107TH CONGRESS
1st Session
HOUSE OF REPRESENTATIVES
REPT. 107–250
Part 1

FINANCIAL ANTI-TERRORISM ACT OF 2001

OCTOBER 17, 2001.—Ordered to be printed

Mr. OXLEY, from the Committee on Financial Services, submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 3004]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3004) to combat the financing of terrorism and other 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.

CONTENTS

99–006

AMENDMENT

The amendment is as follows:
Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Financial Anti-Terrorism Act of 2001".

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

TITLE I—STRENGTHENING LAW ENFORCEMENT

SEC. 101. BULK CASH SMUGGLING INTO OR OUT OF THE UNITED STATES.

(a) FINDINGS.—The Congress finds the following:

(1) Effective enforcement of the currency reporting requirements of subchapter II of chapter 53 of title 31, United States Code, and the regulations prescribed under such subchapter, has forced drug dealers and other criminals engaged in cash-based businesses to avoid using traditional financial institutions.

(2) In their effort to avoid using traditional financial institutions, drug dealers and other criminals are forced to move large quantities of currency in bulk form

to and through the airports, border crossings, and other ports of entry where the currency can be smuggled out of the United States and placed in a foreign financial institution or sold on the black market.

(3) The transportation and smuggling of cash in bulk form may now be the most common form of money laundering, and the movement of large sums of cash is one of the most reliable warning signs of drug trafficking, terrorism, money laundering, racketeering, tax evasion and similar crimes.

(4) The intentional transportation into or out of the United States of large amounts of currency or monetary instruments, in a manner designed to circumvent the mandatory reporting provisions of subchapter II of chapter 53 of title 31, United States Code,, is the equivalent of, and creates the same harm as, the smuggling of goods.

(5) The arrest and prosecution of bulk cash smugglers are important parts of law enforcement's effort to stop the laundering of criminal proceeds, but the couriers who attempt to smuggle the cash out of the United States are typically low-level employees of large criminal organizations, and thus are easily replaced. Accordingly, only the confiscation of the smuggled bulk cash can effectively break the cycle of criminal activity of which the laundering of the bulk cash is a critical part.

(6) The current penalties for violations of the currency reporting requirements are insufficient to provide a deterrent to the laundering of criminal proceeds. In particular, in cases where the only criminal violation under current law is a reporting offense, the law does not adequately provide for the confiscation of smuggled currency. In contrast, if the smuggling of bulk cash were itself an offense, the cash could be confiscated as the corpus delicti of the smuggling offense.

(b) PURPOSES.—The purposes of this section are—

(1) to make the act of smuggling bulk cash itself a criminal offense;

(2) to authorize forfeiture of any cash or instruments of the smuggling offense;

(3) to emphasize the seriousness of the act of bulk cash smuggling; and

(4) to prescribe guidelines for determining the amount of property subject to such forfeiture in various situations.

(c) ENACTMENT OF BULK CASH SMUGGLING OFFENSE.—Subchapter II of chapter 53 of title 31, United States Code, is amended by adding at the end the following:

"§ 5331. Bulk cash smuggling into or out of the United States

"(a) CRIMINAL OFFENSE.—

"(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

"(2) CONCEALMENT ON PERSON.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

"(b) PENALTY.—

"(1) TERM OF IMPRISONMENT.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

"(2) FORFEITURE.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property, subject to subsection (d) of this section.

"(3) PROCEDURE.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

"(4) PERSONAL MONEY JUDGMENT.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

"(c) CIVIL FORFEITURE.—

"(1) IN GENERAL.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such viola-

tion or conspiracy, may be seized and, subject to subsection (d) of this section, forfeited to the United States.

"(2) PROCEDURE.—The seizure and forfeiture shall be governed by the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

"(3) TREATMENT OF CERTAIN PROPERTY AS INVOLVED IN THE OFFENSE.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.

"(d) PROPORTIONALITY OF FORFEITURE.—

"(1) IN GENERAL.—Upon a showing by the property owner by a preponderance of the evidence that the currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source, and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense.

"(2) FACTORS TO BE CONSIDERED.—In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances that have a bearing on the gravity of the offense, including the following:

"(A) The value of the currency or other monetary instruments involved in the offense.

"(B) Efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice.

"(C) Whether the offense is part of a pattern of repeated violations of Federal law.".

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

"5331. Bulk cash smuggling into or out of the United States.".

SEC. 102. FORFEITURE IN CURRENCY REPORTING CASES.

(a) IN GENERAL.—Subsection (c) of section 5317 of title 31, United States Code, is amended to read as follows:

"(c) FORFEITURE.—

"(1) IN GENERAL.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or section 6050I of the Internal Revenue Code of 1986, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

"(2) PROCEDURE.—Forfeitures under this subsection shall be governed by the procedures established in section 413 of the Controlled Substances Act and the guidelines established in paragraph (4).

"(3) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or section 6050I of the Internal Revenue Code of 1986, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and, subject to paragraph (4), forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

"(4) PROPORTIONALITY OF FORFEITURE.—

"(A) IN GENERAL.—Upon a showing by the property owner by a preponderance of the evidence that any currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source, and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense.

"(B) FACTORS TO BE CONSIDERED.—In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances that have a bearing on the gravity of the offense, including the following:

"(i) The value of the currency or other monetary instruments involved in the offense.

"(ii) Efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice.

"(iii) Whether the offense is part of a pattern of repeated violations of Federal law.".

(b) CONFORMING AMENDMENTS.—(1) Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "of section 5313(a) or 5324(a) of title 31, or".

(2) Section 982(a)(1) of title 18, United States Code, is amended by striking "of section 5313(a), 5316, or 5324 of title 31, or".

SEC. 103. INTERSTATE CURRENCY COURIERS.

Section 1957 of title 18, United States Code, is amended by adding at the end the following new subsection:

"(g) Any person who conceals more than $10,000 in currency on his or her person, in any vehicle, in any compartment or container within any vehicle, or in any container placed in a common carrier, and transports, attempts to transport, or conspires to transport such currency in interstate commerce on any public road or highway or on any bus, train, airplane, vessel, or other common carrier, knowing that the currency was derived from some form of unlawful activity, or knowing that the currency was intended to be used to promote some form of unlawful activity, shall be punished as provided in subsection (b). The defendant's knowledge may be established by proof that the defendant was willfully blind to the source or intended use of the currency. For purposes of this subsection, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.".

SEC. 104. ILLEGAL MONEY TRANSMITTING BUSINESSES.

(a) SCIENTER REQUIREMENT FOR SECTION 1960 VIOLATION.—Section 1960 of title 18, United States Code, is amended to read as follows:

"§ 1960. Prohibition of unlicensed money transmitting businesses

"(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

"(b) As used in this section—

"(1) the term 'unlicensed money transmitting business' means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

"(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

"(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

"(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to be used to promote or support unlawful activity;

"(2) the term 'money transmitting' includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

"(3) the term 'State' means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.".

(b) SEIZURE OF ILLEGALLY TRANSMITTED FUNDS.—Section 981(a)(1)(A) of title 18, United States Code, is amended by striking "or 1957" and inserting ", 1957 or 1960".

(c) CLERICAL AMENDMENT.—The table of sections for chapter 95 of title 18, United States Code, is amended in the item relating to section 1960 by striking "illegal" and inserting "unlicensed".

SEC. 105. LONG-ARM JURISDICTION OVER FOREIGN MONEY LAUNDERERS.

Section 1956(b) of title 18, United States Code, is amended—

(1) by striking "(b) Whoever" and inserting "(b)(1) Whoever";

(2) by redesignating paragraphs (1) and (2) as subparagraphs (A) and (B), respectively;

(3) by striking "subsection (a)(1) or (a)(3)," and inserting "subsection (a)(1) or (a)(2) or section 1957,"; and

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

"(2) For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person,

including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if—

"(A) service of process upon such foreign person is made under the Federal Rules of Civil Procedure or the laws of the country where the foreign person is found; and

"(B) the foreign person—

"(i) commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

"(ii) converts to such person's own use property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

"(iii) is a financial institution that maintains a correspondent bank account at a financial institution in the United States.

"(3) The court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.".

SEC. 106. LAUNDERING MONEY THROUGH A FOREIGN BANK.

Section 1956(c)(6) of title 18, United States Code, is amended to read as follows:

"(6) the term 'financial institution' includes any financial institution described in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder, as well as any foreign bank, as defined in paragraph (7) of section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(7));".

SEC. 107. SPECIFIED UNLAWFUL ACTIVITY FOR MONEY LAUNDERING.

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

(1) in subparagraph (B)—

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

"(ii) any act or acts constituting a crime of violence, as defined in section 16 of this title;"; and

(B) by inserting after clause (iii) the following new clauses:

"(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

"(v) smuggling or export control violations involving munitions listed in the United States Munitions List or technologies with military applications as defined in the Commerce Control List of the Export Administration Regulations; or

"(vi) an offense with respect to which the United States would be obligated by a bilateral treaty either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States;"; and

(2) in subparagraph (D)—

(A) by inserting "section 541 (relating to goods falsely classified)," before "section 542";

(B) by inserting "section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking)," before "section 956";

(C) by inserting "section 1030 (relating to computer fraud and abuse)," before "1032";

(D) by inserting "any felony violation of the Foreign Agents Registration Act of 1938, as amended," before "or any felony violation of the Foreign Corrupt Practices Act"; and

(E) by striking "fraud in the sale of securities" and inserting "fraud in the purchase or sale of securities".

SEC. 108. LAUNDERING THE PROCEEDS OF TERRORISM.

