105TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPT. 105–611 Part 1

# MONEY LAUNDERING DETERRENCE ACT OF 1998

JULY 8, 1998.—Ordered to be printed

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

# R E P O R T

[To accompany H.R. 4005]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 4005) to amend title 31 of the United States Code to improve methods for preventing financial crimes, and for other purposes, having considered the same, report favorably thereon with an amendment 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.**

This Act may be cited as the "Money Laundering Deterrence Act of 1998".

**SEC. 2. FINDINGS AND PURPOSES.**

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

(1) The dollar amount involved in international money laundering likely exceeds $500,000,000,000 annually.

(2) Organized crime groups are continually devising new methods to launder the proceeds of illegal activities in an effort to subvert the transaction reporting requirements of subchapter II of chapter 53 of title 31, United States Code, and chapter 2 of Public Law 91–508.

(3) A number of methods to launder the proceeds of criminal activity were identified and described in congressional hearings, including the use of financial service providers which are not depository institutions, such as money transmitters and check cashing services, the purchase and resale of durable goods, and the exchange of foreign currency in the so-called "black market".

(4) Recent successes in combating domestic money laundering have involved the application of the heretofore seldom-used authority granted to the Secretary of the Treasury and the cooperative efforts of Federal, State, and local law enforcement agencies.

(5) Such successes have been exemplified by the implementation of the geographic targeting order in New York City and through the work of the El Dorado task force, a group comprised of agents of Department of the Treasury law enforcement agencies, New York State troopers, and New York City police officers.

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(6) Money laundering by international criminal enterprises challenges the legitimate authority of national governments, corrupts government institutions, endangers the financial and economic stability of nations, and routinely violates legal norms, property rights, and human rights. In some countries, such as Columbia, Mexico, and Russia, the wealth and power of organized criminal enterprises rivals their own government's.

(7) The structure of international criminal enterprises engaged in money laundering is complex, diverse, and fragmented. Organized criminal enterprises such as the Colombian and Mexican cartels, the Russian "mafiya", Sicilian crime families, and Chinese gangs are highly resistant to conventional law enforcement techniques. Their financial management and organizational infrastructure are highly sophisticated and difficult to track because of the globalization of the financial service industry.

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

(1) To amend subchapter II of chapter 53 of title 31, United States Code, to provide the law enforcement community with the necessary legal authority to combat money laundering.

(2) To broaden the law enforcement community's access to transactional information already being collected which relate to coins and currency received in a nonfinancial trade or business.

(3) To expedite the issuance by the Secretary of the Treasury of regulations designed to deter money laundering activities at certain types of financial institutions.

**SEC. 3. 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.—Notwithstanding any other provision of law—

"(i) any financial institution that—

"(I) makes a disclosure of any possible violation of law or regulation to an appropriate government agency; or

"(II) makes a disclosure pursuant to this subsection or any other authority;

"(ii) any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure; and

"(iii) any independent public accountant who audits any such financial institution and makes a disclosure described in clause (i),

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 thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to notify the person who is the subject of such disclosure or any other person identified in the disclosure.

"(B) EXCEPTION.—Subparagraph (A) shall not apply to a disclosure or communication required under Federal securities law, other than provisions of law that specifically refer to the Currency and Foreign Transactions Reporting Act of 1970.".

(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, any director, officer, employee, or agent of any financial institution, or any independent public accountant who audits any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to an appropriate government agency—

"(i) the financial institution, director, officer, employee, agent, or accountant may not notify any person involved in the transaction that the transaction has been reported and may not disclose any information included in the report to any such person; and

"(ii) any other person, including any officer or employee of any government, who has any knowledge that such report was made may not disclose to any person involved in the transaction that the transaction has been reported or any information included in the report.

"(B) COORDINATION WITH PARAGRAPH (5).—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 paragraph (5) in re-

sponse to a request from another financial institution, 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.".

(c) AUTHORIZATION TO INCLUDE SUSPICIONS OF ILLEGAL ACTIVITY IN EMPLOYMENT REFERENCES.—Section 5318(g) of title 31, United States Code, is amended by adding at the end the following new paragraph:

"(5) EMPLOYMENT REFERENCES MAY INCLUDE SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

"(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraph (B) of this paragraph and paragraph (2)(C), any financial 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 financial institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in any suspicious transaction relevant to a possible violation of law or regulation.

"(B) LIMIT ON LIABILITY FOR DISCLOSURES.—A financial institution, 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, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for any disclosure under subparagraph (A), to the extent—

"(i) the disclosure does not contain information which the institution, director, officer, employee, agent, or accountant knows to be false; and

"(ii) the institution, director, officer, employee, agent, or accountant has not acted with malice or with reckless disregard for the truth in making the disclosure.

"(C) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this paragraph, the term 'institution-affiliated party' has the meaning given to such term in section 3(u) of the Federal Deposit Insurance Act, except such section 3(u) shall be applied by substituting 'financial institution' for 'insured depository institution'.".

(d) AMENDMENTS RELATING TO AVAILABILITY OF SUSPICIOUS ACTIVITY REPORTS FOR OTHER AGENCIES.—Section 5319 of title 31, United States Code, is amended—

(1) in the 1st sentence, by striking "5314, or 5316" and inserting "5313A, 5314, 5316, or 5318(g)";

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

(3) by adding the following new sentence after the last sentence: "The Secretary of the Treasury may permit the dissemination of information in any such reports to any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), if the Securities and Exchange Commission determines that such dissemination is necessary or appropriate to permit such organization to perform its function under the Securities Exchange Act of 1934 and regulations prescribed under such Act.".

**SEC. 4. EXPANSION OF SCOPE OF SUMMONS POWER.**

Section 5318(b)(1) of title 31, United States Code, is amended by inserting "examinations to determine compliance with the requirements of this subchapter, section 21 of the Federal Deposit Insurance Act, and chapter 2 of Public Law 91–508 and regulations prescribed pursuant to such provisions, investigations relating to reports filed by financial institutions or other persons pursuant to any such provision or regulation, and" after "in connection with".

**SEC. 5. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORDKEEPING REQUIREMENTS.**

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

(1) by inserting "or order issued" after "regulation prescribed" the 1st place it appears; and

(2) by inserting ", or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or under section 123 of Public Law 91–508," before "is liable".

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

(1) in each of subsections (a) and (b), by inserting "or order issued" after "regulation prescribed" the 1st place it appears;

(2) in subsection (a), by inserting ", or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or under section 123 of Public Law 91–508," before "shall"; and

(3) in subsection (b), by inserting "or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or under section 123 of Public Law 91–508," before "while violating".

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

(1) in the portion of such section which precedes paragraph (1), by inserting ", the reporting 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" after "regulation prescribed under any such section"; and

(2) in paragraphs (1) and (2), by inserting ", to file a report required by any 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" where such term appears in each such paragraph.

(d) INCREASE IN CIVIL PENALTIES FOR VIOLATION OF CERTAIN RECORDKEEPING REQUIREMENTS.—

(1) FEDERAL DEPOSIT INSURANCE ACT.—Section 21(j)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1829b(j)(1)) is amended by striking "$10,000" and inserting "the greater of the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred or $25,000".

(2) PUBLIC LAW 91–508.—Section 125(a) of Public Law 91–508 (12 U.S.C. 1955(a)) is amended by striking "$10,000" and inserting "the greater of the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred or $25,000".

(e) CRIMINAL PENALTIES FOR VIOLATION OF CERTAIN RECORDKEEPING REQUIREMENTS.—

(1) SECTION 126.—Section 126 of Public Law 91–508 (12 U.S.C. 1956) is amended to read as follows:

**"§ 126. Criminal penalty**

"A person willfully violating this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this chapter or such section, shall be fined not more than $250,000, or imprisoned for not more than five years, or both.".

(2) SECTION 127.—Section 127 of Public Law 91–508 (12 U.S.C. 1957) is amended to read as follows:

**"§ 127. Additional criminal penalty in certain cases**

"A person willfully violating this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this chapter or such section, 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.".

**SEC. 6. REPEAL OF CERTAIN REPORTING REQUIREMENTS.**

Section 407(d) of the Money Laundering Suppression Act of 1994 (31 U.S.C. 5311 note) is amended by striking "subsection (c)" and inserting "subsection (c)(2)".

**SEC. 7. LIMITED EXEMPTION FROM PAPERWORK REDUCTION ACT.**

Section 3518(c)(1) of title 44, United States Code, is amended—

(1) by redesignating subparagraphs (C) and (D) as subparagraphs (D) and (E), respectively; and

(2) by inserting after subparagraph (B) the following new subparagraph:

"(C) pursuant to regulations prescribed or orders issued by the Secretary of the Treasury under section 5318(h) or 5326 of title 31;".

**SEC. 8. TRANSFER OF REPORTING REQUIREMENTS FROM SECTION 6050I OF THE INTERNAL REVENUE CODE OF 1986 TO TITLE 31, UNITED STATES CODE.**

(a) REENACTMENT OF SECTION 6050I.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5313 the following new section:

**"§ 5313A. Reports relating to coins and currency received in nonfinancial trade or business**

"(a) COIN AND CURRENCY RECEIPTS OF MORE THAN $10,000.—Any person—

"(1) who is engaged in a trade or business; and

"(2) who, in the course of such trade or business, receives more than $10,000 in coins or currency in 1 transaction (or 2 or more related transactions),

shall file a report described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

"(b) FORM AND MANNER OF REPORTS.—A report is described in this subsection if such report—

"(1) is in such form as the Secretary may prescribe;

"(2) contains—

"(A) the name, address, and taxpayer identification number of the person from whom the coins or currency was received;

"(B) the amount of coins or currency received;

"(C) the date and nature of the transaction; and

"(D) such other information as the Secretary may prescribe.

"(c) EXCEPTIONS.—

"(1) AMOUNTS RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.

"(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

"(d) CURRENCY INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—

"(1) IN GENERAL.—For purposes of this section, the term 'currency' includes—

"(A) foreign currency; and

"(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

"(2) SCOPE OF APPLICATION.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).

"(e) COINS OR CURRENCY RECEIVED BY CRIMINAL COURT CLERKS.—

"(1) IN GENERAL.—Every clerk of a Federal or State criminal court who receives more than $10,000 in coins or currency as bail for any individual charged with a specified criminal offense shall file a report described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

"(2) REPORT.—A report is described in this paragraph if such report—

"(A) is in such form as the Secretary may prescribe; and

"(B) contains—

"(i) the name, address, and taxpayer identification number of—

"(I) the individual charged with the specified criminal offense; and

"(II) each person posting the bail (other than a person licensed as a bail bondsman);

"(ii) the amount of coins or currency received;

"(iii) the date the coins or currency was received; and

"(iv) such other information as the Secretary may prescribe.

"(3) SPECIFIED CRIMINAL OFFENSE.—For purposes of this subsection, the term 'specified criminal offense' means—

"(A) any Federal criminal offense involving a controlled substance;

"(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code);

"(C) money laundering (as defined in section 1956 or 1957 of such title); and

"(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).

"(4) INFORMATION TO FEDERAL PROSECUTORS.—Each clerk required to include in a report under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

"(5) INFORMATION TO PAYORS OF BAIL.—Each clerk required to file a report under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such report by reason of paragraph (2)(B)(i)(II) a written statement showing—

"(A) the name and address of the clerk's office required to file the report; and

"(B) the aggregate amount of coins and currency described in paragraph (1) received by such clerk.".

(b) PROHIBITION ON STRUCTURING TRANSACTIONS.—

(1) IN GENERAL.—Section 5324 of title 31, United States Code, is amended—

(A) by redesignating subsections (b) and (c) as subsections (c) and (d), respectively; and

(B) by inserting after subsection (a) the following new subsection:

"(b) DOMESTIC COIN AND CURRENCY TRANSACTIONS INVOLVING NONFINANCIAL TRADES OR BUSINESSES.—No person shall for the purpose of evading the report requirements of section 5313A or any regulation prescribed under such section—

"(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5313A or any regulation prescribed under such section;

"(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5313A or any regulation prescribed under such section that contains a material omission or misstatement of fact; or

"(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) The heading for subsection (a) of section 5324 of title 31, United States Code, is amended by inserting "INVOLVING FINANCIAL INSTITUTIONS" after "TRANSACTIONS".

(B) Section 5317(c) of title 31, United States Code, is amended by striking "5324(b)" and inserting "5324(c)".

(c) DEFINITION OF NONFINANCIAL TRADE OR BUSINESS.—

(1) IN GENERAL.—Section 5312(a) of title 31, United States Code, is amended—

(A) by redesignating paragraphs (4) and (5) as paragraphs (5) and (6), respectively; and

(B) by inserting after paragraph (3) the following new paragraph:

"(4) NONFINANCIAL TRADE OR BUSINESS.—The term 'nonfinancial trade or business' means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.".

(2) TECHNICAL AND CONFORMING AMENDMENTS.—

(A) Section 5312(a)(3)(C) of title 31, United States Code, is amended by striking "section 5316," and inserting "sections 5313A and 5316,".

(B) Subsections (a) through (f) of section 5318 of title 31, United States Code, and sections 5321, 5326, and 5328 of such title are each amended—

(i) by inserting "or nonfinancial trade or business" after "financial institution" each place such term appears; and

(ii) by inserting "or nonfinancial trades or businesses" after "financial institutions" each place such term appears.

(C) Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "5313(a) or 5324(a) of title 31," and inserting "5313(a) or 5313A of title 31, or subsection (a) or (b) of section 5324 of such title,".

(D) Section 982(a)(1) of title 18, United States Code, is amended by inserting "5313A," after "5313(a),".

(d) REPEAL OF DUPLICATE PROVISION.—Section 6050I of the Internal Revenue Code of 1986 is repealed.

(e) CLERICAL AMENDMENTS.—

(1) TITLE 31.—The tables of sections for chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5313 the following new item:

"5313A. Reports relating to coins and currency received in nonfinancial trade or business.".

(2) INTERNAL REVENUE CODE OF 1986.—

(A) The table of sections for subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 is amended by striking the item relating to section 6050I.

(B)(i) Subsection (l) of section 6103 of such Code is amended by striking paragraph (15).

(ii) Subparagraph (A) of section 6103(p)(3) of such Code is amended by striking "(15),".

(iii) Paragraph (4) of section 6103(p) of such Code is amended by striking in the material preceding subparagraph (A) "(12)" and all that follows through "(16)" and inserting "(12), or (16)".

(iv) Clause (ii) of section 6103(p)(4)(F) of such Code is amended by striking "(14), or (15)" and inserting "or (14)".

