall apply:

23 “(1) ACCOUNT.—The term ‘account’—

24 “(A) means a formal banking or business
 25 relationship established to provide regular serv-

1 ices, dealings, and other financial transactions;
2 and

3 “(B) includes a demand deposit, savings
4 deposit, or other asset account and a credit ac-
5 count or other extension of credit.

6 “(2) CORRESPONDENT ACCOUNT.—The term
7 ‘correspondent account’ means an account estab-
8 lished to receive deposits from and make payments
9 on behalf of a correspondent bank.

10 “(3) CORRESPONDENT BANK.—The term ‘cor-
11 respondent bank’ means a depository institution that
12 accepts deposits from another financial institution
13 and provides services on behalf of such other finan-
14 cial institution.

15 “(4) DEPOSITORY INSTITUTION.—The term ‘de-
16 pository institution’ has the meaning given such
17 term in section 19(b)(1)(A) of the Federal Reserve
18 Act.

19 “(5) FOREIGN BANKING INSTITUTION.—The
20 term ‘foreign banking institution’ means a foreign
21 entity that engages in the business of banking, and
22 includes foreign commercial banks, foreign merchant
23 banks, and other foreign institutions that engage in
24 banking activities usual in connection with the busi-

1 ness of banking in the countries where they are or-
2 ganized or operating.

3 “(6) FOREIGN ENTITY.—The term ‘foreign en-
4 tity’ means an entity that is not organized under the
5 laws of the Federal Government of the United
6 States, any State of the United States, the District
7 of Columbia, the Commonwealth of Puerto Rico, the
8 Virgin Islands, Guam, American Samoa, the Com-
9 monwealth of the Northern Mariana Islands, the Re-
10 public of the Marshall Islands, the Federated States
11 of Micronesia, or the Republic of Palau.

12 “(7) PAYABLE-THROUGH ACCOUNT.—The term
13 ‘payable-through account’ means an account, includ-
14 ing a transaction account (as defined in section
15 19(b)(1)(C) of the Federal Reserve Act), opened at
16 a depository institution by a foreign banking institu-
17 tion by means of which the foreign banking institu-
18 tion permits its customers to engage, either directly
19 or through a sub-account, in banking activities usual
20 in connection with the business of banking in the
21 United States.”.

22 (b) CLERICAL AMENDMENT.—The table of sections
23 for subchapter II of chapter 53 of title 31, United States
24 Code, is amended by inserting after the item relating to
25 section 5330 the following new item:

“5331. Requirements relating to transactions and accounts with or on behalf of foreign entities.”.

1 (c) EFFECTIVE DATE.—The amendments made by
2 subsection (a) shall apply—

3 (1) with respect to accounts opened on or after
4 the date of the enactment of this Act, as of such
5 date; and

6 (2) with respect to accounts opened before the
7 date of the enactment of this Act, as of the end of
8 the 6-month period beginning on such date.

9 (d) RULE OF CONSTRUCTION.—No provision of the
10 amendment made by subsection (a) shall be construed as
11 requiring or authorizing a financial institution to disclose
12 any information described in such amendment to any
13 other entity.

14 **SEC. 4. CORRUPTION IN FOREIGN GOVERNMENTS.**

15 (a) IN GENERAL.—It is the sense of the Congress
16 that, in deliberations between the United States Govern-
17 ment and any other country on money laundering and cor-
18 ruption issues, the United States Government should—

19 (1) emphasize an approach that addresses not
20 only the laundering of the proceeds of traditional
21 criminal activity but also the increasingly endemic
22 problem of governmental corruption and the corrup-
23 tion of ruling elites; and

1 (2) encourage the enactment and enforcement
2 of laws in such country to prevent money laundering
3 and systemic corruption.

4 (b) UNITED STATES VOTES IN INTERNATIONAL FI-
5 NANCIAL INSTITUTIONS.—The Secretary of the Treasury
6 shall instruct the United States Executive Directors of
7 each international financial institution (as defined in sec-
8 tion 1701(c) of the International Financial Institutions
9 Act) to oppose any loan, disbursement, or other utilization
10 of resources by the international financial institution,
11 other than to address basic human needs, for any country
12 that the Secretary of the Treasury determines—

13 (1) has a high level of corruption;

14 (2) is not effectively implementing good govern-
15 ance and anticorruption measures; and

16 (3) is not taking meaningful steps to improve
17 good governance and reduce corruption.