Section 1956(c)(7)(D) of title 18, United States Code, is amended by inserting "or 2339B" after "2339A".

SEC. 109. VIOLATIONS OF REPORTING REQUIREMENTS FOR NONFINANCIAL TRADES AND BUSINESS.

(a) CIVIL FORFEITURE.—Section 981(a)(1)(A) of title 18, United States Code, is amended by inserting "section 6050I of the Internal Revenue Code of 1986, or" before "section 1956".

(b) CRIMINAL FORFEITURE.—Section 982(a)(1) of title 18, United States Code, is amended by inserting "section 6050I of the Internal Revenue Code of 1986, or" before "section 1956".

SEC. 110. PROCEEDS OF FOREIGN CRIMES.

Section 981(a)(1)(B) of title 18, United States Code, is amended to read as follows:

"(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such offense, if—

"(i) the offense involves the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B),

"(ii) the offense would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding one year, and

"(iii) the offense would be punishable under the laws of the United States by imprisonment for a term exceeding one year if the act or activity constituting the offense had occurred within the jurisdiction of the United States.".

SEC. 111. AVAILABILITY OF REPORTS RELATING TO COINS AND CURRENCY RECEIVED IN NONFINANCIAL TRADE OR BUSINESS.

(a) ACTION REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall take such action and establish such procedures as may be necessary and appropriate to make the information contained on returns filed under section 6050I of the Internal Revenue Code of 1986 available through the Financial Crimes Enforcement Network to government agencies in accordance with subsections (l)(15) and (p)(4) of section 6103 of such Code and other applicable laws.

(b) REPORT.—The Secretary of the Treasury shall submit a report to the Congress within 15 days after the end of the 6-month period described in subsection (a) containing a description of the actions of the Secretary pursuant to such subsection, together with such recommendations for legislative and administrative action as the Secretary may determine to be appropriate to achieve the goal described in such subsection.

SEC. 112. PENALTIES FOR VIOLATIONS OF GEOGRAPHIC TARGETING ORDERS AND CERTAIN RECORD KEEPING REQUIREMENTS.

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

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

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

(b) CRIMINAL PENALTIES FOR VIOLATION OF TARGETING ORDER.—

Section 5322 of title 31, United States Code, is amended—

(1) in subsection (a)—

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

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

(2) in subsection (b)—

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

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

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

(1) by inserting a comma after "shall";

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

(3) 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" each place that term appears.

(d) INCREASE IN CIVIL PENALTIES FOR VIOLATION OF CERTAIN RECORD KEEPING 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—

"(A) the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred; or

"(B) $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—

"(1) the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred; or

"(2) $25,000".

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

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

"SEC. 126. CRIMINAL PENALTY.

"A person that willfully violates this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this chapter or that section 21, shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.".

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

"SEC. 127. ADDITIONAL CRIMINAL PENALTY IN CERTAIN CASES.

"A person that willfully violates this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this chapter or that section 21, 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. 113. EXCLUSION OF ALIENS INVOLVED IN MONEY LAUNDERING.

(a) IN GENERAL.—Section 212 of the Immigration and Nationality Act, as amended (8 U.S.C. 1182), is amended in subsection (a)(2)—

(1) by redesignating subparagraphs (D), (E), (F), (G), and (H) as subparagraphs (E), (F), (G), (H), and (I), respectively; and

(2) by inserting after subparagraph (C) the following new subparagraph (D):

"(D) MONEY LAUNDERING ACTIVITIES.—

"(i) IN GENERAL.—Any alien who the consular officer or the Attorney General knows or has reason to believe is or has been engaged in activities which if engaged in within the United States would constitute a violation of the money laundering provisions section 1956, 1957, or 1960 of title 18, United States Code, or has knowingly assisted, abetted, or conspired or colluded with others in any such illicit activity is inadmissible.

"(ii) RELATED INDIVIDUALS.—Any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from such illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible, except that the Attorney General may, in the full discretion of the Attorney General, waive the exclusion of the spouse, son, or daughter of an alien under this clause if the Attorney General determines that exceptional circumstances exist that justify such waiver.".

(b) CONFORMING AMENDMENT.—Section 212(h)(1)(A)(i) of the Immigration and Nationality Act, as amended (8 U.S.C. 1182), is amended by striking "(D)(i) or (D)(ii)" and inserting "(E)(i) or (E)(ii)".

SEC. 114. STANDING TO CONTEST FORFEITURE OF FUNDS DEPOSITED INTO FOREIGN BANK THAT HAS A CORRESPONDENT ACCOUNT IN THE UNITED STATES.

Section 981 of title 18, United States Code, is amended by adding the following after the last subsection:

"(k) CORRESPONDENT BANK ACCOUNTS.—

"(1) TREATMENT OF ACCOUNTS OF CORRESPONDENT BANK IN DOMESTIC FINANCIAL INSTITUTIONS.—

"(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act, if funds are deposited into a dollar-denominated bank account in a foreign financial institution, and that foreign financial institution has a correspondent account with a financial institution in the United States, the funds deposited into the foreign financial institution (the respondent bank) shall be deemed to have been deposited

into the correspondent account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding such funds may be served on the correspondent bank, and funds in the correspondent account up to the value of the funds deposited into the dollar-denominated account in the foreign financial institution may be seized, arrested or restrained.

"(B) AUTHORITY TO SUSPEND.—The Attorney General, in consultation with the Secretary, may suspend or terminate a forfeiture under this section if the Attorney General determines that a conflict of law exists between the laws of the jurisdiction in which the foreign bank is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

"(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), the Government shall not be required to establish that such funds are directly traceable to the funds that were deposited into the respondent bank, nor shall it be necessary for the Government to rely on the application of Section 984 of this title.

"(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds seized, arrested, or restrained under paragraph (1), the owner of the funds may contest the forfeiture by filing a claim pursuant to section 983.

"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) CORRESPONDENT ACCOUNT.—The term 'correspondent account' has the meaning given to the term 'interbank account' in section 984(c)(2)(B).

"(B) OWNER.—

"(i) IN GENERAL.—Except as provided in clause (ii), the term 'owner'—

"(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign bank at the time such funds were deposited; and

"(II) does not include either the foreign bank or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

"(ii) EXCEPTION.—The foreign bank may be considered the 'owner' of the funds (and no other person shall qualify as the owner of such funds) only if—

"(I) the basis for the forfeiture action is wrongdoing committed by the foreign bank; or

"(II) the foreign bank establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign bank had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign bank shall be deemed the owner of the funds to the extent of such discharged obligation.".

SEC. 115. SUBPOENAS FOR RECORDS REGARDING FUNDS IN CORRESPONDENT BANK ACCOUNTS.

(a) IN GENERAL.—Subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after section 5331 (as added by section 101) the following new section:

"§ 5332. Subpoenas for records

"(a) DESIGNATION BY FOREIGN FINANCIAL INSTITUTION OF AGENT.—Any foreign financial institution that has a correspondent bank account at a financial institution in the United States shall designate a person residing in the United States as a person authorized to accept a subpoena for bank records or other legal process served on the foreign financial institution.

"(b) MAINTENANCE OF RECORDS BY DOMESTIC FINANCIAL INSTITUTION.—

"(1) IN GENERAL.—Any domestic financial institution that maintains a correspondent bank account for a foreign financial institution shall maintain records regarding the names and addresses of the owners of the foreign financial institution, and the name and address of the person who may be served with a subpoena for records regarding any funds transferred to or from the correspondent account.

"(2) PROVISION TO LAW ENFORCEMENT AGENCY.—A domestic financial institution shall provide names and addresses maintained under paragraph (1) to a Government authority (as defined in section 1101(3) of the Right to Financial

Privacy Act of 1978) within 7 days of the receipt of a request, in writing, for such records.

"(c) ADMINISTRATIVE SUBPOENA.—

"(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury may each issue an administrative subpoena for records relating to the deposit of any funds into a dollar-denominated account in a foreign financial institution that maintains a correspondent account at a domestic financial institution.

"(2) MANNER OF ISSUANCE.—Any subpoena issued by the Attorney General or the Secretary of the Treasury under paragraph (1) shall be issued in the manner described in section 3486 of this title, and may be served on the representative designated by the foreign financial institution pursuant to subsection (a) to accept legal process in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

"(d) CORRESPONDENT ACCOUNT DEFINED.—For purposes of this section, the term 'correspondent account' has the same meaning as the term 'interbank account' as such term is defined in section 984(c)(2)(B) of title 18, United States Code.".

(b) CLERICAL AMENDMENTS.—The table of sections for subchapter II of chapter 53 of title 31, United States Code, is amended by inserting after the item relating to section 5331 the following new item:

"5332. Subpoenas for records.".

(c) EFFECTIVE DATE.—Section 5332(a) of title 31, United States Code, (as added by subsection (a) of this section shall apply after the end of the 30-day period beginning on the date of the enactment of this Act.

(d) REQUESTS FOR RECORDS.—Section 3486(a)(1)(A)(i) of title 18, United States Code, is amended by striking "; or (II) a Federal offense involving the sexual exploitation or abuse of children," and inserting ", (II) a Federal offense involving the sexual exploitation or abuse of children, or (III) a money laundering offense in violation of section 1956, 1957 or 1960 of this title,".

SEC. 116. AUTHORITY TO ORDER CONVICTED CRIMINAL TO RETURN PROPERTY LOCATED ABROAD.