(C) Paragraph (2) of section 6721(e) of such Code is amended—

(i) in subparagraph (A) by striking "6050I," and by adding "or" at the end,

(ii) by striking "or" at the end of subparagraph (B) and inserting "and", and

(iii) by striking subparagraph (C).

(D) Subparagraph (B) of section 6724(d)(1) of such Code is amended by striking clause (iv) and by redesignating the succeeding clauses accordingly.

(E) Paragraph (2) of section 6724(d) of such Code is amended by striking subparagraph (K) and by redesignating the succeeding subparagraphs accordingly.

(F) Section 7203 of such Code is amended by striking the last sentence.

(f) REGULATIONS; EFFECTIVE DATE.—

(1) REGULATIONS.—Regulations which the Secretary of the Treasury determines are necessary to implement this section shall be published in final form before the end of the 6-month period beginning on the date of the enactment of this Act.

(2) EFFECTIVE DATE.—The amendments made by this section shall take effect at the end of the 6-month period beginning on the date the regulations referred to in paragraph (1) are published in final form in the Federal Register.

**SEC. 9. PROMULGATION OF "KNOW YOUR CUSTOMER" REGULATIONS.**

Within 120 days after the date of the enactment of this Act, the Secretary of the Treasury shall promulgate "Know Your Customer" regulations for financial institutions. This section shall not be construed as precluding any supervisory agency for any financial institution from requiring the financial institution to submit any information or report to the agency or another agency pursuant to any other applicable provision of law.

**SEC. 10. FUNGIBLE PROPERTY IN BANK ACCOUNTS.**

Section 984 of title 18, United States Code, is amended—

(1) so that subsection (a) reads as follows:

"(a) This section applies only if the action for forfeiture was commenced by a seizure or an arrest in rem not later than 2 years after the offense that is the basis for the forfeiture.";

(2) by striking subsection (c);

(3) by redesignating subsection (d) as subsection (c), and in such subsection—

(A) by striking "(1)" and all that follows through the end of paragraph (1) and inserting the following:

"(1) Subsection (b) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture."; and

(B) by adding at the end the following new paragraph:

"(3) As used in this subsection, a 'financial institution' includes a foreign bank, as defined in paragraph (7) of section 1(b) of the International Banking Act of 1978."; and

(4) by adding at the end the following new subsection:

"(d) Nothing in this section is intended to limit the ability of the Government to obtain the forfeiture of property under any statute where the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.".

**SEC. 11. REPORT ON PRIVATE BANKING ACTIVITIES.**

(a) IN GENERAL.—Within 1 year after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with Federal banking agencies, shall submit to the Committee on Banking and Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate a report on—

(1) the nature and extent of private banking activities in the United States;

(2) regulatory efforts to monitor such activities and ensure that such activities are conducted in compliance with the Bank Secrecy Act; and

(3) policies and procedures of depository institutions that are designed to ensure that such activities are conducted in compliance with the Bank Secrecy Act.

(b) PRIVATE BANKING ACTIVITIES.—In subsection (a), the term "private banking activities", with respect to an institution, includes, among other things, personalized services such as money management, financial advice, and investment services that are provided to clients with high net worth and that are not provided generally to all clients of the institution.

**SEC. 12. AVAILABILITY OF CERTAIN ACCOUNT INFORMATION.**

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

"(3) AVAILABILITY OF CERTAIN ACCOUNT INFORMATION.—The Secretary of the Treasury shall prescribe regulations under this subsection which require financial institutions to maintain all accounts in such a way as to ensure that the name of an account holder and the number of the account are associated with all account activity of the account holder, and to ensure that all such information is available for purposes of account supervision and law enforcement.".

**SEC. 13. SENSE OF THE CONGRESS.**

It is the sense of the Congress that the Secretary of the Treasury should make available to all Federal, State, and local law enforcement agencies and financial regulatory agencies the full contents of the data base of reports that have been filed pursuant to subchapter II of chapter 53 of title 31, United States Code.

**SEC. 14. DESIGNATION OF FOREIGN HIGH INTENSITY MONEY LAUNDERING AREAS.**

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5326 the following new section:

**"§ 5327. Designation of foreign high intensity money laundering areas**

"(a) CRITERIA.—The Secretary of the Treasury, in consultation with appropriate Federal law enforcement agencies, shall develop criteria by which to identify areas outside the United States in which money laundering activities are concentrated.

"(b) DESIGNATION.—The Secretary of the Treasury shall designate as a foreign high intensity money laundering area any foreign country in which there is an area which is identified, using the criteria developed under subsection (a), as an area in which money laundering activities are concentrated.

"(c) NOTICE.—On the designation under subsection (b) of a country as a foreign high intensity money laundering area, the Secretary of the Treasury shall provide written notice to each insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) and each depository institution holding company (as defined in section 3(w)(1) of such Act) that has control over an insured depository institution of the identity of the foreign country and include with the notice a written warning that there is a concentration of money laundering activities in the foreign country.".

(b) CLERICAL AMENDMENT.—The table of sections for such chapter is amended by inserting after the item relating to section 5326 the following new item:

"5327. Designation of foreign high intensity money laundering areas.".

**SEC. 15. DOUBLING OF CRIMINAL PENALTIES FOR VIOLATIONS OF LAWS AIMED AT PREVENTING MONEY LAUNDERING IN FOREIGN HIGH INTENSITY MONEY LAUNDERING AREAS.**

Section 5322 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(d) The court may double the sentence of fine or imprisonment, or both, that would otherwise be imposed on a person for a violation described in subsection (a) or (b) if person commits the violation with respect to a transaction involving a person in, a relationship maintained for a person in, or a transport of a monetary instrument involving a foreign country, knowing that the foreign country is designated under section 5327(b) as a foreign high intensity money laundering area.".

## PURPOSE AND SUMMARY

The purpose of this legislation is to strengthen Federal law enforcement efforts to combat money laundering, the process by which criminal elements seek to convert the monetary proceeds of their illicit activity into funds with an apparently legal source. The legislation is designed principally to facilitate greater access by law

enforcement authorities to information relating to suspicious financial transactions.

H.R. 4005, as amended by the Committee, (1) transfers from the U.S. tax code to the Bank Secrecy Act the requirement that nonfinancial trades or businesses, such as car dealers and merchandise wholesalers, report cash transactions in excess of $10,000 to the Federal government, thereby making such reports more widely available in the law enforcement community; (2) extends "safe harbor" protections to independent public accountants who submit reports of suspicious financial activity to the Federal government; (3) provides financial institutions with immunity from liability when making employment references that may include suspicions of an employee's involvement in illegal activity, unless such suspicions are known to be false or the institution has acted with malice or reckless disregard for the truth; (4) makes reports of suspicious financial activity filed with the Federal government available to self-regulatory organizations as defined by the Securities and Exchange Act of 1934; (5) clarifies the circumstances under which the Federal government can obtain the forfeiture of fungible assets when no property traceable to the underlying offense is available, including extending the statute of limitations on such forfeiture actions from one to two years; and (6) requires the Secretary of the Treasury to promulgate "Know Your Customer" regulations within 120 days of enactment of the legislation, submit a report on private banking to the House and Senate Banking Committees, prescribe regulations requiring financial institutions to maintain all accounts in such a way as to ensure that the name of an account holder and the number of his or her account are associated with all activity in the account, and develop criteria to identify areas outside of the United States where money laundering is concentrated.

## BACKGROUND AND NEED FOR LEGISLATION

It is estimated that upwards of $500 billion in laundered funds—a large portion of it derived from narcotics trafficking—is cycled through the U.S. financial system on an annual basis. Any meaningful strategy for combating the international drug trade and other global criminal enterprises must include strong legal mechanisms for detecting the flows of their illicit proceeds. Left unchecked, money laundering has debilitating consequences for the integrity of financial institutions, and, because it is the lifeblood of the drug traffickers, a devastating impact on the social fabric as well.

The last decade has been characterized by an increasing globalization of the financial services industry and increasingly sophisticated technology being placed at the disposal of criminal elements seeking to disguise the proceeds of their illegal activity. Millions of dollars can now be transferred through multiple accounts all over the world with blinding speed. Moreover, the range of mechanisms through which criminals can launder their ill-gotten gains has expanded far beyond the boundaries of traditional depository institutions, to include currency exchange houses, stock brokerages, money and wire transmitters, casinos, insurance companies, and a host of other non-bank financial institutions. All of

these developments present fundamental challenges to law enforcement authorities in the U.S. and around the world.

Beginning with the passage of the Bank Secrecy Act (P.L. 91–508) in 1970, the Committee has been at the forefront of legislative efforts to erect a system of financial reporting and record-keeping designed to give law enforcement authorities sufficient tools to detect and prosecute money laundering offenses. The various reporting requirements imposed by the Bank Secrecy Act and subsequent legislation promote the disclosure of information relating to suspicious financial transactions by financial institutions and other commercial enterprises, and the subsequent dissemination of that information among Federal, state and local law enforcement authorities. In crafting these bills, Congress has sought to advance a number of policy objectives, including facilitating the law enforcement community's access to accurate and complete information regarding possible money laundering, and encouraging safe and sound practices at Federally-insured depository institutions, while at the same time protecting the free flow of legitimate commerce and the privacy interests of bank customers.

Federal law enforcement officials have testified to the Committee that the point at which laundered funds are most vulnerable to detection is at their initial placement in the financial system. For example, a narco-trafficking organization that collects cash from its U.S. customers has a choice of either attempting to smuggle the currency across our border, or seeking to enter it into the legitimate financial system in the U.S. If the latter option is selected, the Bank Secrecy Act's wide array of reporting requirements increase the likelihood that law enforcement authorities will be alerted, and that the narco-traffickers will ultimately be subjected to criminal accountability.

H.R. 4005 represents an attempt to strengthen the anti-money laundering regime of Bank Secrecy Act laws and regulations, by adding provisions to the United States Code that promote greater reporting of suspicious transactions and wider circulation of such reports within the law enforcement community.

## HEARINGS

Many of H.R. 4005's specific provisions grew out of a series of hearings held by the Subcommittee on General Oversight and Investigations during the 105th Congress. On March 11, 1997, the Subcommittee examined the Treasury Department's use of a Geographic Targeting Order authorized under the Bank Secrecy Act to target money laundering by representatives of Colombian drug cartels at money transmitting businesses located in New York City. The Subcommittee held two separate hearings, on March 21, 1997, and April 1, 1998, to review the operations of the Financial Crimes Enforcement Network (FinCEN), the component of the Treasury Department responsible for collecting and analyzing the various reports to be filed under the Bank Secrecy Act. On July 30, 1997, the Subcommittee reviewed regulations promulgated by FinCEN imposing certain registration and reporting requirements on Money Services Businesses, such as currency dealers, check cashers, and money transmitters. Finally, on October 22, 1997, the Subcommittee examined efforts by Federal law enforcement authorities to

combat a form of money laundering known as black market peso brokering, involving the manipulation of trade in durable goods by Colombian drug cartels seeking to conceal the proceeds of their U.S. operations.

On June 5, 1998, Chairman Leach introduced H.R. 4005, the Money Laundering Deterrence Act. The Committee held a hearing on the legislation and related issues on June 11, 1998. Testifying at the hearing were The Honorable Charles Grassley (R–Iowa); Raymond Kelly, Treasury Undersecretary for Enforcement; Mary Lee Warren, Deputy Assistant Attorney General for the Criminal Division; Jonathan Weiner, Deputy Assistant Secretary of State; Herbert A. Biern, Associate Director of the Federal Reserve Board's Division of Banking Supervision and Regulation; Robert B. Serino, Deputy Chief Counsel of the Office of the Comptroller of the Currency; Jack A. Blum of the law firm of Lobel, Novins & Lamont, and Charles S. Saphos of the law firm of Fila & Saphos.

## COMMITTEE CONSIDERATION AND VOTES

On June 11, 1998, the full Committee met in open session to mark up H.R. 4005, the Money Laundering Deterrence Act of 1998. The Committee called up H.R. 4005 as original text for purposes of amendment.

During the mark up, the Manager's Amendment and 11 other amendments were offered. The Manager's Amendment and 7 of the 11 amendments were adopted by voice vote.

*Amendments that were adopted*

1. Manager's Amendment, making technical and grammatical corrections to H.R. 4005, as introduced,

2. An amendment offered by Mr. Ryun to add to the Congressional findings that (1) money laundering by international criminal enterprises undermines the financial and economic stability of national governments; and (2) the structure of international criminal enterprises engaged in money laundering is complex, diverse and fragmented, making them highly resistant to conventional law enforcement techniques.

3. An amendment offered by Mr. Campbell to clarify the law applicable to actions by the government to seize fungible property in bank accounts, including extending the statute of limitations on such actions from one to two years.

4. An amendment offered by Ms. Waters, as amended by Chairman Leach, to require the Secretary of the Treasury to promulgate "Know your Customer" regulations within 120 days of the date of enactment of this legislation.

5. An amendment offered by Ms. Waters, as amended by Chairman Leach after consultation with Ms. Roukema, to require the Secretary of the Treasury, in consultation with the Federal banking agencies, to submit to the House Committee on Banking and Financial Services and Senate Committee on Banking, Housing, and Urban Affairs a report on the nature and extent of private banking activities in the United States; regulatory efforts to monitor such activities; and policies and procedures of depository institutions that are designed to ensure that such activities are conducted in compliance with the Bank Secrecy Act.

6. An amendment offered by Ms. Waters, as amended by Chairman Leach, to require a financial institution to maintain accounts in such a way as to ensure that the name of an account holder and the number of the account are associated with all account activity of the account holder.

7. An amendment offered by Ms. Waters and Mr. Hinchey, as amended, to require the Secretary of the Treasury and Federal law enforcement agencies to develop criteria to identify areas outside the U.S. where money laundering is concentrated, and to increase the criminal penalties for certain offenses.

8. An amendment offered by Mr. Barr to express the sense of the Congress that the Secretary of the Treasury should make available to all Federal, state, and local law enforcement agencies and financial regulatory agencies the full content of the data base of reports that have been filed pursuant to subchapter II of chapter 53 of title 31 of the U.S. Code.

*Amendments that were withdrawn*

1. An amendment offered by Ms. Waters to require that financial institutions engaging in private banking services file annual reports with the Secretary of the Treasury describing (1) policies and procedures followed in conducting such activities; and (2) the manner and extent to which compliance with Federal money laundering laws is achieved.

2. An amendment offered by Ms. Waters to convert maximum criminal penalties imposed for violations of Federal money laundering laws into minimum criminal penalties.

3. An amendment offered by Ms. Waters to require the termination of deposit insurance of a financial institution found criminally or civilly liable for money laundering three times within a ten-year period.