18 (c) REPORT REQUIRED.—

19 (1) IN GENERAL.—The Secretary of the Treas-
20 ury shall submit an annual report to the Congress
21 on the deliberations between the United States and
22 other countries on money laundering and corruption
23 issues.

24 (2) CONTENTS OF REPORT.—Each report sub-
25 mitted under paragraph (1) shall contain—

1 (A) an assessment by the Secretary of the
 2 extent of corruption in each country covered by
 3 the report; and

4 (B) an assessment by the Secretary of the
 5 extent to which such country maintains effec-
 6 tive money laundering and corruption preven-
 7 tion measures or is implementing such meas-
 8 ures.

9 **SEC. 5. AMENDMENTS RELATING TO REPORTING OF SUS-**
 10 **PICIOUS ACTIVITIES.**

11 (a) AMENDMENT RELATING TO CIVIL LIABILITY IM-
 12 MUNITY FOR DISCLOSURES.—Section 5318(g)(3) of title
 13 31, United States Code, is amended to read as follows:

14 “(3) LIABILITY FOR DISCLOSURES.—

15 “(A) IN GENERAL.—Notwithstanding any
 16 other provision of law—

17 “(i) any financial institution that—

18 “(I) makes a disclosure of any
 19 possible violation of law or regulation
 20 to an appropriate government agency;
 21 or

22 “(II) makes a disclosure pursu-
 23 ant to this subsection or any other au-
 24 thority;

1 “(ii) any director, officer, employee, or
2 agent of such institution who makes, or re-
3 quires another to make any such disclo-
4 sure; and

5 “(iii) any independent public account-
6 ant who audits any such financial institu-
7 tion and makes a disclosure described in
8 clause (i),

9 shall not be liable to any person under any law
10 or regulation of the United States, any con-
11 stitution, law, or regulation of any State or po-
12 litical subdivision thereof, or under any contract
13 or other legally enforceable agreement (includ-
14 ing any arbitration agreement), for such disclo-
15 sure or for any failure to notify the person who
16 is the subject of such disclosure or any other
17 person identified in the disclosure.

18 “(B) EXCEPTION.—Subparagraph (A)
19 shall not apply to a disclosure or communica-
20 tion required under Federal securities law,
21 other than provisions of law that specifically
22 refer to the Currency and Foreign Transactions
23 Reporting Act of 1970.

24 “(C) RULE OF CONSTRUCTION.—Subpara-
25 graph (A) shall not be construed as creating—

1 “(i) any inference that the term ‘per-
2 son’, as used in such subparagraph, may
3 be construed more broadly than its ordi-
4 nary usage so to include any government
5 or agency of government; or

6 “(ii) any immunity against, or other-
7 wise affecting, any civil or criminal action
8 brought by any government or agency of
9 government to enforce any constitution,
10 law, or regulation of such government or
11 agency.”.

12 (b) PROHIBITION ON NOTIFICATION OF DISCLO-
13 SURES.—Section 5318(g)(2) of title 31, United States
14 Code, is amended to read as follows:

15 “(2) NOTIFICATION PROHIBITED.—

16 “(A) IN GENERAL.—If a financial institu-
17 tion, any director, officer, employee, or agent of
18 any financial institution, or any independent
19 public accountant who audits any financial in-
20 stitution, voluntarily or pursuant to this section
21 or any other authority, reports a suspicious
22 transaction to an appropriate government
23 agency—

24 “(i) the financial institution, director,
25 officer, employee, agent, or accountant

1 may not notify any person involved in the
2 transaction that the transaction has been
3 reported and may not disclose any infor-
4 mation included in the report to any such
5 person; and

6 “(ii) any other person, including any
7 officer or employee of any government,
8 who has any knowledge that such report
9 was made may not disclose to any person
10 involved in the transaction that the trans-
11 action has been reported or any informa-
12 tion included in the report.

13 “(B) COORDINATION WITH PARAGRAPH
14 (5).—Subparagraph (A) shall not be construed
15 as prohibiting any financial institution, or any
16 director, officer, employee, or agent of such in-
17 stitution, from including, in a written employ-
18 ment reference that is provided in accordance
19 with paragraph (5) in response to a request
20 from another financial institution, information
21 that was included in a report to which subpara-
22 graph (A) applies, but such written employment
23 reference may not disclose that such informa-
24 tion was also included in any such report or
25 that such report was made.”.