(a) FORFEITURE OF SUBSTITUTE PROPERTY.—Section 413(p) of the Controlled Substances Act (21 U.S.C. 853) is amended to read as follows:

"(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

"(1) IN GENERAL.—Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

"(A) cannot be located upon the exercise of due diligence;

"(B) has been transferred or sold to, or deposited with, a third party;

"(C) has been placed beyond the jurisdiction of the court;

"(D) has been substantially diminished in value; or

"(E) has been commingled with other property which cannot be divided without difficulty.

"(2) SUBSTITUTE PROPERTY.—In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

"(3) RETURN OF PROPERTY TO JURISDICTION.—In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.".

(b) PROTECTIVE ORDERS.—Section 413(e) of the Controlled Substances Act (21 U.S.C. 853(e)) is amended by adding at the end the following:

"(4) ORDER TO REPATRIATE AND DEPOSIT.—

"(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

"(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.".

SEC. 117. CORPORATION REPRESENTED BY A FUGITIVE.

Section 2466 of title 28, United States Code, is amended by designating the present matter as subsection (a), and adding at the end the following:

"(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.".

SEC. 118. ENFORCEMENT OF FOREIGN JUDGMENTS.

Section 2467 of title 28, United States Code, is amended—

(1) in subsection (d), by inserting after paragraph (2) the following new paragraph:

"(3) PRESERVATION OF PROPERTY.—To preserve the availability of property subject to a foreign forfeiture or confiscation judgment, the Government may apply for, and the court may issue, a restraining order pursuant to section 983(j) of title 18, United States Code, at any time before or after an application is filed pursuant to subsection (c)(1). The court, in issuing the restraining order—

"(A) may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

"(B) may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

No person may object to the restraining order on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.";

(2) in subsection (b)(1)(C), by striking "establishing that the defendant received notice of the proceedings in sufficient time to enable the defendant" and inserting "establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons";

(3) in subsection (d)(1)(D), by striking "the defendant in the proceedings in the foreign court did not receive notice" and inserting "the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property"; and

(4) in subsection (a)(2)(A), by inserting ", any violation of foreign law that would constitute a violation of an offense for which property could be forfeited under Federal law if the offense were committed in the United States" after "United Nations Convention".

SEC. 119. REPORTING PROVISIONS AND ANTI-TERRORIST ACTIVITIES OF UNITED STATES INTELLIGENCE AGENCIES.

(a) AMENDMENT RELATING TO THE PURPOSES OF CHAPTER 53 OF TITLE 31, UNITED STATES CODE.—Section 5311 of title 31, United States Code, is amended by inserting before the period at the end the following: ", or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism".

(b) AMENDMENT RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.—Section 5318(g)(4)(B) of title 31, United States Code, is amended by striking "or supervisory agency" and inserting ", supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism".

(c) AMENDMENT RELATING TO AVAILABILITY OF REPORTS.—Section 5319 of title 31, United States Code, is amended to read as follows:

"§ 5319. Availability of reports

"The Secretary of the Treasury shall make information in a report filed under this subchapter available to an agency, including any State financial institutions supervisory agency or United States intelligence agency, upon request of the head of the agency. The report shall be available for a purpose that is consistent with this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from disclosure under section 552 of title 5.".

(d) AMENDMENTS TO THE RIGHT TO FINANCIAL PRIVACY ACT.—The Right to Financial Privacy Act of 1978 is amended—

(1) in section 1112(a) (12 U.S.C. 3412(a)), by inserting ", or intelligence or counterintelligence activity, investigation or analysis related to international terrorism" after "legitimate law enforcement inquiry";

(2) in section 1114(a)(1) (12 U.S.C. 3414(a)(1))—

(A) in subparagraph (A), by striking "or" at the end;

(B) in subparagraph (B), by striking the period at the end and inserting "; or"; and

(C) by adding at the end the following:

"(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses."; and

(3) in section 1120(a)(2) (12 U.S.C. 3420(a)(2)), by inserting ", or for a purpose authorized by section 1112(a)" before the semicolon at the end.

(e) AMENDMENT TO THE FAIR CREDIT REPORTING ACT.—

(1) IN GENERAL.—The Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(A) by redesignating the second of the 2 sections designated as section 624 (15 U.S.C. 1681u) (relating to disclosure to FBI for counterintelligence purposes) as section 625; and

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

"§ 626. Disclosures to governmental agencies for counterterrorism purposes

"(a) DISCLOSURE.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish a consumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or analysis.

"(b) FORM OF CERTIFICATION.—The certification described in subsection (a) shall be signed by the Secretary of the Treasury, or an officer designated by the Secretary from among officers of the Department of the Treasury whose appointments to office are required to be made by the President, by and with the advice and consent of the Senate.

"(c) CONFIDENTIALITY.—No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

"(d) RULE OF CONSTRUCTION.—Nothing in section 625 shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

"(e) SAFE HARBOR.—Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a governmental agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.".

(2) CLERICAL AMENDMENTS.—The table of sections for the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) is amended—

(A) by redesignating the second of the 2 items designated as section 624 as section 625; and

(B) by inserting after the item relating to section 625 (as so redesignated) the following new item:

"626. Disclosures to governmental agencies for counterterrorism purposes.".

SEC. 120. FINANCIAL CRIMES ENFORCEMENT NETWORK.

(a) IN GENERAL.—Subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by redesignating section 310 as section 311; and

(2) by inserting after section 309 the following new section:

"§ 310. Financial Crimes Enforcement Network

"(a) IN GENERAL.—The Financial Crimes Enforcement Network established by order of the Secretary of the Treasury (Treasury Order Numbered 105-08) on April 25, 1990, shall be a bureau in the Department of the Treasury.

"(b) DIRECTOR.—

"(1) APPOINTMENT.—The head of the Financial Crimes Enforcement Network shall be the Director who shall be appointed by the President, by and with the consent of the Senate, to a term of 4 years.

"(2) DUTIES AND POWERS.—The duties and powers of the Director are as follows:

"(A) Advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary for Enforcement.

"(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

"(i) Information collected by the Department of the Treasury, including report information filed under subchapters II and III of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities), chapter 2 of Public Law 91–508, section 21 of the Federal Deposit Insurance Act and section 6050I of the Internal Revenue Code of 1986.

"(ii) Information regarding national and international currency flows.

"(iii) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases.

"(iv) Other privately and publicly available information.

"(C) Analyze and disseminate the available data in accordance with applicable legal requirements and policies and guidelines established by the Secretary of the Treasury and the Under Secretary for Enforcement to—

"(i) identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies;

"(ii) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;

"(iii) identify possible instances of noncompliance with subchapters II and III of chapter 53 of this title, chapter 2 of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act to Federal agencies with statutory responsibility for enforcing compliance with such provisions and other appropriate Federal regulatory agencies;

"(iv) evaluate and recommend possible uses of special currency reporting requirements under section 5326; and

"(v) determine emerging trends and methods in money laundering and other financial crimes.

"(D) Establish and maintain a financial crimes communications center to furnish law enforcement authorities with intelligence information related to emerging or ongoing investigations and undercover operations.

"(E) Furnish research, analytical, and informational services to financial institutions, appropriate Federal regulatory agencies with regard to financial institutions, and appropriate Federal, State, local, and foreign law enforcement authorities, in accordance with policies and guidelines established by the Secretary of the Treasury or the Under Secretary of the Treasury for Enforcement, in the interest of detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes.

"(F) Establish and maintain a special unit dedicated to combatting the use of informal, nonbank networks and payment and barter system mechanisms that permit the transfer of funds or the equivalent of funds without records and without compliance with criminal and tax laws.

"(G) Provide computer and data support and data analysis to the Secretary of the Treasury for tracking and controlling foreign assets.

"(H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.

"(I) Administer the requirements of subchapters II and III of chapter 53 of this title, chapter 2 of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary of the Treasury.

"(J) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.

"(c) REQUIREMENTS RELATING TO MAINTENANCE AND USE OF DATA BANKS.—The Secretary of the Treasury shall establish and maintain operating procedures with respect to the government-wide data access service and the financial crimes communications center maintained by the Financial Crimes Enforcement Network which provide—

"(1) for the coordinated and efficient transmittal of information to, entry of information into, and withdrawal of information from, the data maintenance system maintained by the Network, including—

"(A) the submission of reports through the Internet or other secure network, whenever possible;

"(B) the cataloguing of information in a manner that facilitates rapid retrieval by law enforcement personnel of meaningful data; and

"(C) a procedure that provides for a prompt initial review of suspicious activity reports and other reports, or such other means as the Secretary may provide, to identify information that warrants immediate action; and

"(2) in accordance with section 552a of title 5 and the Right to Financial Privacy Act of 1978, appropriate standards and guidelines for determining—

"(A) who is to be given access to the information maintained by the Network;

"(B) what limits are to be imposed on the use of such information; and

"(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the data maintenance system.

"(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Financial Crimes Enforcement Network such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005.".

(b) COMPLIANCE WITH EXISTING REPORTS COMPLIANCE.—The Secretary of the Treasury shall study methods for improving compliance with the reporting requirements established in section 5314 of title 31, United States Code, and shall submit a report on such study to the Congress by the end of the 6-month period beginning on the date of the enactment of this Act and each 1-year period thereafter. The initial report shall include historical data on compliance with such reporting requirements.

(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 3 of title 31, United States Code, is amended—

(1) by redesignating the item relating to section 310 as section 311; and

(2) by inserting after the item relating to section 309 the following new item:

"310. Financial Crimes Enforcement Network".

SEC. 121. CUSTOMS SERVICE BORDER SEARCHES.

Section 5317(b) of title 31, United States Code, is amended to read as follows:

"(b) SEARCHES AT BORDER.—

"(1) IN GENERAL.—For purposes of ensuring compliance with the laws enforced by the United States Customs Service, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering, transiting, or departing from the United States.