4. An amendment offered by Ms. Waters to require that in reviewing merger applications, Federal regulators (1) consider the effectiveness of the institutions involved in the transactions in combating money laundering; (2) disapprove transactions involving any institution which is the subject of pending Federal investigation or prosecution for money laundering or other related financial crimes; and (3) disapprove transactions involving any institution which has been found criminally or civilly liable for money laundering during the preceding 5-year period.

The Committee adopted, by voice vote, a motion by Mr. Bereuter to authorize the Chairman to offer such motions as may be necessary in the House of Representatives to go to conference with the Senate.

## 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). 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(l)(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, June 25, 1998.*

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. 4005, the Money Laundering Deterrence Act of 1998.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are John R. Righter and Mark Grabowicz. The staff contact for the estimated impact on state, local, and tribal governments is Marc Nicole, and the contact for the estimated impact on the private sector is Jean Wooster.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 4005—The Laundering Deterrence Act of 1998*

Summary: H.R. 4005 would amend Title 31 of the U.S. Code so as to help federal agencies detect and prevent financial crimes. Subject to the availability of appropriated funds, CBO estimates that implementing H.R. 4005 would increase federal costs to combat money laundering by between $500,000 and $1 million in fiscal year 1999. For fiscal year 2000 and subsequent years, we estimate that implementing the bill would cost less than $500,000 a year, and could result in some savings. Because H.R. 4005 could increase the amounts collected from civil and criminal fines, as well as the amounts seized from forfeited assets, pay-as-you-go procedures would apply. CBO estimates that the net effect of such changes for pay-as-you-go purposes would be less than $500,000 annually.

H.R. 4005 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would preempt certain state laws. CBO estimates that no costs would result from these mandates. The bill would not have any other significant effects on the budgets of state, local, or tribal governments.

H.R. 4005 also would impose private-sector mandates on independent public accountants and financial institutions. CBO estimates that the annual direct costs of complying with those mandates would not exceed the statutory threshold for private-sector mandates ($100 million in 1996, adjusted annually for inflation).

Description of bill's major provisions: Under current law, certain private-sector entities are required to report cash transactions in excess of $10,000 to the Internal Revenue Service (IRS). H.R. 4005 would require them, instead, to file reports with the Department of the Treasury. The bill also would extend from one to two years—after a money laundering offense—the period of time during which the Department of Justice (DOJ) can seize property in bank accounts that are holding or have held laundered funds. H.R. 4005 also would increase the civil and criminal penalties for violating targeting orders and certain recordkeeping requirements, and would increase the criminal penalties for violating certain laws aimed at preventing money laundering in designated high-intensity areas. Finally, the bill would require the Treasury Department to submit a report to the Congress on private banking activities, develop criteria for designating countries as high-intensity areas for money laundering activities, and issue regulations to implement several of the bill's provisions.

*Estimated cost to the Federal Government*

*Spending subject to appropriation*

Subject to the availability of funds, CBO estimates that implementing H.R. 4005 would increase costs to combat money laundering by between $500,000 and $1 million in fiscal year 1999. For fiscal years 2000 and thereafter, we estimate that implementing the bill would increase annual costs by less than $500,000, with the possibility that it could result in annual savings (in some or all years). The estimate for 1999 reflects the costs for the Department of the Treasury to submit a report to the Congress on private banking activities, develop criteria for designating countries as high-risk areas for money laundering activities, and issue regulations to im-

plement several of the bill's provisions. The estimate for fiscal years 2000 and thereafter covers remaining annual costs, such as the cost of notifying insured depository institutions of foreign countries that have been designated as high-risk areas for money laundering activities.

The bill could also result in small savings to federal agencies. For instance, it would require that certain private-sector entities begin reporting cash transactions in excess of $10,000 to the Treasury rather than to the IRS, as required under current law. As a consequence, the reported information would become available for use by law enforcement agencies, possibly saving some investigation costs.

*Direct spending and revenues*

The bill would extend from one to two years the period of time in which DOJ can seize fungible property in bank accounts that are holding or have held laundered funds. By extending the period of time, the provision could lead to an increase in the amount of assets seized by the federal government each year, thus adding to government receipts. However, CBO has no basis for estimating the amount of any such increase. Because DOJ can spend amounts seized without further appropriation action, any increase in governmental receipts would be offset over time by an equivalent increase in direct spending.

Additionally, the bill would both clarify and increase the civil and criminal penalties for violating targeting orders and certain recordkeeping requirements. It would also increase the criminal penalties for violating certain laws aimed at preventing money laundering in designated high-intensity areas. CBO estimates that the additional collections of civil and criminal penalties, both of which are recorded in the budget as governmental receipts, would be less than $500,000 annually. Because collections of criminal fines are deposited in the Crime Victims Fund and spent in the following year, the provision would also increase direct spending. We estimate, however, that the additional direct spending also would be less than $500,000 annually.

Pay-as-you-go consideration: Section 252 of the Balanced Budget and Emergency Deficit Control Act sets up pay-as-you-go procedures for legislation affecting direct spending or receipts. H.R. 4005 would affect both direct spending and governmental receipts; however, CBO estimates that the effect of such changes would be less than $500,000 annually.

Estimated impact on State, local and tribal governments: In general, H.R. 4005 would help law enforcement agencies, including state and local agencies, identify and prosecute money launderers. In doing so, the bill would impose intergovernmental mandates as defined in UMRA. It would broaden an existing preemption of state law by limiting the civil liability of independent public accountants who audit financial institutions and disclose information about any public accountants who audit financial institutions and disclose information about any possible involvement in illegal activity. It would also shield financial institutions and their employees from liability in connection with certain employment references they may provide. Under UMRA such preemptions of state law are man-

dates. However, because the preemptions would simply limit the application of state law in some circumstances, CBO estimates that no costs would result from these mandates. The bill would not have any other significant effects on the budgets of state, local, or tribal governments.

Estimated impact on the private sector: H.R. 4005 would impose private-sector mandates, but CBO estimates that any costs would be negligible. Section 3 would prohibit financial institutions and independent public accountants that audit financial institutions and report any suspicious transactions to a government agency from disclosing any information included in the report to any involved individual. CBO estimates that financial institutions and independent public accountants would not incur any additional costs in complying with this mandate.

Section 12 would require that financial institutions maintain all accounts so that the name of the account holder and the number of the account are associated with all account activity of the account holder. That information would also be required to be available for regulatory review and law enforcement. According to representatives from the banking industry and the Treasury Department, most financial institutions currently have this information. This mandate would minimally increase financial institutions' record keeping responsibility, including the retention and retrieval of required information.

Section 9 would require that the Treasury Department issue "Know Your Customer" regulations for financial institutions within 120 days after the enactment date of H.R. 4005. "Know Your Customer" policies allow banks to establish and maintain procedures to identify their customers and to understand the sources of funds and the normal and expected transactions of their customers. Those provisions are included in the Bank Secrecy Act, and the Treasury Department is in the process of developing regulations to implement them. CBO concludes that section 9 would not impose a new mandate on financial institutions.

Estimate prepared by: Federal costs: John R. Righter and Mark Grabowicz; Impact on State, Local, and Tribal governments: Marc Nicole; and Impact on the Private Sector: Jean Wooster.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

## COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON COMMERCE,
*Washington, DC, June 25, 1998.*

Hon. JAMES A. LEACH,
*Chairman, Committee on Banking and Financial Services, Rayburn House Office Building, Washington, DC.*

DEAR CHAIRMAN LEACH: It is my understanding that the Committee on Banking and Financial Services is prepared to file reports on two bills in which the Committee on Commerce has an interest: H.R. 4005, the Money Laundering Deterrence Act of 1998; and H.R. 1756, the Money Laundering and Financial Crimes Strategy Act of 1998.

The Commerce Committee's interest in H.R. 4005 arises in Section 9 of the bill, entitled "Promulgation of 'Know Your Customer' Regulations," which would require the Secretary of the Treasury to promulgate "know your customer" regulations for "financial institutions." Because the legislation does not define the term "financial institutions," this broad term could be interpreted to include such individuals and entities as securities brokers and dealers, investment companies, and investment advisers. In fact, such an interpretation is likely given the fact that the term "financial institutions" is specifically defined to include securities brokers and dealers and investment companies in Section 5312(a)(2) of Title 31 of the United States Code.

As you may know, securities brokers and dealers, investment companies, and investment advisers are already subject to extensive "know your customer" regulations under the Federal securities laws and regulations issued under those laws, including the regulations of self-regulatory organizations. These regulations fall within the jurisdiction of the Committee on Commerce pursuant to Rule X of the Rules of the House of Representatives. I am concerned that the mandate in Section 9 of H.R. 4005 would result in a whole new set of "know your customer" regulations which are either duplicative of, or inconsistent with, existing regulations which apply to brokers, dealers, and others subject to the Federal securities laws.

In order to avoid such regulatory inconsistency and overlap, it is my understanding that you have agreed to offer an amendment to H.R. 4005 that would add the following language after the first sentence of Section 9:

> As used in this section, the term "financial institutions" does not include a broker, dealer, investment company, or investment adviser, as such terms are defined in the Securities Exchange Act of 1934.

With respect to H.R. 1756, Section 2 of the legislation amends Chapter 53 of Title 31 of the United States Code to direct the Secretary of the Treasury to "regularly review enforcement efforts under this subchapter and other provisions of law and, when appropriate, modify existing regulations or prescribe new regulations for purposes of preventing such criminal activity. * * *" I am concerned that such a broad mandate could be interpreted to authorize the Secretary of the Treasury to review enforcement actions under the Federal securities laws or to modify regulations promulgated pursuant to the Federal securities laws, or to grant to the Secretary new or additional authority to prescribe regulations applicable to entities that are regulated pursuant to the Federal securities laws.

It is my understanding that you do not intend this language of H.R. 1756 to require or invite the Treasury Secretary to conduct a review of enforcement actions and activities pursuant to the Federal securities laws, or to grant to the Secretary any new or additional authority to prescribe regulations applicable to entities that are regulated pursuant to the Federal securities laws. It is further my understanding that you have agreed to clarify, in a statement on the Floor of the House of Representatives during consideration

of the bill, that it is not your intent for this language to grant the Secretary of the Treasury any such new or additional authority, or to require or encourage the Secretary of the Treasury to review enforcement actions under the Federal securities laws or to modify, or recommend the modification of, regulations promulgated under the Federal securities laws.

I recognize your interest in moving these bills expeditiously to the House floor and, in consideration of the agreements described above, I would commit not to seek a sequential referral of either bill. By agreeing not to assert its jurisdiction over either bill, the Commerce Committee does not waive its jurisdiction over these bills or similar bills. Furthermore, the Committee reserves its prerogative to seek representation on any House-Senate conference that may be convened on either bill. Finally, I would ask that a copy of this letter and your response be included in the Banking Committee's reports on H.R. 4005 and H.R. 1756.

I appreciate your cooperation in accommodating the interests of the Commerce Committee.

Sincerely,

TOM BLILEY, *Chairman.*

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HOUSE OF REPRESENTATIVES,
COMMITTEE ON BANKING AND FINANCIAL SERVICES,
*Washington, DC, June 25, 1998.*

Hon. TOM BLILEY,
*Chairman, Committee on Commerce,*
*Rayburn House Office Building, Washington, DC.*

DEAR TOM: I have received your letter of June 25, 1998, concerning H.R. 4005 and H.R. 1756, two bills which the Committee on Banking and Financial Services on June 11, 1998, voted to favorably report to the House. In your letter you indicate that the Committee on Commerce would agree not to seek a referral of H.R. 4005 if section 9 of that legislation is amended to exclude securities firms, investment companies and investment advisers and of H.R. 1756 if the legislative history of that bill is clarified to indicate that the Secretary of the Treasury is not granted any new or additional authority to prescribe regulations for entities that are regulated pursuant to Federal securities laws. Without conceding to any jurisdictional claim of the Commerce Committee over these two bills, I would agree to seek the changes outlined in your letter and as described below.

H.R. 4005, among other things, would increase the tools available to law enforcement authorities to combat money laundering, while H.R. 1756 would establish a coordinated government-wide effort against money laundering. As noted in your letter, section 9 of H.R. 4005, directs the Secretary of the Treasury to promulgate "Know Your Customer" regulations for financial institutions within 120 days after enactment. Under the Bank Secrecy Act (BSA), the Treasury Department already has broad authority to develop rules and regulations that would require banks, securities firms and other money transmitters and intermediaries—all defined as financial institutions under the BSA—to develop procedures and policies to better identify the true ownership of a customer's accounts in

order to protect the institution from being victimized by money launderers or other perpetrators of financial crimes. Section 9 merely imposes a specified timeline on promulgation of these regulations.

Your letter indicates that the Committee on Commerce has concerns over how these regulations may affect the securities markets and the "Know Your Customer" and suitability requirements already imposed on securities firms by the exchanges and other regulatory bodies. Even though extant "Know Your Customer" requirements imposed on securities firms are designed more to protect the customer rather than the financial institution (while those contemplated in H.R. 4005 are primarily intended to preserve the integrity of financial institutions whose customers seek to use them for money laundering purposes) it would be my intent to support and seek the amendment provided for in your letter.

My agreement to such an amendment to section 9 of H.R. 4005, however, should not be construed to limit the existing statutory authority of the Secretary of the Treasury to promulgate regulations applicable to "financial institutions," as that term is defined in the BSA. Nor should exclusion of securities firms, investment companies and investment advisers from section 9 be interpreted as precluding the Secretary of the Treasury from promulgating "Know Your Customer" regulations applicable to such firms, after appropriate consultation with other Federal financial regulatory agencies regarding the interplay and potential overlap between regulations of the kind contemplated by H.R. 4005 and the requirements imposed by existing securities laws and regulations.

With regard to H.R. 1756, you correctly note that this legislation should not be interpreted as granting the Secretary of the Treasury any new or additional authority over Federal securities laws. Accordingly, I will agree to insert in my floor statement the clarification outlined in your letter. Finally pursuant to your request a copy of your letter and my response will be included in the Committee's reports on these two bills.

Thanks for you cooperation in this matter.

Sincerely,

JAMES A. LEACH, *Chairman.*

## SECTION-BY-SECTION ANALYSIS

### SECTION 1. SHORT TITLE

"Money Laundering Deterrence Act of 1998".

### SECTION 2. FINDINGS AND PURPOSES

The bill contains seven "findings" drawn largely from hearings held over the last two years by the Committee and the Subcommittee on General Oversight and Investigations. The bill also notes three purposes; (1) to provide the law enforcement community with the necessary legal authority to combat money laundering; (2) to broaden the law enforcement community's access to transactional information already being collected by the government; and (3) to expedite the issuance by the Secretary of the Treasury of regulations designed to deter money laundering activities at certain types of financial institutions.