1 (c) AUTHORIZATION TO INCLUDE SUSPICIONS OF IL-
2 LEGAL ACTIVITY IN EMPLOYMENT REFERENCES.—Sec-
3 tion 5318(g) of title 31, United States Code, is amended
4 by adding at the end the following new paragraph:

5 “(5) EMPLOYMENT REFERENCES MAY INCLUDE
6 SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIV-
7 ITY.—

8 “(A) IN GENERAL.—Notwithstanding any
9 other provision of law and subject to subpara-
10 graph (B) of this paragraph and paragraph
11 (2)(C), any financial institution, and any direc-
12 tor, officer, employee, or agent of such institu-
13 tion, may disclose, in any written employment
14 reference relating to a current or former insti-
15 tution-affiliated party of such institution which
16 is provided to another financial institution in
17 response to a request from such other institu-
18 tion,
19 information concerning the possible involvement
20 of such institution-affiliated party in any sus-
21 picious transaction relevant to a possible viola-
22 tion of law or regulation.

23 “(B) LIMIT ON LIABILITY FOR DISCLO-
24 SURES.—A financial institution, and any direc-
25 tor, officer, employee, or agent of such institu-

1 tion, shall not be liable to any person under any
2 law or regulation of the United States, any con-
3 stitution, law, or regulation of any State or po-
4 litical subdivision thereof, or under any contract
5 or other legally enforceable agreement (includ-
6 ing any arbitration agreement), for any disclo-
7 sure under subparagraph (A), to the extent—

8 “(i) the disclosure does not contain in-
9 formation which the institution, director,
10 officer, employee, agent, or accountant
11 knows to be false; and

12 “(ii) the institution, director, officer,
13 employee, agent, or accountant has not
14 acted with malice or with reckless dis-
15 regard for the truth in making the disclo-
16 sure.

17 “(C) INSTITUTION-AFFILIATED PARTY DE-
18 FINED.—For purposes of this paragraph, the
19 term ‘institution-affiliated party’ has the mean-
20 ing given to such term in section 3(u) of the
21 Federal Deposit Insurance Act, except such sec-
22 tion 3(u) shall be applied by substituting ‘finan-
23 cial institution’ for ‘insured depository institu-
24 tion’.”.

1 (d) AMENDMENTS RELATING TO AVAILABILITY OF
2 SUSPICIOUS ACTIVITY REPORTS FOR OTHER AGEN-
3 CIES.—Section 5319 of title 31, United States Code, is
4 amended—

5 (1) in the 1st sentence, by striking “5314, or
6 5316” and inserting “5313A, 5314, 5316, or
7 5318(g)”;

8 (2) in the last sentence, by inserting “under
9 section 5313, 5313A, 5314, 5316, or 5318(g)” after
10 “records of reports”; and

11 (3) by adding the following new sentence after
12 the last sentence: “The Secretary of the Treasury
13 may permit the dissemination of information in any
14 such reports to any self-regulatory organization (as
15 defined in section 3(a)(26) of the Securities Ex-
16 change Act of 1934), if the Securities and Exchange
17 Commission determines that such dissemination is
18 necessary or appropriate to permit such organization
19 to perform its function under the Securities Ex-
20 change Act of 1934 and regulations prescribed
21 under such Act.”.

22 **SEC. 6. SPECIFIED UNLAWFUL ACTIVITIES FOR MONEY**
23 **LAUNDERING.**

24 Section 1956(c)(7) of title 18, United States Code,
25 is amended—

1 (1) in subparagraph (B)—

2 (A) by striking clause (ii) and inserting the
3 following new clause:

4 “(ii) any conduct constituting a crime
5 of violence;” and

6 (B) by adding at the end the following new
7 clauses:

8 “(iv) fraud, or any scheme to defraud,
9 committed against a foreign government or
10 foreign governmental entity;

11 “(v) bribery of a public official, or the
12 misappropriation, theft, or embezzlement
13 of public funds, by or for the benefit of a
14 public official;

15 “(vi) smuggling or export control vio-
16 lations involving munitions listed in the
17 United States Munitions List or tech-
18 nologies with military applications, as de-
19 fined in the Commerce Control List of the
20 Export Administration Regulations;

21 “(vii) an offense with respect to which
22 the United States would be obligated by a
23 multilateral treaty either to extradite the
24 alleged offender or to submit the case for
25 prosecution, if the offender were found

1 within the territory of the United States;