"(2) INTERNATIONAL SHIPMENTS OF MAIL.—With respect to shipments of international mail that are exported or imported by the United States Postal Service, the Customs Service and other appropriate Federal agencies shall, subject to paragraph (3), apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the United States Postal Service and similar shipments by private companies.

"(3) SAFEGUARDS.—No provision of this subsection shall be construed as authorizing any customs officer or any other person to read any correspondence unless—

"(A) a search warrant has been issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure which permits such correspondence to be read; or

"(B) the sender or addressee of the correspondence has given written consent for any such action.".

SEC. 122. PROHIBITION ON FALSE STATEMENTS TO FINANCIAL INSTITUTIONS CONCERNING THE IDENTITY OF A CUSTOMER.

(a) IN GENERAL.—Chapter 47 of title 18, United States Code, is amended by inserting after section 1007 the following:

"§ 1008. False statements concerning the identity of customers of financial institutions

"(a) IN GENERAL.—Whoever, in connection with information submitted to or requested by a financial institution, knowingly in any manner—

"(1) falsifies, conceals, or covers up, or attempts to falsify, conceal, or cover up, the identity of any person in connection with any transaction with a financial institution;

"(2) makes, or attempts to make, any materially false, fraudulent, or fictitious statement or representation of the identity of any person in connection with a transaction with a financial institution;

"(3) makes or uses, or attempts to make or use, any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry concerning the identity of any person in connection with a transaction with a financial institution; or

"(4) uses or presents, or attempts to use or present, in connection with a transaction with a financial institution, an identification document or means of identification the possession of which is a violation of section 1028;

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

"(b) DEFINITIONS.—In this section, the following definitions shall apply:

"(1) FINANCIAL INSTITUTION.—The term 'financial institution'—

"(A) has the same meaning as in section 20; and

"(B) in addition, has the same meaning as in section 5312(a)(2) of title 31, United States Code.

"(2) IDENTIFICATION DOCUMENT.—The term 'identification document' has the same meaning as in section 1028(d).

"(3) MEANS OF IDENTIFICATION.—The term 'means of identification' has the same meaning as in section 1028(d).".

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) TITLE 18, UNITED STATES CODE.—Section 1956(c)(7)(D) of title 18, United States Code, is amended by striking "1014 (relating to fraudulent loan" and inserting "section 1008 (relating to false statements concerning the identity of customers of financial institutions), section 1014 (relating to fraudulent loan".

(2) TABLE OF SECTIONS.—The table of sections for chapter 47 of title 18, United States Code, is amended by inserting after the item relating to section 1007 the following:

"1008. False statements concerning the identity of customers of financial institutions.".

SEC. 123. VERIFICATION OF IDENTIFICATION.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(i) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS.—

"(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards regarding customer identification that shall apply in connection with the opening of an account at a financial institution.

"(2) MINIMUM REQUIREMENTS.—The regulations shall, at a minimum, require financial institutions to implement procedures for—

"(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

"(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information;

"(C) consulting applicable lists of known or suspected terrorists or terrorist organizations generated by government agencies to determine whether a person seeking to open an account appears on any such list.

"(3) FACTORS TO BE CONSIDERED.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

"(4) CERTAIN FINANCIAL INSTITUTIONS.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commission), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

"(5) EXEMPTIONS.—The Secretary of the Treasury (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

"(6) EFFECTIVE DATE.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of the enactment of the Financial Anti-Terrorism Act of 2001.".

(b) STUDY AND REPORT REQUIRED.—Within 6 months after the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) and

other appropriate Government agencies, shall submit a report to the Congress containing recommendations for—

(1) determining the most timely and effective way to require foreign nationals to provide domestic financial institutions and agencies with appropriate and accurate information, comparable to that which is required of United States nationals, concerning their identity, address, and other related information necessary to enable such institutions and agencies to comply with the requirements of this section;

(2) requiring foreign nationals to apply for and obtain, before opening an account with a domestic financial institution, an identification number which would function similarly to a Social Security number or tax identification number; and

(3) establishing a system for domestic financial institutions and agencies to review information maintained by relevant Government agencies for purposes of verifying the identities of foreign nationals seeking to open accounts at those institutions and agencies.

SEC. 124. CONSIDERATION OF ANTI-MONEY LAUNDERING RECORD.

(a) BANK HOLDING COMPANY ACT OF 1956.—

(1) IN GENERAL.—Section 3(c) of the Bank Holding Company Act of 1956 (12 U.S.C. 1842(c)) is amended by adding at the end the following new paragraph:

"(6) MONEY LAUNDERING.—In every case the Board shall take into consideration the effectiveness of the company or companies in combating and preventing money laundering activities, including in overseas branches.".

(2) SCOPE OF APPLICATION.—The amendment made by paragraph (1) shall apply with respect to any application submitted to the Board of Governors of the Federal Reserve System under section 3 of the Bank Holding Company Act of 1956 after December 31, 2000, which has not been approved by the Board before the date of the enactment of this Act.

(b) MERGERS SUBJECT TO REVIEW UNDER FEDERAL DEPOSIT INSURANCE ACT.—

(1) IN GENERAL.—Section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)) is amended—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10), the following new paragraph:

"(11) MONEY LAUNDERING.—In every case, the responsible agency shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combating and preventing money laundering activities, including in overseas branches.".

(2) SCOPE OF APPLICATION.—The amendment made by paragraph (1) shall apply with respect to any application submitted to the responsible agency under section 18(c) of the Federal Deposit Insurance Act after December 31, 2000, which has not been approved by all appropriate responsible agencies before the date of the enactment of this Act.

SEC. 125. REPORTING OF SUSPICIOUS ACTIVITIES BY INFORMAL UNDERGROUND BANKING SYSTEMS, SUCH AS HAWALAS.

(a) DEFINITION FOR SUBCHAPTER.—Subparagraph (R) of section 5312(a)(2) of title 31, United States Code, is amended to read as follows:

"(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system;".

(b) MONEY TRANSMITTING BUSINESS.—Section 5330(d)(1)(A) of title 31, United States Code, is amended by inserting before the semicolon the following: "or any other person who engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system".

(c) APPLICABILITY OF RULES.—Section 5318 of title 31, United States Code, as amended by this title, is amended by adding at the end the following:

"(l) APPLICABILITY OF RULES.—Any rules prescribed pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system.".

(d) REPORT.—Not later than 1 year after the date of enactment of this Act, the Secretary of the Treasury shall report to Congress on the need for any additional legislation relating to—

(1) informal value transfer banking systems or networks of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system;

(2) anti-money laundering controls; and

(3) regulatory controls relating to underground money movement and banking systems, such as the system referred to as "hawala", including whether the threshold for the filing of suspicious activity reports under section 5318(g) of title 31, United States Code should be lowered in the case of such systems.

TITLE II—PUBLIC-PRIVATE COOPERATION

SEC. 201. ESTABLISHMENT OF HIGHLY SECURE NETWORK.

(a) IN GENERAL.—The Secretary of the Treasury shall establish a highly secure network in the Financial Crimes Enforcement Network that—

(1) allows financial institutions to file reports required under subchapter II or III of chapter 53 of title 31, United States Code, chapter 2 of Public Law 91–508, or section 21 of the Federal Deposit Insurance Act through the network; and

(2) provides financial institutions with alerts and other information regarding suspicious activities that warrant immediate and enhanced scrutiny.

(b) EXPEDITED DEVELOPMENT.—The Secretary of the Treasury shall take such action as may be necessary to ensure that the website required under subsection (a) is fully operational before the end of the 9-month period beginning on the date of the enactment of this Act.

SEC. 202. REPORT ON IMPROVEMENTS IN DATA ACCESS AND OTHER ISSUES.

Before the end of the 6-month period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall report to the Congress on the following issues:

(1) DATA COLLECTION AND ANALYSIS.—Progress made since such date of enactment in meeting the requirements of section 310(c) of title 31, United States Code (as added by this Act).

(2) BARRIERS TO EXCHANGE OF FINANCIAL CRIME INFORMATION.—Technical, legal, and other barriers to the exchange of financial crime prevention and detection information among and between Federal law enforcement agencies, including an identification of all Federal law enforcement data systems between which or among which data cannot be shared for whatever reason.

(3) PRIVATE BANKING.—Private banking activities in the United States, including information on the following:

(A) The nature and extent of private banking activities in the United States.

(B) Regulatory efforts to monitor private banking activities and ensure that such activities are conducted in compliance with subchapter II of chapter 53 of title 31, United States Code, and section 21 of the Federal Deposit Insurance Act.

(C) With regard to financial institutions that offer private banking services, the policies and procedures of such institutions that are designed to ensure compliance with the requirements of subchapter II of chapter 53 of title 31, United States Code, and section 21 of the Federal Deposit Insurance Act with respect to private banking activity.

SEC. 203. REPORTS TO THE FINANCIAL SERVICES INDUSTRY ON SUSPICIOUS FINANCIAL ACTIVITIES.

At least once each calendar quarter, the Secretary of the Treasury shall—

(1) publish a report containing a detailed analysis identifying patterns of suspicious activity and other investigative insights derived from suspicious activity reports and investigations conducted by Federal, State, and local law enforcement agencies to the extent appropriate; and

(2) distribute such report to financial institutions (as defined in section 5312 of title 31, United States Code).

SEC. 204. EFFICIENT USE OF CURRENCY TRANSACTION REPORT SYSTEM.