SECTION 3. PROVISIONS RELATING TO THE REPORTING OF SUSPICIOUS ACTIVITIES

This section of the bill, comprised of four subsections, amends existing suspicious activity reporting requirements outlined in the Bank Secrecy Act. The amendments are designed to facilitate the flow of information regarding suspicious transactions among law enforcement and financial regulatory agencies. Subsection (a) extends the "safe harbor" provisions of 31 U.S.C. § 5318 to independent public accountants who file Suspicious Activity Reports. Extending immunity from civil liability to accountants advances the underlying purposes of the Bank Secrecy Act, by encouraging disclosures of suspicious activities uncovered in the course of audits and routine examinations of a financial institution's books and records. Subsection (b) clarifies existing statutory language limiting the circumstances under which the filing of a Suspicious Activity Report may be disclosed. Subsection (c) provides financial institutions with immunity from liability when making employment references that include suspicions of a prospective employee's possible involvement in a violation of law or regulation, unless such suspicions are known by the financial institution to be false or the institution acts with malice or reckless disregard for the truth in making such a reference. The financial institution is not permitted under this subsection to disclose the fact that a Suspicious Activity Report has been filed, or that the information included in an employment reference was the subject of a Suspicious Activity Report. Subsection (d) makes Suspicious Activity Reports available to self-regulatory organizations as defined by the Securities and Exchange Act of 1934.

SECTION 4. EXPANSION OF SCOPE OF SUMMONS POWER

Under the current law, summons power under 31 U.S.C. § 5318(b)(1) is limited to "investigations for the purpose of civil enforcement" of the Bank Secrecy Act. This section expands the scope of the summons authority to examinations to determine compliance with the Bank Secrecy Act, as well as investigations relating to reports filed pursuant to the Act. The expanded summons authority granted to the Secretary of the Treasury under this section is particularly needed in the case of non-depository institutions whose activities are not subject to regulatory oversight. However, with respect to depository institutions subject to regular examinations, the Committee expects that the Secretary of the Treasury will coordinate the use of its expanded authority over these institutions with the appropriate Federal banking regulators.

SECTION 5. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORD-KEEPING REQUIREMENTS

This section clarifies existing statutory language making it illegal to violate reporting requirements mandated by a geographic targeting order issued by the Secretary of the Treasury or the funds transfer record-keeping rules.

SECTION 6. REPEAL OF CERTAIN REPORTING REQUIREMENTS

This section eliminates the obligation of the Secretary of the Treasury to report to Congress on the status of states' adoption of uniform laws regulating money transmitters. This directive has been rendered unnecessary by the Treasury Department's recently promulgated regulations for Money Services Businesses, which include money transmitters.

SECTION 7. LIMITED EXEMPTION FROM PAPERWORK REDUCTION ACT

This section exempts Bank Secrecy Act reporting requirements, including those imposed by geographic targeting orders, from consideration under the Paperwork Reduction Act.

SECTION 8. TRANSFER OF REPORTING REQUIREMENTS FROM SECTION 6050I OF THE INTERNAL REVENUE CODE TO TITLE 31, UNITED STATES CODE [1]

This section transfers from the Internal Revenue Code to the Bank Secrecy Act the requirement that any person engaged in a trade or business (other than financial institutions required to report under the Bank Secrecy Act) file a report with the Federal government on cash transactions in excess of $10,000. Reports filed pursuant to this requirement provide law enforcement authorities with a paper trail that can, among other things, help identify a lifestyle that is not commensurate with an individual's known sources of legitimate income.

Under current law, non-financial institutions are required to report cash transactions exceeding $10,000 to the Internal Revenue Service on IRS Form 8300. Because the requirement that such reports be filed is contained in the Internal Revenue Code, Form 8300 information is considered tax return information, and, as such, may not be disclosed to any persons or used in any manner not authorized by the Internal Revenue Code. Authorized disclosures of Form 8300 information are subject to the procedural and record-keeping requirements of section 6103 of the Internal Revenue Code. For example, section 6103(p)(4)(E) requires agencies seeking Form 8300 information to file a report with the Secretary of the Treasury that describes the procedures established and utilized by the agency for ensuring the confidentiality of the information. IRS requires that agencies requesting Form 8300 information file a "Safeguard Procedures Report" which must be approved by the IRS before any such information can be released.

While the IRS uses Form 8300 to identify individuals who may be engaged in tax evasion, the information collected on the form can also be useful to other law enforcement agencies investigating other financial crimes, including money laundering. Form 8300 information can be instrumental in helping law enforcement authorities trace cash payments by drug traffickers and other criminals for luxury cars, jewelry, and other expensive merchandise. Because of the restrictions on their dissemination outlined above, however, Form 8300s are not nearly as accessible to law enforcement au-

[1] This portion of the section-by-section analysis draws extensively upon work conducted by the General Accounting Office in the 105th Congress at the request of Chairman Bachus, Chairman of the Subcommittee on General Oversight and Investigations.

thorities as the various reports mandated by the Bank Secrecy Act, which can typically be retrieved electronically from a database maintained by the Treasury Department. The differential access to the two kinds of reports is made anomalous by the fact that Form 8300 elicits much the same information that is required to be disclosed by the Bank Secrecy Act. For example, just as Form 8300 seeks the name, address, and social security number of a customer who engages in a cash transaction exceeding $10,000 with a trade or business, Currency Transaction Reports (CTRs) mandated by the Bank Secrecy Act require the same information to be reported on a cash transaction exceeding $10,000 between a financial institution and its customer.

Congress has sought in the past to ease the restrictions imposed by the Internal Revenue Code on law enforcement's access to Form 8300 information. The Anti-Drug Abuse Act of 1988 (P.L. 100–690) included a special temporary rule permitting IRS to disclose Form 8300 information to other Federal agencies for the purpose of administering statutes unrelated to tax administration. The special rule, originally scheduled to expire in 1990, was extended for two years before lapsing in 1992.

Codification of the temporary rule in effect from 1988 to 1992 ensures that the entire Federal law enforcement community—not just tax agents—will have access to information that has proven to be beneficial in detecting attempts by criminal elements to launder the proceeds of their illegal activities. It is the Committee's expectation that the IRS will continue to devote resources to the administration and enforcement of the reporting requirements applicable to non-financial trades or businesses.

### SECTION 9. PROMULGATION OF "KNOW YOUR CUSTOMER" REGULATIONS

This section mandates that within 120 days of enactment of the legislation, the Secretary of the Treasury shall promulgate "Know Your Customer" regulations for financial institutions. The regulations, which have been the subject of lengthy discussion and study among Federal banking and financial regulatory agencies, including the Treasury Department, the Federal Reserve Board of Governors, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, are intended to assist financial institutions in verifying that their customers' funds are derived from legitimate sources. By requiring the Secretary of the Treasury to promulgate these regulations by a date certain, the Committee does not intend to preclude any supervisory agency for any financial institution from promulgating "Know Your Customer" regulations of its own. For example, testimony before the Committee on June 11, 1998, indicated that both the Board of Governors of the Federal Reserve and the Office of the Comptroller of the Currency will likely be in a position to issue such regulations for depository institutions that they regulate prior to the expiration of the 120-day period contemplated by this provision. The Committee is supportive of these efforts.

SECTION 10. FUNGIBLE PROPERTY IN BANK ACCOUNTS

Vigorous enforcement of laws authorizing the seizure of the proceeds of illicit activity are an integral part of any effective strategy for combating money laundering. 18 U.S.C. § 984, first enacted as part of the Annunzio-Wylie Anti-Money Laundering Act of 1992, provides that all bank deposits are fungible, and thus authorizes the forfeiture of money held in the bank account of a criminal actor without requiring the government to prove that the money in the account on one day is the "same money" as was in the account on a prior occasion. This section of the legislation amends 18 U.S.C. § 984 by extending the statute of limitations applicable in such forfeiture actions from one to two years, and making other clarifying changes.

The amendment was endorsed by the Department of Justice in testimony before the Committee on June 11, 1998. Mary Lee Warren, Deputy Assistant Attorney General for the Criminal Division, pointed out that investigations of money laundering offenses are often complex and last for several years. Under the current statute of limitations, the government can only avail itself of the fungibility provisions of 18 U.S.C. § 984 if it initiates a forfeiture action within one year of the underlying money laundering offense. By extending the limitations period to two years, this section strengthens the government's ability to recover the proceeds of illicit activity.

SECTION 11. REPORT ON PRIVATE BANKING ACTIVITIES

This provision requires the Secretary of the Treasury, in consultation with "federal banking agencies" and within one year of enactment of this legislation, to prepare a report on the nature and extent of private banking activities in the U.S.; regulatory efforts to monitor private banking activities and ensure that they are conducted in compliance with the Bank Secrecy Act; and policies and procedures of depository institutions that are designed to ensure that private banking activities are conducted in compliance with the Bank Secrecy Act. This section defines "private banking activities" to include "personalized services such as money management, financial advice, and investment services that are provided to clients with high net worth and are not provided generally to all clients of the institution." For purposes of this section, the term "federal banking agencies" is intended to have the meaning given to such term in section 3(z) of the Federal Deposit Insurance Act, and therefore includes the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, and the Federal Deposit Insurance Corporation.

In preparing the report mandated by this section, the Treasury Department and the federal banking agencies should consult with the General Accounting Office, which recently completed an extensive review of private banking activities in the United States and the vulnerability of such activities to money laundering, pursuant to a March 5, 1997, request by Mr. Bachus, Chairman of the Subcommittee on General Oversight and Investigations.

SECTION 12. AVAILABILITY OF CERTAIN ACCOUNT INFORMATION

This section requires the Secretary of the Treasury to prescribe regulations requiring financial institutions to maintain all accounts in such a way as to ensure that the name of an account holder and the number of the account are associated with all account activity of the account holder, and to ensure that all such information is available for purposes of account supervision and law enforcement.

In making rules pursuant to this provision, the Secretary of the Treasury should limit only the use of those accounts within a financial institution that mask the activities or identity of one or more of a financial institution's clients. The provision is not intended in any way to interfere with the normal correspondent or clearing relationships among financial institutions. For example, the provision is not intended to affect in any way accounts at one financial institution held for the benefit of customers of other brokers, dealers, or investment advisers registered with the Securities and Exchange Commission. In clearing relationships among securities firms, at least one financial institution in a chain of institutions involved with an account maintains the account holder and account activity information, and the provision is not intended to affect these accounts. Similarly, the provision is not intended to affect suspense accounts of broker-dealers where funds whose ownership is being researched are held, or the various bulk accounts maintained for financing or other legitimate business purposes by firms registered with the SEC.

SECTION 13. SENSE OF THE CONGRESS

This section expresses the sense of the Congress that the Secretary of the Treasury should make available to all Federal, State and local law enforcement agencies and financial regulatory agencies the full contents of the electronic database of reports required to be filed under the Bank Secrecy Act.

SECTION 14. DESIGNATION OF FOREIGN HIGH INTENSITY MONEY LAUNDERING AREAS

This section directs the Secretary of the Treasury, in consultation with appropriate Federal law enforcement authorities, to develop criteria by which to identify areas outside the United States in which money laundering activities are concentrated, and to designate any areas so identified as foreign high intensity money laundering areas. The Committee recognizes that the Federal government, including the Department of the Treasury, already invests significant resources in identifying those foreign countries that serve as safe havens for money laundering. The International Narcotics Strategy Control Report, published annually by the Department of State, is a good example of the government's efforts in this regard. It is the Committee's intention that the Secretary of the Treasury make full use of such reports—and any other relevant information available elsewhere in the executive branch—in making the designations mandated by this section.

SECTION 15. DOUBLING OF CRIMINAL PENALTIES FOR VIOLATIONS OF LAWS AIMED AT PREVENTING MONEY LAUNDERING IN FOREIGN HIGH INTENSITY MONEY LAUNDERING AREAS

This section authorizes the doubling of criminal penalties for Bank Secrecy Act violations committed with respect to a transaction involving a person in, a relationship maintained in, or transport of a monetary instrument involving a foreign country known to have been designated as a foreign high intensity money laundering area pursuant to the preceding section.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 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):

## TITLE 31, UNITED STATES CODE

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## CHAPTER 53—MONETARY TRANSACTIONS

SUBCHAPTER I—CREDIT AND MONETARY EXPANSION

Sec.
5301. Buying obligations of the United States Government.

* * * * * * *

SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

5311. Declaration of purpose.
5312. Definitions and application.
5313. Reports on domestic coins and currency transactions.
*5313A. Reports relating to coins and currency received in nonfinancial trade or business.*

* * * * * * *

*5327. Designation of foreign high intensity money laundering areas.*

* * * * * * *

## SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

* * * * * * *

### § 5312. Definitions and application

(a) In this subchapter—
(1) * * *

* * * * * * *

(3) "monetary instruments" means—
(A) * * *

* * * * * * *

(C) as the Secretary of the Treasury shall provide by regulation for purposes of [section 5316,] *sections 5313A and 5316,* checks, drafts, notes, money orders, and other

similar instruments which are drawn on or by a foreign financial institution and are not in bearer form.

*(4) NONFINANCIAL TRADE OR BUSINESS.—The term "nonfinancial trade or business" means any trade or business other than a financial institution that is subject to the reporting requirements of section 5313 and regulations prescribed under such section.*

**[**(4)**]** *(5)* "person", in addition to its meaning under section 1 of title 1, includes a trustee, a representative of an estate and, when the Secretary prescribes, a governmental entity.

**[**(5)**]** *(6)* "United States" means the States of the United States, the District of Columbia, and, when the Secretary prescribes by regulation, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, the Trust Territory of the Pacific Islands, a territory or possession of the United States, or a military or diplomatic establishment.