2 or

3 “(viii) the misuse of funds of, or pro-
4 vided by, the International Monetary Fund
5 in contravention of the Articles of Agree-
6 ment of the Fund or the misuse of funds
7 of, or provided by, any other international
8 financial institution (as defined in section
9 1701(c)(2) of the International Financial
10 Institutions Act) in contravention of any
11 international treaty or other international
12 agreement to which the United States is a
13 party, including any article of agreement
14 of the members of such international fi-
15 nancial institution.”;

16 (2) in subparagraph (D)—

17 (A) by inserting “section 541 (relating to
18 goods falsely classified),” before “section 542”;

19 (B) by inserting “section 924(m) (relating
20 to firearms trafficking),” before “section 956”;

21 (C) by inserting “section 1030 (relating to
22 computer fraud and abuse),” before “1032”;

23 and

24 (D) by inserting “any felony violation of
25 the Foreign Agents Registration Act of 1938,

1 as amended,” before “or any felony violation of
2 the Foreign Corrupt Practices Act”;

3 (3) in subparagraph (E)—

4 (A) by inserting “section 42 or 43 of this
5 title (commonly called the Lacey Act),” after “a
6 felony violation of”;

7 (B) by inserting “the Clean Air Act (42
8 U.S.C. 7401 et seq.),” after “the Safe Drinking
9 Water Act (42 U.S.C. 300f et seq.),”; and

10 (4) by adding at the end the following new sub-
11 paragraph:

12 “(G) Any offense under any Federal law
13 consisting of the failure to report to an appro-
14 priate Federal agency the ownership or control
15 of a foreign corporation, the ownership or con-
16 trol of a foreign financial account, or a bene-
17 ficial interest in a foreign trust.”.

18 **SEC. 7. FALSE STATEMENTS TO FINANCIAL INSTITUTIONS**
19 **CONCERNING THE IDENTITY OF A CUS-**
20 **TOMER.**

21 (a) IN GENERAL.—Chapter 47 of title 18, United
22 States Code (relating to fraud and false statements) is
23 amended by inserting after section 1007 the following new
24 section:

1 **“§ 1008. False statements concerning the identity of**
2 **customers of financial institutions**

3 “(a) IN GENERAL.—Whoever knowingly in any
4 manner—

5 “(1) falsifies, conceals, or covers up, or at-
6 tempts to falsify, conceal, or cover up, the identity
7 of any person in connection with any transaction
8 with a financial institution; or

9 “(2) makes, or attempts to make, any materi-
10 ally false, fraudulent, or fictitious statement or rep-
11 resentation of the identity of any person in connec-
12 tion with a transaction with a financial institution;
13 or

14 “(3) makes or uses, or attempts to make or
15 use, any false writing or document knowing the
16 same to contain any materially false, fictitious, or
17 fraudulent statement or entry concerning the iden-
18 tity of any person in connection with a transaction
19 with a financial institution; or

20 “(4) uses or presents, or attempts to use or
21 present, in connection with a transaction with a fi-
22 nancial institution, an identification document or
23 means of identification the possession of which is a
24 violation of section 1028,

25 shall be fined under this title, imprisoned for not more
26 than 5 years, or both.

1 “(b) DEFINITIONS.—For purposes of this section, the
2 following definitions shall apply:

3 “(1) IDENTIFICATION DOCUMENT AND MEANS
4 OF IDENTIFICATION.—The terms ‘identification doc-
5 ument’ and ‘means of identification’ have the mean-
6 ings given to such terms in section 1028(d).

7 “(2) FINANCIAL INSTITUTION.—In addition to
8 the meaning given to the term ‘financial institution’
9 by section 20, the term ‘financial institution’ also
10 has the meaning given to such term in section
11 5312(a)(2) of title 31.”.

12 (b) TECHNICAL AND CONFORMING AMENDMENT.—
13 Section 1956(c)(7)(D) of title 18, United States Code (as
14 amended by section 6(2) of this Act) is amended by strik-
15 ing “1014 (relating to fraudulent loan” and inserting
16 “section 1008 (relating to false statements concerning the
17 identity of customers of financial institutions), section
18 1014 (relating to fraudulent loan”.

19 (c) CLERICAL AMENDMENT.—The table of sections
20 for chapter 47 of title 18, United States Code, is amended
21 by inserting after the item relating to section 1007 the
22 following new item:

“1008. False statements concerning the identity of customers of financial insti-
tutions.”.

○