(a) FINDINGS.—The Congress finds the following:

(1) The Congress established the currency transaction reporting requirements in 1970 because the Congress found then that such reports have a high degree of usefulness in criminal, tax, and regulatory investigations and proceedings

and the usefulness of such reports has only increased in the years since the requirements were established.

(2) In 1994, in response to reports and testimony that excess amounts of currency transaction reports were interfering with effective law enforcement, the Congress reformed the currency transaction report exemption requirements to provide—

(A) mandatory exemptions for certain reports that had little usefulness for law enforcement, such as cash transfers between depository institutions and cash deposits from government agencies; and

(B) discretionary authority for the Secretary of the Treasury to provide exemptions, subject to criteria and guidelines established by the Secretary, for financial institutions with regard to regular business customers that maintain accounts at an institution into which frequent cash deposits are made.

(3) Today there is evidence that some financial institutions are not utilizing the exemption system, or are filing reports even if there is an exemption in effect, with the result that the volume of currency transaction reports is once again interfering with effective law enforcement.

(b) STUDY AND REPORT.—

(1) STUDY REQUIRED.—The Secretary of the Treasury shall conduct a study of—

(A) the possible expansion of the statutory exemption system in effect under 5313 of title 31, United States Code; and

(B) methods for improving financial institution utilization of the statutory exemption provisions as a way of reducing the submission of currency transaction reports that have little or no value for law enforcement purposes, including improvements in the systems in effect at financial institutions for regular review of the exemption procedures used at the institution and the training of personnel in its effective use.

(2) REPORT REQUIRED.—The Secretary of the Treasury shall submit a report to the Congress before the end of the 90-day period beginning on the date of the enactment of this Act containing the findings and conclusions of the Secretary with regard to the study required under subsection (a) and such recommendations for legislative or administrative action as the Secretary determines to be appropriate.

SEC. 205. PUBLIC-PRIVATE TASK FORCE ON TERRORIST FINANCING ISSUES.

Section 1564 of the Annunzio—Wylie Anti-Money Laundering Act (31 U.S.C. 5311 note) is amended by adding at the end the following new subsection:

"(d) TERRORIST FINANCING ISSUES.—

"(1) IN GENERAL.—The Secretary of the Treasury shall provide, either within the Bank Secrecy Act Advisory Group, or as a subcommittee or other adjunct of the Advisory Group, for a task force of representatives from agencies and officers represented on the Advisory Group, a representative of the Director of the Office of Homeland Security, and representatives of financial institutions, private organizations that represent the financial services industry, and other interested parties to focus on—

"(A) issues specifically related to the finances of terrorist groups, the means terrorist groups use to transfer funds around the world and within the United States, including through the use of charitable organizations, nonprofit organizations, and nongovernmental organizations, and the extent to which financial institutions in the United States are unwittingly involved in such finances and the extent to which such institutions are at risk as a result;

"(B) the relationship, particularly the financial relationship, between international narcotics traffickers and foreign terrorist organizations, the extent to which their memberships overlap and engage in joint activities, and the extent to which they cooperate with each other in raising and transferring funds for their respective purposes; and

"(C) means of facilitating the identification of accounts and transactions involving terrorist groups and facilitating the exchange of information concerning such accounts and transactions between financial institutions and law enforcement organizations.

"(2) APPLICABILITY OF OTHER PROVISIONS.—Sections 552, 552a, and 552b of title 5, United States Code, and the Federal Advisory Committee Act shall not apply to the task force established pursuant to paragraph (1).".

SEC. 206. SUSPICIOUS ACTIVITY REPORTING REQUIREMENTS.

(a) DEADLINE FOR SUSPICIOUS ACTIVITY REPORTING REQUIREMENTS FOR REGISTERED BROKERS AND DEALERS.—The Secretary of the Treasury, in consultation

with the Securities and Exchange Commission, shall publish proposed regulations in the Federal Register before January 1, 2002, requiring brokers and dealers registered with the Securities and Exchange Commission under the Securities Exchange Act of 1934 to submit suspicious activity reports under section 5318(g) of title 31, United States Code. Such regulations shall be published in final form no later than June 1, 2002.

(b) SUSPICIOUS ACTIVITY REPORTING REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS, COMMODITY TRADING ADVISORS, AND COMMODITY POOL OPERATORS.—The Secretary of the Treasury, in consultation with the Commodity Futures Trading Commission, may prescribe regulations requiring futures commission merchants, commodity trading advisors, and commodity pool operators registered under the Commodity Exchange Act to submit suspicious activity reports under section 5318(g) of title 31, United States Code.

SEC. 207. AMENDMENTS RELATING TO REPORTING OF SUSPICIOUS ACTIVITIES.

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

"(3) LIABILITY FOR DISCLOSURES.—

"(A) IN GENERAL.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement (including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to any person.

"(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

"(i) any inference that the term 'person', as used in such subparagraph, may be construed more broadly than its ordinary usage so to include any government or agency of government; or

"(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.".

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

"(2) NOTIFICATION PROHIBITED.—

"(A) IN GENERAL.—If a financial institution or any director, officer, employee, or agent of any financial institution, voluntarily or pursuant to this section or any other authority, reports a suspicious transaction to a government agency—

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

"(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported other than as necessary to fulfill the official duties of such officer or employee.

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

SEC. 208. AUTHORIZATION TO INCLUDE SUSPICIONS OF ILLEGAL ACTIVITY IN WRITTEN EMPLOYMENT REFERENCES.

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

"(w) WRITTEN EMPLOYMENT REFERENCES MAY CONTAIN SUSPICIONS OF INVOLVEMENT IN ILLEGAL ACTIVITY.—

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

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

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

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

SEC. 209. INTERNATIONAL COOPERATION ON IDENTIFICATION OF ORIGINATORS OF WIRE TRANSFERS.

The Secretary of the Treasury shall—

(1) in consultation with the Attorney General and the Secretary of State, take all reasonable steps to encourage foreign governments to require the inclusion of the name of the originator in wire transfer instructions sent to the United States and other countries, with the information to remain with the transfer from its origination until the point of disbursement; and

(2) report annually to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate on—

(A) progress toward the goal enumerated in paragraph (1), as well as impediments to implementation and an estimated compliance rate; and

(B) impediments to instituting a regime in which all appropriate identification, as defined by the Secretary, about wire transfer recipients shall be included with wire transfers from their point of origination until disbursement.

SEC. 210. CHECK TRUNCATION STUDY.

Before the end of the 90-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury, in consultation with the Attorney General and the Board of Governors of the Federal Reserve System, shall conduct a study of the impact on crime prevention, law enforcement, and the administration of consumer protection laws of any policy of the Board of Governors of the Federal Reserve System relating to the promotion of check electronification, through truncation or other means, or migration from paper checks.

TITLE III—COMBATTING INTERNATIONAL MONEY LAUNDERING

SEC. 301. SPECIAL MEASURES FOR JURISDICTIONS, FINANCIAL INSTITUTIONS, OR INTERNATIONAL TRANSACTIONS OF PRIMARY MONEY LAUNDERING CONCERN.

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

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

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

"(1) IN GENERAL.—The Secretary may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

"(2) FORM OF REQUIREMENT.—The special measures described in—

"(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

"(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

"(C) subsection (b)(5) may be imposed only by regulation.

"(3) DURATION OF ORDERS; RULEMAKING.—Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)—

"(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

"(B) may not remain in effect for more than 120 days, except pursuant to a regulation prescribed on or before the end of the 120-day period beginning on the date of issuance of such order.

"(4) PROCESS FOR SELECTING SPECIAL MEASURES.—In selecting which special measure or measures to take under this subsection, the Secretary—

"(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Securities and Exchange Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary such other agencies and interested parties as the Secretary may find to be appropriate; and

"(B) shall consider—

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

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

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

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

"(b) SPECIAL MEASURES.—The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

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

"(A) IN GENERAL.—The Secretary may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or class of transactions to be of primary money laundering concern.

"(B) FORM OF RECORDS AND REPORTS.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

"(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

"(ii) the legal capacity in which a participant in any transaction is acting;

"(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

"(iv) a description of any transaction.

"(2) INFORMATION RELATING TO BENEFICIAL OWNERSHIP.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account

opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, transaction, or account to be of primary money laundering concern.

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

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

"(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

"(4) INFORMATION RELATING TO CERTAIN CORRESPONDENT ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

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

"(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

"(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable- through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

"(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN.—

"(1) IN GENERAL.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary to take 1 or more of the special measures described in sub-

section (b), the Secretary shall consult with the Secretary of State, and the Attorney General.

"(2) ADDITIONAL CONSIDERATIONS.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

"(A) JURISDICTIONAL FACTORS.—In the case of a particular jurisdiction—

"(i) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction;

"(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

"(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

"(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

"(v) the extent to which that jurisdiction is characterized as an offshore banking or secrecy haven by credible international organizations or multilateral expert groups;

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

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

"(B) INSTITUTIONAL FACTORS.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

"(i) the extent to which such financial institutions, transactions, or types of accounts are used to facilitate or promote money laundering in or through the jurisdiction;

"(ii) the extent to which such institutions, transactions, or types of accounts are used for legitimate business purposes in the jurisdiction; and

"(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

"(d) NOTIFICATION OF SPECIAL MEASURES INVOKED BY THE SECRETARY.—Not later than 10 days after the date of any action taken by the Secretary under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

"(e) DEFINITIONS.—Notwithstanding any other provision of this subchapter, for purposes of this section, the following definitions shall apply:

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

"(A) ACCOUNT.—The term 'account'—

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

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

"(B) CORRESPONDENT ACCOUNT.—The term 'correspondent account' means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.