* * * * * * *

***§ 5313A. Reports relating to coins and currency received in nonfinancial trade or business***

*(a) COIN AND CURRENCY RECEIPTS OF MORE THAN $10,000.—Any person—*

*(1) who is engaged in a trade or business; and*

*(2) who, in the course of such trade or business, receives more than $10,000 in coins or currency in 1 transaction (or 2 or more related transactions),*

*shall file a report described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.*

*(b) FORM AND MANNER OF REPORTS.—A report is described in this subsection if such report—*

*(1) is in such form as the Secretary may prescribe;*

*(2) contains—*

*(A) the name, address, and taxpayer identification number of the person from whom the coins or currency was received;*

*(B) the amount of coins or currency received;*

*(C) the date and nature of the transaction; and*

*(D) such other information as the Secretary may prescribe.*

*(c) EXCEPTIONS.—*

*(1) AMOUNTS RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to amounts received in a transaction reported under section 5313 and regulations prescribed under such section.*

*(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.*

*(d) CURRENCY INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—*

*(1) IN GENERAL.—For purposes of this section, the term "currency" includes—*

*(A) foreign currency; and*

*(B) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.*

*(2) SCOPE OF APPLICATION.—Paragraph (1)(B) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), or (S) of section 5312(a)(2).*

*(e) COINS OR CURRENCY RECEIVED BY CRIMINAL COURT CLERKS.—*

*(1) IN GENERAL.—Every clerk of a Federal or State criminal court who receives more than $10,000 in coins or currency as bail for any individual charged with a specified criminal offense shall file a report described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.*

*(2) REPORT.—A report is described in this paragraph if such report—*

*(A) is in such form as the Secretary may prescribe; and*

*(B) contains—*

*(i) the name, address, and taxpayer identification number of—*

*(I) the individual charged with the specified criminal offense; and*

*(II) each person posting the bail (other than a person licensed as a bail bondsman);*

*(ii) the amount of coins or currency received;*

*(iii) the date the coins or currency was received; and*

*(iv) such other information as the Secretary may prescribe.*

*(3) SPECIFIED CRIMINAL OFFENSE.—For purposes of this subsection, the term "specified criminal offense" means—*

*(A) any Federal criminal offense involving a controlled substance;*

*(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code);*

*(C) money laundering (as defined in section 1956 or 1957 of such title); and*

*(D) any State criminal offense substantially similar to an offense described in subparagraph (A), (B), or (C).*

*(4) INFORMATION TO FEDERAL PROSECUTORS.—Each clerk required to include in a report under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.*

*(5) INFORMATION TO PAYORS OF BAIL.—Each clerk required to file a report under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person*

*whose name is required to be set forth in such report by reason of paragraph (2)(B)(i)(II) a written statement showing—*

*(A) the name and address of the clerk's office required to file the report; and*

*(B) the aggregate amount of coins and currency described in paragraph (1) received by such clerk.*

* * * * * * *

**§ 5317. Search and forfeiture of monetary instruments**

(a) * * *

* * * * * * *

(c) If a report required under section 5316 with respect to any monetary instrument is not filed (or if filed, contains a material omission or misstatement of fact), the instrument and any interest in property, including a deposit in a financial institution, traceable to such instrument may be seized and forfeited to the United States Government. Any property, real or personal, involved in a transaction or attempted transaction in violation of section ⟦5324(b)⟧ *5324(c)*, or any property traceable to such property, may be seized and forfeited to the United States Government. A monetary instrument transported by mail or a common carrier, messenger, or bailee is being transported under this subsection from the time the instrument is delivered to the United States Postal Service, common carrier, messenger, or bailee through the time it is delivered to the addressee, intended recipient, or agent of the addressee or intended recipient without being transported further in, or taken out of, the United States.

* * * * * * *

**§ 5318. Compliance, exemptions, and summons authority**

(a) GENERAL POWERS OF SECRETARY.—The Secretary of the Treasury may (except under section 5315 of this title and regulations prescribed under section 5315)—

(1) except as provided in subsection (b)(2), delegate duties and powers under this subchapter to an appropriate supervising agency and the United States Postal Service;

(2) require a class of domestic financial institutions *or nonfinancial trades or businesses* to maintain appropriate procedures to ensure compliance with this subchapter and regulations prescribed under this subchapter or to guard against money laundering;

(3) examine any books, papers, records, or other data of domestic financial institutions *or nonfinancial trades or businesses* relevant to the recordkeeping or reporting requirements of this subchapter;

(4) summon a financial institution *or nonfinancial trade or business*, an officer or employee of a financial institution (including a former officer or employee), or any person having possession, custody, or care of the reports and records required under this subchapter, to appear before the Secretary of the Treasury or his delegate at a time and place named in the summons and to produce such books, papers, records, or other

data, and to give testimony, under oath, as may be relevant or material to an investigation described in subsection (b);

* * * * * * *

(b) LIMITATIONS ON SUMMONS POWER.—

(1) SCOPE OF POWER.—The Secretary of the Treasury may take any action described in paragraph (3) or (4) of subsection (a) only in connection with *examinations to determine compliance with the requirements of this subchapter, section 21 of the Federal Deposit Insurance Act, and chapter 2 of Public Law 91–508 and regulations prescribed pursuant to such provisions, investigations relating to reports filed by financial institutions or other persons pursuant to any such provision or regulation, and* investigations for the purpose of civil enforcement of violations of this subchapter, section 21 of the Federal Deposit Insurance Act, section 411 of the National Housing Act, or chapter 2 of Public Law 91–508 (12 U.S.C. 1951 et seq.) or any regulation under any such provision.

(2) AUTHORITY TO ISSUE.—A summons may be issued under subsection (a)(4) only by, or with the approval of, the Secretary of the Treasury or a supervisory level delegate of the Secretary of the Treasury.

(c) ADMINISTRATIVE ASPECTS OF SUMMONS.—

(1) PRODUCTION AT DESIGNATED SITE.—A summons issued pursuant to this section may require that books, papers, records, or other data stored or maintained at any place be produced at any designated location in any State or in any territory or other place subject to the jurisdiction of the United States not more than 500 miles distant from any place where the financial institution *or nonfinancial trade or business* operates or conducts business in the United States.

* * * * * * *

(f) WRITTEN AND SIGNED STATEMENT REQUIRED.—No person shall qualify for an exemption under subsection (a)(5) unless the relevant financial institution *or nonfinancial trade or business* prepares and maintains a statement which—

(1) describes in detail the reasons why such person is qualified for such exemption; and

(2) contains the signature of such person.

(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 regulation 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, any director, officer, employee, or agent of any financial institution, or any independent public accountant who audits any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to an appropriate government agency—*

*(i) the financial institution, director, officer, employee, agent, or accountant may not notify any person involved in the transaction that the transaction has been reported and may not disclose any information included in the report to any such person; and*

*(ii) any other person, including any officer or employee of any government, who has any knowledge that such report was made may not disclose to any person involved in the transaction that the transaction has been reported or any information included in the report.*

*(B) COORDINATION WITH PARAGRAPH (5).—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 paragraph (5) in response to a request from another financial institution, 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.—Notwithstanding any other provision of law—*

*(i) any financial institution that—*

*(I) makes a disclosure of any possible violation of law or regulation to an appropriate government agency; or*

*(II) makes a disclosure pursuant to this subsection or any other authority;*

*(ii) any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure; and*

*(iii) any independent public accountant who audits any such financial institution and makes a disclosure described in clause (i),*

*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 thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to notify the person who is the subject of such disclosure or any other person identified in the disclosure.*

*(B) EXCEPTION.—Subparagraph (A) shall not apply to a disclosure or communication required under Federal securi-*

*ties law, other than provisions of law that specifically refer to the Currency and Foreign Transactions Reporting Act of 1970.*

* * * * * * *

*(5) EMPLOYMENT REFERENCES MAY INCLUDE SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—*

*(A) IN GENERAL.—Notwithstanding any other provision of law and subject to subparagraph (B) of this paragraph and paragraph (2)(C), any financial 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 financial institution in response to a request from such other institution, information concerning the possible involvement of such institution-affiliated party in any suspicious transaction relevant to a possible violation of law or regulation.*

*(B) LIMIT ON LIABILITY FOR DISCLOSURES.—A financial institution, 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, any constitution, law, or regulation of any State or political subdivision thereof, or under any contract or other legally enforceable agreement (including any arbitration agreement), for any disclosure under subparagraph (A), to the extent—*

*(i) the disclosure does not contain information which the institution, director, officer, employee, agent, or accountant knows to be false; and*

*(ii) the institution, director, officer, employee, agent, or accountant has not acted with malice or with reckless disregard for the truth in making the disclosure.*

*(C) INSTITUTION-AFFILIATED PARTY DEFINED.—For purposes of this paragraph, the term "institution-affiliated party" has the meaning given to such term in section 3(u) of the Federal Deposit Insurance Act, except such section 3(u) shall be applied by substituting "financial institution" for "insured depository institution".*

(h) ANTI-MONEY LAUNDERING PROGRAMS.—

(1) * * *

* * * * * * *

*(3) AVAILABILITY OF CERTAIN ACCOUNT INFORMATION.—The Secretary of the Treasury shall prescribe regulations under this subsection which require financial institutions to maintain all accounts in such a way as to ensure that the name of an account holder and the number of the account are associated with all account activity of the account holder, and to ensure that all such information is available for purposes of account supervision and law enforcement.*

**§ 5319. Availability of reports**

The Secretary of the Treasury shall make information in a report filed under section 5313, [5314, or 5316] *5313A, 5314, 5316, or 5318(g)* of this title available to an agency, including any State fi-

nancial institutions supervisory agency, on request of the head of the agency. The report shall be available for a purpose consistent with those sections or a regulation prescribed under those sections. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes. However, a report and records of reports *under section 5313, 5313A, 5314, 5316, or 5318(g)* are exempt from disclosure under section 552 of title 5. *The Secretary of the Treasury may permit the dissemination of information in any such reports to any self-regulatory organization (as defined in section 3(a)(26) of the Securities Exchange Act of 1934), if the Securities and Exchange Commission determines that such dissemination is necessary or appropriate to permit such organization to perform its function under the Securities Exchange Act of 1934 and regulations prescribed under such Act.*

* * * * * * *

**§ 5321. Civil penalties**

(a)(1) A domestic financial institution *or nonfinancial trade or business*, and a partner, director, officer, or employee of a domestic financial institution *or nonfinancial trade or business*, 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 under 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.

* * * * * * *

(6) NEGLIGENCE.—

(A) IN GENERAL.—The Secretary of the Treasury may impose a civil money penalty of not more than $500 on any financial institution *or nonfinancial trade or business* which negligently violates any provision of this subchapter or any regulation prescribed under this subchapter.

(B) PATTERN OF NEGLIGENT ACTIVITY.—If any financial institution *or nonfinancial trade or business* engages in a pattern of negligent violations of any provision of this subchapter or any regulation prescribed under this subchapter, the Secretary of the Treasury may, in addition to any penalty imposed under subparagraph (A) with respect to any such violation, impose a civil money penalty of not more than $50,000 on the financial institution *or nonfinancial trade or business*.

* * * * * * *

**§ 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 under 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 under 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.

* * * * * * *

*(d) The court may double the sentence of fine or imprisonment, or both, that would otherwise be imposed on a person for a violation described in subsection (a) or (b) if person commits the violation with respect to a transaction involving a person in, a relationship maintained for a person in, or a transport of a monetary instrument involving a foreign country, knowing that the foreign country is designated under section 5327(b) as a foreign high intensity money laundering area.*

* * * * * * *

**§ 5324. Structuring transactions to evade reporting requirement prohibited**

(a) DOMESTIC COIN AND CURRENCY TRANSACTIONS *INVOLVING FINANCIAL INSTITUTIONS*.—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*, the reporting 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 required by any 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 required by any 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* that contains a material omission or misstatement of fact; or

* * * * * * *

*(b) DOMESTIC COIN AND CURRENCY TRANSACTIONS INVOLVING NONFINANCIAL TRADES OR BUSINESSES.—No person shall for the purpose of evading the report requirements of section 5313A or any regulation prescribed under such section—*

*(1) cause or attempt to cause a nonfinancial trade or business to fail to file a report required under section 5313A or any regulation prescribed under such section;*

*(2) cause or attempt to cause a nonfinancial trade or business to file a report required under section 5313A or any regulation prescribed under such section that contains a material omission or misstatement of fact; or*

*(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with 1 or more nonfinancial trades or businesses.*

[(b)] *(c)* INTERNATIONAL MONETARY INSTRUMENT TRANSACTIONS.—No person shall, for the purpose of evading the reporting requirements of section 5316—

(1) fail to file a report required by section 5316, or cause or attempt to cause a person to fail to file such a report;

(2) file or cause or attempt to cause a person to file a report required under section 5316 that contains a material omission or misstatement of fact; or

(3) structure or assist in structuring, or attempt to structure or assist in structuring, any importation or exportation of monetary instruments.

[(c)] *(d)* CRIMINAL PENALTY.—

(1) IN GENERAL.—Whoever violates this section shall be fined in accordance with title 18, United States Code, imprisoned for not more than 5 years, or both.

(2) ENHANCED PENALTY FOR AGGRAVATED CASES.—Whoever violates this section 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 twice the amount provided in subsection (b)(3) or (c)(3) (as the case may be) of section 3571 of title 18, United States Code, imprisoned for not more than 10 years, or both.

* * * * * * *

### § 5326. Records of certain domestic coin and currency transactions

(a) IN GENERAL.—If the Secretary of the Treasury finds, upon the Secretary's own initiative or at the request of an appropriate Federal or State law enforcement official, that reasonable grounds exist for concluding that additional recordkeeping and reporting requirements are necessary to carry out the purposes of this subtitle and prevent evasions thereof, the Secretary may issue an order requiring any domestic financial institution *or nonfinancial trade or business* or group of domestic financial institutions *or nonfinancial trades or businesses* in a geographic area—

(1) to obtain such information as the Secretary may describe in such order concerning—

(A) any transaction in which such financial institution *or nonfinancial trade or business* is involved for the payment, receipt, or transfer of United States coins or currency (or such other monetary instruments as the Secretary may describe in such order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe; and

(B) any other person participating in such transaction;

(2) to maintain a record of such information for such period of time as the Secretary may require; and

(3) to file a report with respect to any transaction described in paragraph (1)(A) in the manner and to the extent specified in the order.

(b) AUTHORITY TO ORDER DEPOSITORY INSTITUTIONS TO OBTAIN REPORTS FROM CUSTOMERS.—

(1) IN GENERAL.—The Secretary of the Treasury may, by regulation or order, require any depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act)—

(A) to request any financial institution *or nonfinancial trade or business* (other than a depository institution) which engages in any reportable transaction with the depository institution to provide the depository institution with a copy of any report filed by the financial institution *or nonfinancial trade or business* under this subtitle with respect to any prior transaction (between such financial institution *or nonfinancial trade or business* and any other person) which involved any portion of the coins or currency (or monetary instruments) which are involved in the reportable transaction with the depository institution; and

(B) if no copy of any report described in subparagraph (A) is received by the depository institution in connection with any reportable transaction to which such subparagraph applies, to submit (in addition to any report required under this subtitle with respect to the reportable transaction) a written notice to the Secretary that the financial institution *or nonfinancial trade or business* failed to provide any copy of such report.

(2) REPORTABLE TRANSACTION DEFINED.—For purposes of this subsection, the term "reportable transaction" means any transaction involving coins or currency (or such other monetary instruments as the Secretary may describe in the regulation or order) the total amounts or denominations of which are equal to or greater than an amount which the Secretary may prescribe.