"(C) PAYABLE-THROUGH ACCOUNT.—The term 'payable-through account' means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

"(D) SECRETARY.—The term 'Secretary' means the Secretary of the Treasury.

"(2) DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.—With respect to any financial institution other than a bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), define by regulation the term 'account', and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable-through and correspondent accounts.

"(3) REGULATORY DEFINITION.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this subchapter. Such regulations shall address issues related to an individual's authority to fund, direct, or manage the account (including the power to direct payments into or out of the account), and an individual's material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

"(4) OTHER TERMS.—The Secretary may, by regulation, further define the terms in paragraphs (1) and (2) and define other terms for the purposes of this section, as the Secretary deems appropriate.".

(b) FINANCIAL INSTITUTIONS SPECIFIED IN SUBCHAPTER II OF CHAPTER 53 OF TITLE 31, UNITED STATES CODE.—

(1) CREDIT UNIONS.—Subparagraph (E) of section 5312(2) of title 31, United States Code, is amended to read as follows:

"(E) any credit union;".

(2) FUTURES COMMISSION MERCHANT; COMMODITY TRADING ADVISOR; COMMODITY POOL OPERATOR.—Section 5312 of title 31, United States Code, is amended by adding at the end the following new subsection:

"(c) ADDITIONAL DEFINITIONS.—For purposes of this subchapter, the following definitions shall apply:

"(1) CERTAIN INSTITUTIONS INCLUDED IN DEFINITION.—The term 'financial institution' (as defined in subsection (a)) includes the following:

"(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act.".

(3) CFTC INCLUDED.—For purposes of this Act and any amendment made by this Act to any other provision of law, the term "Federal functional regulator" includes the Commodity Futures Trading Commission.

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

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

SEC. 302. SPECIAL DUE DILIGENCE FOR CORRESPONDENT ACCOUNTS AND PRIVATE BANKING ACCOUNTS.

(a) IN GENERAL.—Section 5318 of title 31, United States Code, is amended by inserting after subsection (i) (as added by section 123 of this Act) the following new subsection:

"(j) DUE DILIGENCE FOR UNITED STATES PRIVATE BANKING AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

"(1) IN GENERAL.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person, shall establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls to detect and report instances of money laundering through those accounts.

"(2) MINIMUM STANDARDS FOR CORRESPONDENT ACCOUNTS.—

"(A) IN GENERAL.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

"(i) under an offshore banking license; or

"(ii) under a banking license issued by a foreign country that has been designated—

"(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member with which designation the Secretary of the Treasury concurs; or

"(II) by the Secretary as warranting special measures due to money laundering concerns.

"(B) POLICIES, PROCEDURES, AND CONTROLS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) for foreign banks described in subparagraph (A) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

"(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

"(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under section 5318(g); and

"(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

"(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

"(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under section 5318(g); and

"(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, to prevent, detect, and report transactions that may involve the proceeds of foreign corruption.

"(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

"(A) OFFSHORE BANKING LICENSE.—The term 'offshore banking license' means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

"(B) PRIVATE BANK ACCOUNT.—The term 'private bank account' means an account (or any combination of accounts) that—

"(i) requires a minimum aggregate deposits of funds or other assets of not less than $1,000,000;

"(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

"(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.

"(5) REGULATORY AUTHORITY.—Before the end of the 6-month period beginning on the date of the enactment of the Financial Anti-Terrorism Act of 2001, the Secretary, in consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) shall further define and clarify, by regulation, the requirements of this subsection.".

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect beginning 180 days after the date of the enactment of this Act with respect to accounts covered by subsection (j) of section 5318 of title 31, United States Code (as added by this section) that are opened before, on, or after the date of the enactment of this Act.

SEC. 303. PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.

Section 5318 of title 31, United States Code, is amended by inserting after subsection (j) (as added by section 302 of this title) the following new subsection:

"(k) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

"(1) IN GENERAL.—A depository institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

"(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—

"(A) IN GENERAL.—A depository institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that institution in the United States for a foreign

bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country.

"(B) REGULATIONS.—The Secretary shall, in regulations, delineate reasonable steps necessary for a depository institution to comply with this subsection.

"(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed as prohibiting a depository institution from providing a correspondent account to a foreign bank, if the foreign bank—

"(A) is an affiliate of a depository institution, credit union, or other foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

"(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank, described in subparagraph (A), as applicable.

"(4) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

"(A) AFFILIATE.—The term 'affiliate' means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank.

"(B) DEPOSITORY INSTITUTION.—The 'depository institution'—

"(i) has the meaning given such term in section 3 of the Federal Deposit Insurance Act; and

"(ii) includes a credit union.

"(C) PHYSICAL PRESENCE.—The term 'physical presence' means a place of business that—

"(i) is maintained by a foreign bank;

"(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

"(I) employs 1 or more individuals on a full-time basis; and

"(II) maintains operating records related to its banking activities; and

"(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.".

SEC. 304. ANTI-MONEY LAUNDERING PROGRAMS.

(a) IN GENERAL.—Section 5318(h) of title 31, United States Code, is amended to read as follows:

"(h) ANTI-MONEY LAUNDERING PROGRAMS.—

"(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

"(A) the development of internal policies, procedures, and controls;

"(B) the designation of an officer of the financial institution responsible for compliance;

"(C) an ongoing employee training program; and

"(D) an independent audit function to test programs.

"(2) REGULATIONS.—The Secretary may, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the regulations contained in part 103 of title 31, of the Code of Federal Regulations, as in effect on the date of the enactment of the Financial Anti-Terrorism Act of 2001, or any successor to such regulations, for so long as such financial institution is not subject to the provisions of such regulations.".

(b) EFFECTIVE DATE.—The amendment made by subsection (a) shall take effect at the end of the 180-day period beginning on the date of the enactment of this Act.

(c) DATE OF APPLICATION OF REGULATIONS; FACTORS TO BE TAKEN INTO ACCOUNT.—Before the end of the 180-day period beginning on the date of the enactment of this Act, the Secretary of the Treasury shall prescribe regulations to implement the amendment made by subsection (a). In prescribing such regulations, the Secretary shall consider the extent to which the requirements imposed under such regulations are commensurate with the size, location, and activities of the financial institutions to which such regulations apply.

SEC. 305. CONCENTRATION ACCOUNTS AT FINANCIAL INSTITUTIONS.

Section 5318(h) of title 31, United States Code (as amended by section 304) is amended by adding at the end the following:

"(3) CONCENTRATION ACCOUNTS.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

"(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

"(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

"(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.".

SEC. 306. INTERNATIONAL COOPERATION IN INVESTIGATIONS OF MONEY LAUNDERING, FINANCIAL CRIMES, AND THE FINANCES OF TERRORIST GROUPS.

(a) NEGOTIATIONS.—

(1) IN GENERAL.—In addition to the requirements of section 4702 of the Anti-Drug Abuse Act of 1988, the Secretary of the Treasury (hereinafter in this section referred to as the "Secretary"), in consultation with the Attorney General, the Secretary of State, and the Board of Governors of the Federal Reserve System, shall enter into negotiations with the appropriate financial supervisory agencies and other officials of any foreign country the financial institutions of which do business with United States financial institutions or which may be utilized by any foreign terrorist organization (as designated under section 219 of the Immigration and Nationality Act), any person who is a member or representative of any such organization, or any person engaged in money laundering or financial or other crimes.

(2) PURPOSES OF NEGOTIATIONS.—In carrying out negotiations under paragraph (1), the Secretary shall seek to enter into and further cooperative efforts, voluntary information exchanges, the use of letters rogatory, mutual legal assistance treaties, and international agreements to—

(A) ensure that foreign banks and other financial institutions maintain adequate records of—

(i) large United States currency transactions; and

(ii) transaction and account information relating to any foreign terrorist organization (as designated under section 219 of the Immigration and Nationality Act), any person who is a member or representative of any such organization, or any person engaged in money laundering or financial or other crimes; and

(B) establish a mechanism whereby such records may be made available to United States law enforcement officials and domestic financial institution supervisors, when appropriate.

(b) REPORTS.—

(1) INTERIM REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit an interim report to the Congress on progress in the negotiations under subsection (a).

(2) FINAL REPORT.—Not later than 2 years after the date of the enactment of this Act, the Secretary shall submit a final report to the President and the Congress, on the outcome of negotiations under subsection (a).

(3) IDENTIFICATION OF CERTAIN COUNTRIES.—In the report submitted under paragraph (2), the Secretary shall identify countries—

(A) with respect to which the Secretary determines there is evidence that the financial institutions in such countries are being utilized, knowingly or unwittingly, by any foreign terrorist organization (as designated under section 219 of the Immigration and Nationality Act), any person who is a member or representative of any such organization, or any person engaged in money laundering or financial or other crimes; and

(B) which have not reached agreement with United States authorities to meet the objectives of subparagraphs (A) and (B) of subsection (a)(2).

(c) AUTHORITY FOR OTHER ACTION.—

(1) IN GENERAL.—If the President determines that—

(A) a foreign country is described in subparagraphs (A) and (B) of subsection (b)(3); and

(B) such country—

(i) is not negotiating in good faith to reach an agreement described in subsection (a)(2); or

(ii) or a financial institution of such country, has not complied with a request, made by an official of the United States Government authorized to make such request, for information regarding a foreign terrorist organization (as designated under section 219 of the Immigration and Nationality Act), a person who is a member or representative of any such organization, or a person engaged in money laundering for or with any such organization,

the President may impose appropriate penalties and sanctions on such country and, except as provided in paragraph (3), financial institutions of such country.

(2) PENALTIES AND SANCTIONS.—The penalties and sanctions which may be imposed by the President under paragraph (1) include temporarily or permanently—

(A) prohibiting such persons, institutions, or other entities as the President may designate in any such country from participating in any United States dollar clearing or wire transfer system; and

(B) prohibiting such persons, institutions or entities as the President may designate in such countries from maintaining an account with any bank or other financial institution chartered under the laws of the United States or any State.

(3) EXEMPTION FOR CERTAIN FINANCIAL INSTITUTIONS.—Financial institutions that maintain adequate records shall be exempt from such penalties and sanctions.

SEC. 307. PROHIBITION ON ACCEPTANCE OF ANY BANK INSTRUMENT FOR UNLAWFUL INTERNET GAMBLING.

(a) IN GENERAL.—No person engaged in the business of betting or wagering may knowingly accept, in connection with the participation of another person in unlawful Internet gambling—

(1) credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);

(2) an electronic fund transfer or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of the other person;

(3) any check, draft, or similar instrument which is drawn by or on behalf of the other person and is drawn on or payable at or through any financial institution; or

(4) the proceeds of any other form of financial transaction as the Secretary may prescribe by regulation which involves a financial institution as a payor or financial intermediary on behalf of or for the benefit of the other person.

(b) DEFINITIONS.—For purposes of this Act, the following definitions shall apply:

(1) BETS OR WAGERS.—The term "bets or wagers"—

(A) means the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of greater value than the amount staked or risked in the event of a certain outcome;

(B) includes the purchase of a chance or opportunity to win a lottery or other prize (which opportunity to win is predominantly subject to chance);

(C) includes any scheme of a type described in section 3702 of title 28, United States Code;

(D) includes any instructions or information pertaining to the establishment or movement of funds in an account by the bettor or customer with the business of betting or wagering; and

(E) does not include—

(i) any activity governed by the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934) for the purchase or sale at a future date of securities (as that term is defined in section 3(a)(10) of such Act);

(ii) any transaction on or subject to the rules of a contract market designated pursuant to the Commodity Exchange Act;

(iii) any over-the-counter derivative instrument;

(iv) any contract of indemnity or guarantee;

(v) any contract for insurance;

(vi) any deposit or other transaction with a depository institution (as defined in section 3(c) of the Federal Deposit Insurance Act);

(vii) any participation in a simulation sports game or an educational game or contest that—

(I) is not dependent solely on the outcome of any single sporting event or nonparticipant's singular individual performance in any single sporting event;

(II) has an outcome that reflects the relative knowledge and skill of the participants with such outcome determined predominantly by accumulated statistical results of sporting events; and

(III) offers a prize or award to a participant that is established in advance of the game or contest and is not determined by the number of participants or the amount of any fees paid by those participants; and

(viii) any transaction with a business licensed by a State.

(2) BUSINESS OF BETTING OR WAGERING.—The term "business of betting or wagering" does not include, other than for purposes of subsection (e), any creditor, credit card issuer, insured depository institution, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network.

(3) INTERNET.—The term "Internet" means the international computer network of interoperable packet switched data networks.

(4) UNLAWFUL INTERNET GAMBLING.—The term "unlawful Internet gambling" means to place, receive, or otherwise transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State in which the bet or wager is initiated, received, or otherwise made.

(5) OTHER TERMS.—

(A) CREDIT; CREDITOR; AND CREDIT CARD.—The terms "credit", "creditor", and "credit card" have the meanings given such terms in section 103 of the Truth in Lending Act.

(B) ELECTRONIC FUND TRANSFER.—The term "electronic fund transfer"—

(i) has the meaning given such term in section 903 of the Electronic Fund Transfer Act; and

(ii) includes any fund transfer covered by Article 4A of the Uniform Commercial Code, as in effect in any State.

(C) FINANCIAL INSTITUTION.—The term "financial institution" has the meaning given such term in section 903 of the Electronic Fund Transfer Act.

(D) MONEY TRANSMITTING BUSINESS AND MONEY TRANSMITTING SERVICE.—The terms "money transmitting business" and "money transmitting service" have the meanings given such terms in section 5330(d) of title 31, United States Code.

(E) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(c) CIVIL REMEDIES.—

(1) JURISDICTION.—The district courts of the United States shall have original and exclusive jurisdiction to prevent and restrain violations of this section by issuing appropriate orders in accordance with this section, regardless of whether a prosecution has been initiated under this section.

(2) PROCEEDINGS.—

(A) INSTITUTION BY FEDERAL GOVERNMENT.—

(i) IN GENERAL.—The United States, acting through the Attorney General, may institute proceedings under this subsection to prevent or restrain a violation of this section.

(ii) RELIEF.—Upon application of the United States under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(B) INSTITUTION BY STATE ATTORNEY GENERAL.—

(i) IN GENERAL.—The attorney general of a State (or other appropriate State official) in which a violation of this section allegedly has occurred or will occur may institute proceedings under this subsection to prevent or restrain the violation.

(ii) RELIEF.—Upon application of the attorney general (or other appropriate State official) of an affected State under this subparagraph, the district court may enter a preliminary injunction or an injunction against any person to prevent or restrain a violation of this section, in accordance with Rule 65 of the Federal Rules of Civil Procedure.

(C) INDIAN LANDS.—

(i) IN GENERAL.—Notwithstanding subparagraphs (A) and (B), for a violation that is alleged to have occurred, or may occur, on Indian lands (as that term is defined in section 4 of the Indian Gaming Regulatory Act)—

(I) the United States shall have the enforcement authority provided under subparagraph (A);

(II) the enforcement authorities specified in an applicable Tribal-State compact negotiated under section 11 of the Indian Gaming Regulatory Act shall be carried out in accordance with that compact; and

(III) class III Internet gaming activities shall be lawful only if such activities are—

(aa) located in a State that permits Internet gambling;

(bb) conducted in conformance with a tribal-State compact pursuant to section 11(d)(3) of the Indian Gaming Regulatory Act; and

(cc) the person placing or transmitting the wager or bet is located in a jurisdiction that permits Internet gambling.

(ii) RULE OF CONSTRUCTION.—No provision of this section shall be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act.

(D) BANKING REGULATORS.—Before initiating any proceeding under this paragraph with respect to a violation or potential violation of subsection (e) by an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act), the Attorney General of the United States or an attorney general of a State (or other appropriate State official) shall—

(i) notify the appropriate Federal banking agency (as defined in such section) of such violation or potential violation; and

(ii) allow such agency a reasonable time to issue an order to such insured depository institution under section 8(x) of the Federal Deposit Insurance Act.

(3) EXPEDITED PROCEEDINGS.—In addition to any proceeding under paragraph (2), a district court may, in exigent circumstances, enter a temporary restraining order against a person alleged to be in violation of this section upon application of the United States under paragraph (2)(A), or the attorney general (or other appropriate State official) of an affected State under paragraph (2)(B), in accordance with Rule 65(b) of the Federal Rules of Civil Procedure.

(4) LIMITATION.—No provision of this section shall be construed as authorizing an injunction against an interactive computer service (as defined in section 230(f) of the Communications Act of 1934) unless such interactive computer service is acting in concert or participation with a person who violates this section and such service receives actual notice of the order.

(d) CRIMINAL PENALTY.—

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

(2) PERMANENT INJUNCTION.—Upon conviction of a person under this subsection, the court may enter a permanent injunction enjoining such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

(e) CIRCUMVENTIONS PROHIBITED.—Notwithstanding subsection (b)(2), a creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local network utilized to effect a credit transaction, electronic fund transfer, or money transmitting service, or any participant in such network, may be liable under this section if such creditor, issuer, institution, operator, business, network, or participant has actual knowledge and control of bets and wagers—

(1) operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made; or

(2) owns or controls, or is owned or controlled by, any person who operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers may be placed, received, or otherwise made or at which unlawful bets or wagers are offered to be placed, received, or otherwise made.

(f) ENFORCEMENT ACTIONS.—Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818) is amended by adding at the end the following new subsection:

"(x) DEPOSITORY INSTITUTION INVOLVEMENT IN INTERNET GAMBLING.—If any appropriate Federal banking agency determines that any insured depository institution is engaged in any of the following activities, the agency may issue an order to

such institution prohibiting such institution from continuing to engage in any of the following activities:

"(1) Extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such extension of credit, electronic fund transfer, or money transmitting service.

"(2) Paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such check, draft, or other instrument.".

SEC. 308. INTERNET GAMBLING IN OR THROUGH FOREIGN JURISDICTIONS.

(a) IN GENERAL.—In deliberations between the United States Government and any other country on money laundering, corruption, and crime issues, the United States Government should—

(1) encourage cooperation by foreign governments and relevant international fora in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes;

(2) advance policies that promote the cooperation of foreign governments, through information sharing or other measures, in the enforcement of this Act; and

(3) encourage the Financial Action Task Force on Money Laundering, in its annual report on money laundering typologies, to study the extent to which Internet gambling operations are being used for money laundering.

(b) REPORT REQUIRED.—The Secretary of the Treasury shall submit an annual report to the Congress on the deliberations between the United States and other countries on issues relating to Internet gambling.

TITLE IV—CURRENCY PROTECTION

SEC. 401. COUNTERFEITING DOMESTIC CURRENCY AND OBLIGATIONS.

(a) COUNTERFEIT ACTS COMMITTED OUTSIDE THE UNITED STATES.—Section 470 of title 18, United States Code, is amended—

(1) in paragraph (2), by inserting "analog, digital, or electronic image," after "plate, stone,"; and

(2) by striking "shall be fined under this title, imprisoned not more than 20 years, or both" and inserting "shall be punished as is provided for the like offense within the United States".