(c) NONDISCLOSURE OF ORDERS.—No financial institution *or nonfinancial trade or business* or officer, director, employee or agent of a financial institution *or nonfinancial trade or business* subject to an order under this section may disclose the existence of, or terms of, the order to any person except as prescribed by the Secretary.

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

### *§ 5327. Designation of foreign high intensity money laundering areas*

*(a) CRITERIA.—The Secretary of the Treasury, in consultation with appropriate Federal law enforcement agencies, shall develop criteria by which to identify areas outside the United States in which money laundering activities are concentrated.*

*(b) DESIGNATION.—The Secretary of the Treasury shall designate as a foreign high intensity money laundering area any foreign country in which there is an area which is identified, using the criteria developed under subsection (a), as an area in which money laundering activities are concentrated.*

*(c) NOTICE.—On the designation under subsection (b) of a country as a foreign high intensity money laundering area, the Secretary of the Treasury shall provide written notice to each insured depository institution (as defined in section 3(c)(2) of the Federal Deposit Insurance Act) and each depository institution holding company (as defined in section 3(w)(1) of such Act) that has control over an insured depository institution of the identity of the foreign country and include with the notice a written warning that there is a concentration of money laundering activities in the foreign country.*

### § 5328. Whistleblower protections

(a) PROHIBITION AGAINST DISCRIMINATION.—No financial institution *or nonfinancial trade or business* may discharge or otherwise discriminate against any employee with respect to compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to the request of the employee) provided information to the Secretary of the Treasury, the Attorney General, or any Federal supervisory agency regarding a possible violation of any provision of this subchapter or section 1956, 1957, or 1960 of title 18, or any regulation under any such provision, by the financial institution *or nonfinancial trade or business* or any director, officer, or employee of the financial institution *or nonfinancial trade or business*.

(b) ENFORCEMENT.—Any employee or former employee who believes that such employee has been discharged or discriminated against in violation of subsection (a) may file a civil action in the appropriate United States district court before the end of the 2-year period beginning on the date of such discharge or discrimination.

(c) REMEDIES.—If the district court determines that a violation has occurred, the court may order the financial institution *or nonfinancial trade or business* which committed the violation to—

(1) reinstate the employee to the employee's former position;

(2) pay compensatory damages; or

(3) take other appropriate actions to remedy any past discrimination.

* * * * * * *

(e) COORDINATION WITH OTHER PROVISIONS OF LAW.—This section shall not apply with respect to any financial institution *or nonfinancial trade or business* which is subject to section 33 of the Federal Deposit Insurance Act, section 213 of the Federal Credit Union Act, or section 21A(q) of the Home Owners' Loan Act (as added by

section 251(c) of the Federal Deposit Insurance Corporation Improvement Act of 1991).

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## SECTION 21 OF THE FEDERAL DEPOSIT INSURANCE ACT

SEC. 21. (a) * * *

* * * * * * *

(j) CIVIL PENALTIES.—

(1) PENALTY IMPOSED.—Any insured depository institution and any director, officer, or employee of an insured depository institution who willfully or through gross negligence violates, or any person who willfully causes such a violation, any regulation prescribed under subsection (b) shall be liable to the United States for a civil penalty of not more than **[**$10,000**]** *the greater of the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred or $25,000*.

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## ACT OF OCTOBER 26, 1970

AN ACT To amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in United States currency be reported to the Department of the Treasury, and for other purposes.

* * * * * * *

### § 125. Civil penalties

(a) For each willful or grossly negligent violation of any regulation under this chapter, the Secretary may assess upon any person to which the regulation applies, or any person willfully causing a violation of the regulation, and, if such person is a partnership, corporation, or other entity, upon any partner, director, officer, or employee thereof who willfully or through gross negligence participates in the violation, a civil penalty not exceeding **[**$10,000**]** *the greater of the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred or $25,000*.

* * * * * * *

### **[**§ 126. Criminal penalty

**[**Whoever willfully violates any regulation under this chapter shall be fined not more than $1,000 or imprisoned not more than one year, or both.

### **[**§ 127. Additional criminal penalty in certain cases

**[**Whoever willfully violates, or willfully causes a violation of any regulation under this chapter, section 21 of the Federal Deposit Insurance Act, or section 411 of the National Housing Act, where the violation is committed in furtherance of the commission of any violation of Federal law punishable by imprisonment for more than

one year, shall be fined not more than $10,000 or imprisoned not more than five years, or both.]

### *§ 126. Criminal penalty*

*A person willfully violating this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this chapter or such section, shall be fined not more than $250,000, or imprisoned for not more than five years, or both.*

### *§ 127. Additional criminal penalty in certain cases*

*A person willfully violating this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this chapter or such section, 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.*

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## SECTION 407 OF THE MONEY LAUNDERING SUPPRESSION ACT OF 1994

**SEC. 407. UNIFORM STATE LICENSING AND REGULATION OF CHECK CASHING, CURRENCY EXCHANGE, AND MONEY TRANSMITTING BUSINESSES.**

(a) * * *

* * * * * * *

(d) REPORT REQUIRED.—Not later than the end of the 3-year period beginning on the date of enactment of this Act and not later than the end of each of the first two 1-year periods beginning after the end of such 3-year period, the Secretary of the Treasury shall submit a report to the Congress containing the findings and recommendations of the Secretary in connection with the study under subsection [(c)] *(c)(2)*, together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate.

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## SECTION 3518 OF TITLE 44, UNITED STATES CODE

### § 3518. Effect on existing laws and regulations

(a) * * *

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(c)(1) Except as provided in paragraph (2), this chapter shall not apply to the collection of information—

(A) * * *

* * * * * * *

*(C) pursuant to regulations prescribed or orders issued by the Secretary of the Treasury under section 5318(h) or 5326 of title 31;*

[(C)] *(D)* by compulsory process pursuant to the Antitrust Civil Process Act and section 13 of the Federal Trade Commission Improvements Act of 1980; or

[(D)] *(E)* during the conduct of intelligence activities as defined in section 3.4(e) of Executive Order No. 12333, issued December 4, 1981, or successor orders, or during the conduct of cryptologic activities that are communications security activities.

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## TITLE 18, UNITED STATES CODE

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# PART I—CRIMES

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## CHAPTER 46—FORFEITURE

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### § 981. Civil forfeiture

(a)(1) Except as provided in paragraph (2), the following property is subject to forfeiture to the United States:

(A) Any property, real or personal, involved in a transaction or attempted transaction in violation of section [5313(a) or 5324(a) of title 31,] *5313(a) or 5313A of title 31, or subsection (a) or (b) of section 5324 of such title,* or of section 1956 or 1957 of this title, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.

* * * * * * *

### § 982. Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation of section 5313(a), *5313A,* 5316, or 5324 of title 31, or of section 1956, 1957, or 1960 of this title, shall order that the person forfeit to the United States any property, real or personal, involved in such offense, or any property traceable to such property. However, no property shall be seized or forfeited in the case of a violation of section 5313(a) of title 31 by a domestic financial institution examined by a Federal bank supervisory agency or a financial institution regulated by the Securities and Exchange Commission or a partner, director, or employee thereof.

* * * * * * *

### § 984. Civil forfeiture of fungible property

[(a) This section shall apply to any action for forfeiture brought by the Government in connection with any offense under section

1956, 1957, or 1960 of this title or section 5322 or 5324 of title 31, United States Code.]

*(a) This section applies only if the action for forfeiture was commenced by a seizure or an arrest in rem not later than 2 years after the offense that is the basis for the forfeiture.*

* * * * * * *

[(c) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be commenced more than 1 year from the date of the offense.

[(d)(1) No action pursuant to this section to forfeit property not traceable directly to the offense that is the basis for the forfeiture may be taken against funds held by a financial institution in an interbank account, unless the financial institution holding the account knowingly engaged in the offense.]

*(c)(1) Subsection (b) does not apply to an action against funds held by a financial institution in an interbank account unless the account holder knowingly engaged in the offense that is the basis for the forfeiture.*

(2) As used in this section, the term "interbank account" means an account held by one financial institution at another financial institution primarily for the purpose of facilitating customer transactions.

*(3) As used in this subsection, a "financial institution" includes a foreign bank, as defined in paragraph (7) of section 1(b) of the International Banking Act of 1978.*

*(d) Nothing in this section is intended to limit the ability of the Government to obtain the forfeiture of property under any statute where the property involved in the offense giving rise to the forfeiture or property traceable thereto is available for forfeiture.*

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## INTERNAL REVENUE CODE OF 1986

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# Subtitle F—Procedure and Administration

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## CHAPTER 61—INFORMATION AND RETURNS

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## Subchapter A—Returns and Records

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### PART III—INFORMATION RETURNS

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## Subpart B—Information Concerning Transactions with Other Persons

Sec. 6041. Information at source.

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[Sec. 6050I. Returns relating to cash received in trade or business, etc.]

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**[SEC. 6050I. RETURNS RELATING TO CASH RECEIVED IN TRADE OR BUSINESS, ETC.**

[(a) CASH RECEIPTS OF MORE THAN $10,000.—Any person—

[(1) who is engaged in a trade or business, and

[(2) who, in the course of such trade or business, receives more than $10,000 in cash in 1 transaction (or 2 or more related transactions),

shall make the return described in subsection (b) with respect to such transaction (or related transactions) at such time as the Secretary may by regulations prescribe.

[(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

[(1) is in such form as the Secretary may prescribe,

[(2) contains—

[(A) the name, address, and TIN of the person from whom the cash was received,

[(B) the amount of cash received,

[(C) the date and nature of the transaction, and

[(D) such other information as the Secretary may prescribe.

[(c) EXCEPTIONS.—

[(1) CASH RECEIVED BY FINANCIAL INSTITUTIONS.—Subsection (a) shall not apply to—

[(A) cash received in a transaction reported under title 31, United States Code, if the Secretary determines that reporting under this section would duplicate the reporting to the Treasury under title 31, United States Code, or

[(B) cash received by any financial institution (as defined in subparagraphs (A), (B), (C), (D), (E), (F), (G), (J), (K), (R), and (S) of section 5312(a)(2) of title 31, United States Code).

[(2) TRANSACTIONS OCCURRING OUTSIDE THE UNITED STATES.—Except to the extent provided in regulations prescribed by the Secretary, subsection (a) shall not apply to any transaction if the entire transaction occurs outside the United States.

[(d) CASH INCLUDES FOREIGN CURRENCY AND CERTAIN MONETARY INSTRUMENTS.—For purposes of this section, the term "cash" includes—

[(1) foreign currency, and

[(2) to the extent provided in regulations prescribed by the Secretary, any monetary instrument (whether or not in bearer form) with a face amount of not more than $10,000.

Paragraph (2) shall not apply to any check drawn on the account of the writer in a financial institution referred to in subsection (c)(1)(B).

[(e) STATEMENTS TO BE FURNISHED TO PERSONS WITH RESPECT TO WHOM INFORMATION IS REQUIRED.—Every person required to make a return under subsection (a) shall furnish to each person whose name is required to be set forth in such return a written statement showing—

[(1) the name, address, and phone number of the information contact of the person required to make such return, and

[(2) the aggregate amount of cash described in subsection (a) received by the person required to make such return.

The written statement required under the preceding sentence shall be furnished to the person on or before January 31 of the year following the calendar year for which the return under subsection (a) was required to be made.

[(f) STRUCTURING TRANSACTIONS TO EVADE REPORTING REQUIREMENTS PROHIBITED.—

[(1) IN GENERAL.—No person shall for the purpose of evading the return requirements of this section—

[(A) cause or attempt to cause a trade or business to fail to file a return required under this section,

[(B) cause or attempt to cause a trade or business to file a return required under this section that contains a material omission or misstatement of fact, or

[(C) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more trades or businesses.

[(2) PENALTIES.—A person violating paragraph (1) of this subsection shall be subject to the same civil and criminal sanctions applicable to a person which fails to file or completes a false or incorrect return under this section.

[(g) CASH RECEIVED BY CRIMINAL COURT CLERKS.—

[(1) IN GENERAL.—Every clerk of a Federal or State criminal court who receives more than $10,000 in cash as bail for any individual charged with a specified criminal offense shall make a return described in paragraph (2) (at such time as the Secretary may by regulations prescribe) with respect to the receipt of such bail.

[(2) RETURN.—A return is described in this paragraph if such return—

[(A) is in such form as the Secretary may prescribe, and

[(B) contains—

[(i) the name, address and TIN of—

[(I) the individual charged with the specified criminal offense, and

[(II) each person posting the bail (other than a person licensed as a bail bondsman),

[(ii) the amount of cash received,

[(iii) the date the cash was received, and

[(iv) such other information as the Secretary may prescribe.

[(3) SPECIFIED CRIMINAL OFFENSE.—For purposes of this subsection, the term "specified criminal offense" means—

[(A) any Federal criminal offense involving a controlled substance,

[(B) racketeering (as defined in section 1951, 1952, or 1955 of title 18, United States Code),

[(C) money laundering (as defined in section 1956 or 1957 of such title), and

[(D) any State criminal offense substantially similar to an offense described in subparagraph(A), (B), or (C).

[(4) INFORMATION TO FEDERAL PROSECUTORS.—Each clerk required to include on a return under paragraph (1) the information described in paragraph (2)(B) with respect to an individual described in paragraph (2)(B)(i)(I) shall furnish (at such time as the Secretary may by regulations prescribe) a written statement showing such information to the United States Attorney for the jurisdiction in which such individual resides and the jurisdiction in which the specified criminal offense occurred.

[(5) INFORMATION TO PAYORS OF BAIL.—Each clerk required to make a return under paragraph (1) shall furnish (at such time as the Secretary may by regulations prescribe) to each person whose name is required to be set forth in such return by reason of paragraph (2)(B)(i)(II) a written statement showing—

[(A) the name and address of the clerk's office required to make the return, and

[(B) the aggregate amount of cash described in paragraph (1) received by such clerk.]

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## Subchapter B—Miscellaneous Provisions

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**SEC. 6103. CONFIDENTIALITY AND DISCLOSURE OF RETURNS AND RETURN INFORMATION.**

(a) * * *

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(l) DISCLOSURE OF RETURNS AND RETURN INFORMATION FOR PURPOSES OTHER THAN TAX ADMINISTRATION.—

(1) * * *

* * * * * * *

[(15) DISCLOSURE OF RETURNS FILED UNDER SECTION 6050I.—The Secretary may, upon written request, disclose to officers and employees of—

[(A) any Federal agency,

[(B) any agency of a State or local government, or

[(C) any agency of the government of a foreign country, information contained on returns filed under section 6050I. Any such disclosure shall be made on the same basis, and subject to the same conditions, as apply to disclosures of information on reports filed under section 5313 of title 31, United States Code; except that no disclosure under this paragraph shall be made for purposes of the administration of any tax law.]

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(p) PROCEDURE AND RECORDKEEPING.—

(1) * * *

* * * * * * *

(3) RECORDS OF INSPECTION AND DISCLOSURE.—

(A) SYSTEM OF RECORDKEEPING.—Except as otherwise provided by this paragraph, the Secretary shall maintain a permanent system of standardized records or accountings of all requests for inspection or disclosure of returns and return information (including the reasons for and dates of such requests) and of returns and return information inspected or disclosed under this section. Notwithstanding the provisions of section 552a(c) of title 5, United States Code, the Secretary shall not be required to maintain a record or accounting of requests for inspection or disclosure of returns and return information, or of returns and return information inspected or disclosed, under the authority of subsections (c), (e), (h)(1), (3)(A), or (4), (i)(4), or (7)(A)(ii), (k)(1), (2), (6), or (8), (l)(1), (4)(B), (5), (7), (8), (9), (10), (11), (12), (13), (14), or **[**(15),**]** (m) or (n). The records or accountings required to be maintained under this paragraph shall be available for examination by the Joint Committee on Taxation or the Chief of Staff of such joint committee. Such record or accounting shall also be available for examination by such person or persons as may be, but only to the extent, authorized to make such examination under section 552a(c)(3) of title 5, United States Code.

* * * * * * *

(4) SAFEGUARDS.—Any Federal agency described in subsection (h)(2), (h)(5), (i)(1), (2), (3), or (5), (j)(1) or (2), (k)(8), (l)(1), (2), (3), (5), (10), (11), (13), or (14) or (o)(1), the General Accounting Office, or any agency, body, or commission described in subsection (d), (i)(3)(B)(i) or (l)(6), (7), (8), (9), (10), **[**(12) or (15), or (16)**]** *(12), or (16)*, or any other person described in subsection (l)(16) shall, as a condition for receiving returns or return information—

(A) * * *

* * * * * * *

(F) upon completion of use of such returns or return information—

(i) * * *

(ii) in the case of an agency described in subsections (h)(2), (h)(5), (i)(1), (2), (3), or (5), (j)(1) or (2), (k)(8), (l)(1), (2), (3), (5), (10), (11), (12), (13), **[**(14), or (15)**]** *or (14)* or (o)(1), or the General Accounting Office, either—

(I) * * *

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# CHAPTER 68—ADDITIONS TO THE TAX, ADDITIONAL AMOUNTS, AND ASSESSABLE PENALTIES

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## Subchapter B—Assessable Penalties

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### PART II—FAILURE TO COMPLY WITH CERTAIN INFORMATION REQUIREMENTS

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**SEC. 6721. FAILURE TO FILE CORRECT INFORMATION RETURNS.**

(a) * * *

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(e) PENALTY IN CASE OF INTENTIONAL DISREGARD.—IF 1 OR MORE FAILURES DESCRIBED IN SUBSECTION (A)(2) ARE DUE TO INTENTIONAL DISREGARD OF THE FILING REQUIREMENT (OR THE CORRECT INFORMATION REPORTING REQUIREMENT), THEN, WITH RESPECT TO EACH SUCH FAILURE—

(1) subsections (b), (c), and (d) shall not apply,

(2) the penalty imposed under subsection (a) shall be $100, or, if greater—

(A) in the case of a return other than a return required under section 6045(a), 6041A(b), 6050H, [6050I,] 6050J, 6050K, or 6050L, 10 percent of the aggregate amount of the items required to be reported correctly, *or*

(B) in the case of a return required to be filed by section 6045(a), 6050K, or 6050L, 5 percent of the aggregate amount of the items required to be reported correctly, [or] *and*

[(C) in the case of a return required to be filed under section 6050I(a) with respect to any transaction (or related transactions), the greater of

[(i) $25,000, or

[(ii) the amount of cash (within the meaning of section 6050I(d)) received in such transaction (or related transactions) to the extent the amount of such cash does not exceed $100,000, and]

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# CHAPTER 75—CRIMES, OTHER OFFENSES, AND FORFEITURES

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## Subchapter A—Crimes

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## PART I—GENERAL PROVISIONS

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**SEC. 6724. WAIVER; DEFINITIONS AND SPECIAL RULES.**

(a) * * *

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(d) DEFINITIONS.—For purposes of this part—

(1) Information return.—The term "information return" means—

(A) * * *

(B) any return required by—

(i) * * *

* * * * * * *

[(iv) section 6050I(a) or (g)(1) (relating to cash received in trade or business, etc.),]

[(v)] *(iv)* section 6050J(a) (relating to foreclosures and abandonments of security),

[(vi)] *(v)* section 6050K(a) (relating to exchanges of certain partnership interests),

[(vii)] *(vi)* section 6050L(a) (relating to returns relating to certain dispositions of donated property),

[(viii)] *(vii)* section 6050P (relating to returns relating to the cancellation of indebtedness by certain financial entities),

[(ix)] *(viii)* section 6050S (relating to returns relating to payments for qualified tuition and related expenses),

[(x)] *(ix)* section 6052(a) (relating to reporting payment of wages in the form of term-life insurance),

[(xi)] *(x)* section 6053(c)(1) (relating to reporting with respect to certain tips),

[(xii)] *(xi)* subsection (b) or (e) of section 1060 (relating to reporting requirements of transferors and transferees in certain asset acquisitions),

[(xiii)] *(xii)* subparagraph (A) or (C) of subsection (c)(4), of section 4093 (relating to information reporting with respect to tax on diesel and aviation fuels)

[(xiv)] *(xiii)* section 4101(d) (relating to information reporting with respect to fuels taxes)

[(xv)] *(xiv)* subparagraph (C) of section 338(h)(10)(relating to information required to be furnished to the Secretary in case of elective recognition of gain or loss).

* * * * * * *

(2) PAYEE STATEMENT.—The term "payee statement" means any statement required to be furnished under—

(A) * * *

* * * * * * *

[(K) section 6050I(e) or paragraph (4) or (5) of section 6050I(g) (relating to cash received in trade or business, etc.),]

[(L)] *(K)* section 6050J(e) (relating to returns relating to foreclosures and abandonments of security),

[(M)] *(L)* section 6050K(b) (relating to returns relating to exchanges of certain partnership interests),

[(N)] *(M)* section 6050L(c) (relating to returns relating to certain dispositions of donated property),

* * * * * * *

**SEC. 7203. WILLFUL FAILURE TO FILE RETURN, SUPPLY INFORMATION, OR PAY TAX.**

Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information, who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $25,000 ($100,000 in the case of a corporation), or imprisoned not more than 1 year, or both, together with the costs of prosecution. In the case of any person with respect to whom there is a failure to pay any estimated tax, this section shall not apply to such person with respect to such failure if there is no addition to tax under section 6654 or 6655 with respect to such failure. [In the case of a willful violation of any provision of section 6050I, the first sentence of this section shall be applied by substituting "felony" for "misdemeanor" and "5 years" for "1 year".]

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## ADDITIONAL VIEWS OF MAXINE WATERS AND MAURICE HINCHEY

We are pleased that the Committee on Banking and Financial Services took up the issue of money laundering and reported The Money Laundering Deterrence Act out of committee. The primary purpose of this bill is to "provide the law enforcement community with the necessary legal authority to combat money laundering." This is a laudable goal, which we fully support. We are especially pleased that the Committee accepted a number of amendments that, in our view, strengthen the bill and help it achieve its purposes.

### KNOW YOUR CUSTOMER REGULATIONS

"Know Your Customer" procedures are perhaps the most critical component of a successful anti-money laundering strategy. The creation and maintenance of a customer profile is key to determining banking activities that are suspicious in nature. Unfortunately, regulations that would give banks more instruction on how to implement their policies and provide for more oversight of these practices have yet to be put in place. We are pleased that the Committee accepted our amendment to require that the "Know Your Customer" regulations be completed within 120 days of the date of enactment.

### INCREASED PENALTIES

Perhaps the most important aspect of the Money Laundering Deterrence Act is that it increases the penalties for money laundering violations. In our view, banks and their employees will not be deterred from laundering the proceeds of organized crime and drugs unless the consequences reflect the seriousness of the crime. Money laundering is extremely lucrative—the bill's findings indicate that more than $500 billion of dirty money washes through the financial system every year. With this kind of money at stake, the current fines and other sanctions for civil and criminal violations are far to low to be taken seriously by criminals.

Section 5 of the bill increases the penalties for most civil violations of the anti-money laundering laws to a maximum of $100,000 per violation. It also increases the fines and prison sentences for criminal violations, and cracks down on people who willfully evade the currency transaction reporting requirements to hide the proceeds of their crimes. These increases are a good start toward making the punishment fit the crime, but still fall far short of being strong enough to discourage a half-trillion dollar banking enterprise.

For this reason, we offered two amendments at the mark up that attempt to deter money laundering activities by increasing the penalties for engaging in these illegal practices.

*High intensity money laundering areas amendment*

One of the obstacles that law enforcement faces in implementing an effective anti-money laundering strategy is the difficulty in regulating the activities that take place in overseas banks. In some countries, laws protecting the privacy of banking clients completely thwart any efforts to combat money laundering. In fact, some of these countries package themselves as havens for those who wish to avoid the scrutiny of law enforcement and regulation. United States financial institutions must carefully review and monitor activities in these countries and understand the increased risk of doing business in countries where money laundering activities are concentrated.

We are pleased that the Committee accepted our amendment to address this which:

1. Designates certain foreign countries as "High Intensity Money Laundering Areas,"
2. Gives notice to those banks with affiliates or branches in those countries that they are conducting banking operations in a high risk area, and
3. Increases the penalties for those financial institutions that violate federal money laundering laws associated with transactions in countries with this designation.

We look forward to working with the Chairman to address some of the concerns that were raised about the designation procedure and notice provision before the bill reaches the House floor.

*Revocation of deposit insurance amendment*

We addressed the issue of punishment for serial money launderers at the markup with an amendment that would have revoked the deposit insurance of banks that are convicted of three violations of criminal anti-money laundering laws in a 10-year period. Such a measure would have shown financial institutions that we mean business—a bank is not viable as a depository institution without access to the federal safety net.

We withdrew the amendment at the request of the Chairman after concerns were voiced about its effect. The Chairman indicated his willingness to work with us to rewrite this amendment so it punishes the institutions that egregiously and willfully violate the laws, without doing undue harm to those whose violations may be technical or inadvertent. We look forward to working with the Chairman on such a provision before the bill goes to the House floor.

MAXINE WATERS.
MAURICE HINCHEY.

## DISSENTING VIEW OF RON PAUL

The support for the passage of these bills is a recognition that the current policy has failed. These two bills, H.R. 4005, the Money Laundering Deterrence Act of 1998, and H.R. 1756, the Money Laundering and Financial Crimes Strategy Act of 1998, should be rejected. Despite the desire to appear to be "doing something" to thwart personal behavior that some find objectionable, the more justifiable position is to stand for and respect the U.S. Constitution, good economic sense, individuals rights and privacy. Ours is a federal government of limited powers, restricted by the United States Constitution and the too-often-forgotten Bill of Rights preserving individual liberty and reserving certain powers to the states.

*Constitutional concerns*

Constitutionally there are only three federal crimes. These are treason, piracy on the high seas, and counterfeiting. The federal government's role in law enforcement ought to be limited to these constitutionally federal crimes. As such, the criminal laws concerning issues other than these must, according to the ninth and tenth amendments be reserved to state and local governments. The eighteenth and twenty-first amendments are testaments to the constitutional restrictions placed upon police power at the federal level of government.

This interventionist approach (further expanded by these two bills) has not only failed to stem the flow of drugs into this country, substantially reduce the illegal drug trades' profitability or reduce consumption of publicly disapproved-of-substances, but it has introduced a new, violent element into the mix. As a result of government coercion attempting to stifle individual choice and voluntary exchange, profits on the trade of now-illegal substances are artificially high which induces some individuals to risk official retribution. Before drug prohibition and the so-called war on drugs, some individuals chose to use some drugs—just as some do today. However, the violence associated with the drug trade is a result of the failed federal government's attempt to restrict individual liberty.

It is an irrational policy: what is the rationale behind a policy whereby morphine is legal but marijuana is not? Perhaps, following the logic of the prohibitionists, we should, but federal governmental intervention, outlaw fatty foods that allegedly harm one's health.

*Unfunded mandate and great regulatory cost*

These bills will join the misnamed Bank Secrecy Act and other measures that amount to an unfunded mandate on private bankers whose only crime is to meet the need of their customers. Such a federal government intervention in this voluntary exchange is obviously wrong and unjustified by our constitutional rights.

The cost of showing that one complies with the current forms far exceed any alleged benefit. These bills will only add to that burden. Calculations using statistics provided by the Financial Crime Enforcement Network (FinCEN) put cost of compliance at $83,454,000 in 1996 for just one law, the Ban Secrecy Act. This estimate was made by totalling only the number of forms required by the Bank Secrecy Act (multiplied by the cost of compliance of each type of form) to the respondent financial institution, according to numbers supplied in response to a September 1997 request by my office to FinCEN. Two forms were not included in the total which undoubtably would push the current total compliance cost higher: IRS 8852 had been required for less than one year, and TDF 90–2249 was not yet active.

*Regulatory burdens contribute to bank mergers*

Compliance costs for smaller banks are disproportionately high. According to a study prepared for the Independent Bankers Association of America by Grant Thorton in 1993, annual compliance cost for the Bank Secrecy Act in 1992 were estimated at 2,083,003 hours and $59,660,479 just for community banks. It noted that "smaller banks face the highest compliance cost in relation to total assets, equity capital and net income before taxes. For each $1 million in assets, bank less than $30 million in assets incur almost three time the compliance cost of banks between $30–65 million in assets. These findings are consistent for both equity capital and net income measurements." In short, these regulations impose a marginal advantage to larger institutions and are a contributing factor to the rise in mergers into ever-larger institutions. These bills will only exacerbate this factor.

The Cost of Banking Regulations: A Review of the Evidence, (Gregory Elliehausen, Board of Governors of the Federal Reserve System Staff Study 171, April 1998), concurs that the new regulations will impose a disproportionately large cost on smaller institutions. The estimated, aggregate cost of bank regulation (noninterest expenses) on commercial banks was $125.9 billion in 1991, according to the Fed Staff Study. As the introduction of new entrants into the market becomes more costly, smaller institutions will face a marginally increased burden and will be more likely to consolidate. "The basic conclusion is similar for all of the studies of economies of scale: Average compliance costs for regulations are substantially greater for banks at low levels of output than for banks at moderate or high levels of output," the Staff study concludes.

In addition to all of the problems associated with the obligations and requirements that the government regulations impose on the productive, private sectors of the economy, the regulatory burdens amount to a government credit allocation scheme. As Ludwig von Mises explained well in The Theory of Money and Credit (originally) in 1912, governmental credit allocation is a misdirection of credit which leads to malinvestment and contributes to an artificial boom and bust cycle. Nobel laureate Frederick A. Hayek and Mises' other brilliant student Murray Rothbard expounded on this idea.

The unintended consequences of the passage of this bill, as written, will be to stifle the formation of new financial institutions, to consolidate current financial institutions into larger ones better

able to internalize the cost of the additional regulations, and to lower productivity and economic growth due to the misallocation of credit. This increased burden must ultimately be passed on to the consumer. The increased cost on financial institutions these bills impose will lead to a reduction of access to financial institutions, higher fees and higher rates. These provisions are anti-consumer. *The marginal consumers are the ones who will suffer most under these bills.*

*Little benefit for great cost*

Despite the great costs this interventionist approach imposes on the economy, the alleged benefits are poor. Let all of those who believe that the current anti-money laundering laws work stand up and take credit for the success of their approach: drugs are still readily available on the streets. The proponents of these bills need to explain how the additional burden that these bills will impose will meet their objectives. They have failed to justify the costs.

"The drive to stem these flows has imposed an enormous paperwork burden on banks. According to the American Bankers Association, the cost of meeting all the regulations required by the U.S. government may total $10 billion a year. That might be acceptable if convictions for money laundering kept pace with the millions of documents banks must file each year. But the scorecard has been disappointing," reads the Journal of Commerce (December 10, 1996).

Referring to the same Justice Department figures cited in the Journal of Commerce article, Richard Rahn, president and CEO of Novecon, LTD, writes, "In the ten year period from 1987–1996, banks filed more than 77 million Currency Transaction Reports (CTRs) with the U.S. Treasury. This amounts to approximately 308,000 pounds of paper * * * 7,300 defendants were charged but only 580 people were convicted, according to the Justice Department. Environmentalists take note: this works out to about 531 pounds of paper per conviction [America the Financial Imperialist, to be presented at the Cato Institute Conference, Collateral Damage: The Economic Cost of U.S. Foreign Policy, June 23, 1998]."

Mr. Rahn cites arguments by former Federal Reserve Board Governor Lawrence Lindsey who explains that money laundering laws discriminate against the poor. Mr. Rahn's paper elaborates, "[The poor] are the least likely to have established relationships with banks and the most likely to operate primarily with cash. Hence, they are the first to be targeted, and this even further discourages bankers from wanting their business."

*Legal liability questions not adequately addressed*

These laws open the financial institutions up to a new area of legal liability. These bills do not adequately address these concerns. Responding to the Treasury Department money laundering proposal, John J. Byrne, the American Bankers Association's money laundering expert, said the industry opposes plans that impose onerous record-keeping requirements and banks fear being sued by the government or another company if they incorrectly certify that a customer has not committed any illegal acts (American Banker,

November 11, 1997). These regulations effectively deputize bank tellers as law enforcement officers.

The Independent Bankers Association of America (IBAA) has called for FinCEN to establish a "safe harbor" in these regulations. In nearly all cases, the bank has acted in good faith and should not risk being punished. Says a January 1998 IBAA letter to FinCEN, "If a bank has acted in good faith, knowing that there is some protection from liability will encourage banks to use the exemption process. For many banks, especially smaller banks which do not experience as many large currency transactions, it is much simpler to file a CTR. Many are concerned about the possible liability attached to incorrect usage of the exemption list. To avoid any hint of liability, and to avoid criticism from examiners, bankers avoid using the exemption process. A safe harbor from liability would go a long way to encourage them to use exemptions, and to cut down on the number of CTRs." Banks filed 12.75 million currency transaction reports in 1996, nearly double the number only six years earlier without any appreciable reduction in the drug trade.

*Infringes on right to privacy*

> Subtler and more far-reaching means of invading privacy have become available to the government. Discovery and invention have made it possible for the government, by means far more effective than stretching upon the rack, to obtain disclosure in court of what is whispered in the closet.—U.S. Supreme Court Justice Louis Brandeis (1928).

A Winston Smith, or any other average citizen, would have good reason to be even more concerned with the technological reach of a not so fraternal, big government agency. In his opening statement before the Subcommittee on General Oversight and Investigations, House Banking and Financial Services Committee, Hearing to Review the Department of the Treasury's Proposed Rules for Money Service Businesses, Chairman Spencer Bachus championed privacy rights saying, "We have to be cognizant that rules often have unintended consequences * * * These rules will require a huge increase in the amount of information on private citizens that will be provided to federal law enforcement. We need to know whether this creates a potential for abuse, either by those in the industries that do the reporting or by those in government that receive the information * * * this is not an insignificant concern."

At the same hearing, John Bryne of the American Bankers Association trumpeted our tradition of common law rights of privacy and supported "meaningful, consumer-friendly" frameworks based on self-regulating privacy regimes. That is a much preferred approach.

It is proposed that some banks like the Bank Secrecy Act because of the safety and soundness concerns associated with "illicit" funds. The problem lies with the government's interventionist drug policies. Would those same proponents of the money-laundering laws still argue about safety and soundness of deposits from beer and wine wholesalers and distributors?

*FinCEN's blemished record safeguarding our privacy*

The mere existence of the databases holding confidential information on private individuals opens up the possibility of abuse. Unfortunately, it is not just an unfounded fear based on hypotheticals. In fact, the employees of FinCEN itself cannot always be trusted. In 1993, one employee took the liberty of using the resources at his disposal to do a digging into the (assumed to be) private records of the mother of his girlfriend. In the same year, another employee of FinCEN left her desk unattended with the opportunity available for others to access privileged information—and someone else used the opportunity to pursue personally-motivated independent research.

FinCEN defends itself in a fax to our office in response to our inquiries saying "our system of security controls is * * * obviously working. Because of the controls we have in place, the two violations which occurred were picked up right away and dealt with immediately." Neither employee was prosecuted nor fired. No systemic changes were made to safeguard privacy.

The General Accounting Office has criticized FinCEN for failing to keep Congress adequately informed. The agency has missed congressionally-mandated deadlines and sometimes implemented fewer than one-half of the provisions of congressional acts, according to one recent GAO report (Money Laundering: FinCEN Needs to Better Manage Bank Secrecy Act Civil Penalty Cases, June 1998).

Computer vulnerability to hackers is another concern expressed by a major trade group. "The Independent Bankers of America said the Treasury Department's Financial Crimes Enforcement Network needs to do more to make sure that reports on questionable bank transactions are not vulnerable to anyone with a computer, a modem and some spare time," reports The American Banker (November 30, 1995).

"By requiring the disclosure of detailed information on customers and their transactions, the proposed regulations would conflict with the confidentiality inherent in encrypted communications in electronic banking and commerce," writes Thomas E. Crocker (The American Banker, September 23, 1997) in an editorial entitled "Broadening Bank Secrecy Act Is Risky." He wrote opposing Treasury Department's proposal to expand the BSA's reach into electronic commerce, but the comments are valid in a broader context as well.

No government agency can be trusted to safeguard adequately our privacy.

*Barr amendment would reduce privacy safeguards*

The sense of Congress amendment offered by Mr. Barr would make a bad situation worse. Since current safeguards have proved insufficient, we must not reduce what little protection our constituents have. "The government has tremendous information resources at its disposal in data base centers, like the Financial Crimes Enforcement Network (FinCEN) * * * FinCEN has literally everything there is to know about you—tax records, postal addresses, credit records, banking information, you name it—and if more taxpayers knew about it, they would be outrated [emphasis added]"

claimed Grover G. Norquist, president, Americans for Tax Reform, in a statement to the House Judiciary Committee at the hearing on "Security and Freedom Through Encryption."

FinCEN, in a written response to questions concerning his testimony, said "FinCEN has no access to income tax data of any kind * * * The only tax records to which FinCEN has access are property tax records of the kind that any citizen may view in any courthouse * * * FinCEN does obtain from credit agencies certain basic identifying information for individuals as permitted by the Fair Credit Reporting Act. Finally, it has no general access to banking records but only to reports of large currency transactions and suspicious activity."

Mr. Norquist was ahead of his time. This bill gives FinCEN access to income tax records. In addition, the Treasury Department has tried to lower the threshold for "large currency transactions" to only $750. Of course, if you look "suspicious," let's make it only $500, they say.

"Suspicious activities" by customers is inherently subjective and open to abuse. Mr. Norquist is right to point out that taxpayers should be outraged. In addition, the so-called "know your customer" amendment adopted by the committee further infringes on the right to privacy.

*Not every citizen is a crook*

In Supreme Court Justice William O. Douglas dissented in *California Bankers Assn* v. *Shultz,* 416 U.S. 21 (1974), questioning the Constitutionality of the Bank Secrecy Act, writing:

> First, as to the recordkeeping requirements, their announced purpose is that they will have "a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings," 12 U.S.C. 1829b * * * It is estimated that a minimum of 20 billion checks—and perhaps 30 billion—will have to be photocopied and that the weight of these little pieces of paper will approximate 166 million pounds a year * * * It would be highly useful to governmental espionage to have like reports from all our bookstores, all our hardware [416 U.S. 21, 85] and retail stores, all our drugstores. These records too might be "useful" in criminal investigations.
>
> One's reading habits furnish telltale clues to those who are bent on bending us to one point of view. What one buys at the hardware and retail stores may furnish clues to potential uses of wires, soap powders, and the like used by criminals. *A mandatory recording of all telephone conversations would be better than the recording of checks under the Bank Secrecy Act, if Big Brother is to have his way* [emphasis added]. The records of checks—now available to the investigators—are highly useful. In a sense a person is defined by the checks he writes. By examining them the agents get to know his doctors, lawyers, creditors, political allies, social connections, religious affiliation, educational interests, the paper and magazines he reads, and so on ad infinitum. These are all tied to one's social security number; and now that we have the data banks,

> these other items will enrich that storehouse and make it possible for a bureaucrat—by pushing one button—to get in an instant the names of the 190 million Americans who are subversives or potential and likely candidates.
>
> It is, I submit, sheer nonsense to agree with the Secretary that all bank records of every citizen "have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings." That is unadulterated nonsense unless we are to assume that every citizen is a crook, an assumption I cannot make,

Justice Douglas concluded.

*Operation Casablanca worsens situation*

The police "sting" operation has caused international problems since such operations are illegal in Mexico with some referring to it as "a debacle for U.S. diplomacy." Rosario Green, Mexico's foreign minister, says, "This has been a very strong blow to binational cooperation, especially on matters of drug trafficking." (Wall Street Journal, May 28, 1998) U.S. banks named in the investigation were left untouched. She claims to have evidence that U.S. agents broke Mexican law and Mexico may demand their extradition; she termed the operation a "violation of national sovereignty."

The illegal sting operation will make only a paltry dent in money laundering activities. Since it is estimated that $300 billion to $500 billion is cycled through the U.S. financial system on an annual basis, the operation will have little real effect. Federal officials expect to seize as much as $152 million in more than than 100 accounts in the United States, Europe and the Caribbean (Washington Post, May 20, 1998).

"In general, U.S. government sting operations have failed to produce convictions. Of 142 cases filed and 290 defendants charged as the result of bank stings between 1990 and 1995, only 29 were found guilty," the Journal of Commerce (December 10, 1996) article continues. And drugs are still available on the schoolyard.

*Oppose regulations of gold as money*

The Financial Action Task Force (FATF) on Money Laundering (based at the Organization for Economic Cooperation and Development), 1997–1998 Report on Money Laundering Topologies (12 February 1998), suggested expanding still further the reach of governmental police intenvetion—this time in the gold market. "The FATF experts considered for the first time the possibilities of laundering in the gold market. The scale of laundering in this sector, which is not a recent development, constitutes a real threat.

"Gold is a very popular recourse of launderers because of the following characteristics:

> a universally accepted medium of exchange;
> a hedge in times of uncertainly;
> prices set daily, hence a reasonably foreseeable value;
> a material traded on world markets;
> anonymity;
> easy changeability of its forms;
> possibility of dealers of layering transactions in order to blur the audit trail;

possibilities of double invoicing, false shipments and other fraudulent practices."

The FATF report continued, "Gold is the only raw material comparable to money." While the FATF experts are clearly right in concluding that gold is money, we should steadfastly oppose the report's consideration of an expanded governmental reach to control gold.

"It is possible to grasp the meaning of the idea of sound money if one does not realize that it was devised as an instrument for the protection of civil liberties against depositic inroads on the part of governments. Ideologically it belongs in the same class with political constitutions and bills of rights," Ludwig von Mises wrote in the Theory of Money and Credit.

*Congress should safeguard our freedoms and privacy*

In Supreme Court Justice Thurgood Marshall's dissent in *California Bankers Assn* v. *Shultz,* 416 U.S. 21 (1974), he wrote:

> As this Court settled long ago in *Boyd* v. *United States,* 116 U.S. 616, 622 (1886), "a compulsory production of a man's private papers to establish a criminal charge against him * * * is within the scope of the Fourth Amendment to the Constitution * * * The acquisition of records in this case, as we said of the order to produce an invoice in *Boyd*, may lack the "aggravating incidents of actual search and seizure, such as forcible entry into a man's house and searching amongst his papers * * *," ibid, but this cannot change its intrinsic characters as a search and seizure. We do well to recall the admonishment in *Boyd*, id, at 635:
>
> > It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure.
>
> First Amendment freedoms are "delicate and vulnerable." They need breathing space to survive * * * More importantly, however slight may be the inhibition of First Amendment rights caused by the bank's maintenance of the list of contributors, the crucial factor is that the Government has shown no need, compelling or otherwise, for the maintenance of such records. Surely the fact that some may use negotiable instrument for illegal purposes cannot justify the Government's running roughshod over the First Amendment rights of the hundreds of lawful yet controversial organizations like the ACLU. *Congress may well have been correct in concluding that law enforcement would be facilitated by the dragnet requirements of this Act. Those who wrote our Constitution, however, recognized more important values* [emphasis added],

Justice Marshall explained.

"Congress should block the proposed regulations and repeal the Bank Secrecy Act, under which rules are possible," wrote Richard

Rahn, president of Novecon Corp, and an adjunct scholar at the Cato Institute (Investor's Business Daily, August 12, 1997). "Our freedoms and our privacy are must too important to be compromised merely to make money-laundering more costly and inconvenient for criminals."

I agree.

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