(b) OBLIGATIONS OR SECURITIES OF THE UNITED STATES.—Section 471 of title 18, United States Code, is amended by striking "fifteen years" and inserting "20 years".

(c) UTTERING COUNTERFEIT OBLIGATIONS OR SECURITIES.—Section 472 of title 18, United States Code, is amended by striking "fifteen years" and inserting "20 years".

(d) DEALING IN COUNTERFEIT OBLIGATIONS OR SECURITIES.—Section 473 of title 18, United States Code, is amended by striking "ten years" and inserting "20 years".

(e) PLATES, STONES, OR ANALOG, DIGITAL, OR ELECTRONIC IMAGES FOR COUNTERFEITING OBLIGATIONS OR SECURITIES.—

(1) IN GENERAL.—Section 474(a) of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

"Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any obligation or other security of the United States; or".

(2) AMENDMENT TO DEFINITION.—Section 474(b) of title 18, United States Code, is amended by striking the first sentence and inserting the following new sentence: "For purposes of this section, the term 'analog, digital, or electronic image' includes any analog, digital, or electronic method used for the making, execution, acquisition, scanning, capturing, recording, retrieval, transmission, or reproduction of any obligation or security, unless such use is authorized by the Secretary of the Treasury.".

(3) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 474 of title 18, United States Code, is amended by striking "**or stones**" and inserting "**, stones, or analog, digital, or electronic images**".

(4) CLERICAL AMENDMENT.—The table of sections for chapter 25 of title 18, United States Code, is amended in the item relating to section 474 by striking "or stones" and inserting ", stones, or analog, digital, or electronic images".

(f) TAKING IMPRESSIONS OF TOOLS USED FOR OBLIGATIONS OR SECURITIES.—Section 476 of title 18, United States Code, is amended—

(1) by inserting "analog, digital, or electronic image," after "impression, stamp,"; and

(2) by striking "ten years" and inserting "25 years".

(g) POSSESSING OR SELLING IMPRESSIONS OF TOOLS USED FOR OBLIGATIONS OR SECURITIES.—Section 477 of title 18, United States Code, is amended—

(1) in the first paragraph, by inserting "analog, digital, or electronic image," after "imprint, stamp,";

(2) in the second paragraph, by inserting "analog, digital, or electronic image," after "imprint, stamp,"; and

(3) in the third paragraph, by striking "ten years" and inserting "25 years".

(h) CONNECTING PARTS OF DIFFERENT NOTES.—Section 484 of title 18, United States Code, is amended by striking "five years" and inserting "10 years".

(i) BONDS AND OBLIGATIONS OF CERTAIN LENDING AGENCIES.—The first and second paragraphs of section 493 of title 18, United States Code, are each amended by striking "five years" and inserting "10 years".

SEC. 402. COUNTERFEITING FOREIGN CURRENCY AND OBLIGATIONS.

(a) FOREIGN OBLIGATIONS OR SECURITIES.—Section 478 of title 18, United States Code, is amended by striking "five years" and inserting "20 years".

(b) UTTERING COUNTERFEIT FOREIGN OBLIGATIONS OR SECURITIES.—Section 479 of title 18, United States Code, is amended by striking "three years" and inserting "20 years".

(c) POSSESSING COUNTERFEIT FOREIGN OBLIGATIONS OR SECURITIES.—Section 480 of title 18, United States Code, is amended by striking "one year" and inserting "20 years".

(d) PLATES, STONES, OR ANALOG, DIGITAL, OR ELECTRONIC IMAGES FOR COUNTERFEITING FOREIGN OBLIGATIONS OR SECURITIES.—

(1) IN GENERAL.—Section 481 of title 18, United States Code, is amended by inserting after the second paragraph the following new paragraph:

"Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any bond, certificate, obligation, or other security of any foreign government, or of any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money; or".

(2) INCREASED SENTENCE.—The last paragraph of section 481 of title 18, United States Code, is amended by striking "five years" and inserting "25 years".

(3) TECHNICAL AND CONFORMING AMENDMENT.—The heading for section 481 of title 18, United States Code, is amended by striking "**or stones**" and inserting "**, stones, or analog, digital, or electronic images**".

(4) CLERICAL AMENDMENT.—The table of sections for chapter 25 of title 18, United States Code, is amended in the item relating to section 481 by striking "or stones" and inserting ", stones, or analog, digital, or electronic images".

(e) FOREIGN BANK NOTES.—Section 482 of title 18, United States Code, is amended by striking "two years" and inserting "20 years".

(f) UTTERING COUNTERFEIT FOREIGN BANK NOTES.—Section 483 of title 18, United States Code, is amended by striking "one year" and inserting "20 years".

SEC. 403. PRODUCTION OF DOCUMENTS.

Section 5114(a) of title 31, United States Code (relating to engraving and printing currency and security documents), is amended—

(1) by striking "(a) The Secretary of the Treasury" and inserting:

"(a) AUTHORITY TO ENGRAVE AND PRINT.—

"(1) IN GENERAL.—The Secretary of the Treasury"; and

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

"(2) ENGRAVING AND PRINTING FOR OTHER GOVERNMENTS.—The Secretary of the Treasury may, if the Secretary determines that it will not interfere with engraving and printing needs of the United States, produce currency, postage stamps, and other security documents for foreign governments, subject to a determination by the Secretary of State that such production would be consistent with the foreign policy of the United States.".

SEC. 404. REIMBURSEMENT.

Section 5143 of title 31, United States Code (relating to payment for services of the Bureau of Engraving and Printing), is amended—

(1) in the first sentence, by inserting ", any foreign government, or any territory of the United States" after "agency";

(2) in the second sentence, by inserting "and other" after "administrative"; and

(3) in the last sentence, by inserting ", foreign government, or territory of the United States" after "agency".

PURPOSE AND SUMMARY

H.R. 3004, the Financial Anti-Terrorism Act of 2001, provides the United States government with new tools to combat the financing of terrorism and other financial crimes. The legislation contains provisions to strengthen law enforcement authorities, as well as enhance public-private cooperation between government and industry in disrupting terrorist funding.

The bill (1) makes it a crime to smuggle over $10,000 into or out of the United States, and to transport more than $10,000 in criminal proceeds across State lines; (2) gives the Justice Department new prosecutorial tools to combat terrorist-related and other money laundering through U.S. financial institutions; (3) provides statutory authorization for the Financial Crimes Enforcement Network (FinCEN), which analyzes reports filed by financial institutions on currency transactions and suspicious financial activity; (4) sets up a unit in FinCEN directed at oversight and analysis of hawalas and other underground black market banking systems; (5) authorizes the Customs Service to inspect outbound international mail; (6) makes it a crime to knowingly falsify one's identity in opening an account at a financial institution and directs the Treasury to develop regulations to guide financial institutions in identifying account holders; (7) directs the Treasury Department to establish a secure web site to receive electronic filings of Suspicious Activity Reports (SARs) and provide financial institutions with alerts and other information regarding patterns of terrorist or other suspicious activity that warrant enhanced scrutiny; (8) requires the Secretary of the Treasury to report quarterly to industry on how SARs are used to assist law enforcement in combating terrorism and other crimes; (10) authorizes intelligence agency access to reports filed by financial institutions and expands government access to consumer financial records and credit histories; (11) creates a public-private task force on terrorist financing; (12) sets a December 31, 2001, deadline for proposed regulations on SAR reporting requirements for broker-dealers and authorizes the Department of the Treasury to require SARs of certain commodity futures traders; (13) authorizes the Secretary of the Treasury to impose "special measures" if a foreign country, financial institution, transaction, or account is deemed to be a "primary money laundering concern"; (14) prohibits U.S. financial institutions from providing banking services to "shell" banks that have no physical presence in any country nor any affiliation with a financial institution; (15) requires greater due diligence for certain correspondent and private banking accounts; (16) authorizes Treasury to regulate concentration accounts; (17) requires financial institutions to have anti-money laundering programs; (18) authorizes the President to impose certain sanctions (including limiting access to the U.S. financial system) against foreign governments that refuse to cooperate in law enforcement efforts against terrorism and money laundering; (19) prohibits the use of financial instruments for unlawful Internet gambling; and (20) updates U.S. anti-counterfeiting laws.

BACKGROUND AND NEED FOR LEGISLATION

In the wake of the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon, the financial transactions and infrastructure associated with the terrorists have received extensive coverage. Early reports revealed that terrorist operatives used thousands of dollars in cash for expensive flight school training, paid their rent with checks drawn on local American banks, bought airline tickets over the Internet with credit cards, and engaged in numerous other financial transactions. Although the hijackers are suspected to have underwritten much of their low-budget operation from funds generated in the United States, perhaps by petty financial crime, experts suspect that at least some of the seed money may have originated overseas from Osama Bin Laden's organization, Al Qaeda.

According to press reports, Mr. Bin Laden's financial net worth may be as high as $300 million. His fortune derives from an inheritance from his wealthy Saudi family and from revenue generated by a far-flung business empire engaged in everything from construction and agriculture to banking and trade. Witnesses at the trial earlier this year of terrorists responsible for the U.S. embassy bombings in Africa described Mr. Bin Laden's banking relationship with Al Shamal Islamic Bank in the Sudan. Mr. Bin Laden also reportedly enjoys financial support from Persian Gulf businessmen as well as from front organizations posing as Islamic charities.

Despite evidence suggesting Mr. Bin Laden and Al Qaeda utilize formal banking relationships as part of their global financial network, experts believe that a major share of terrorist financing is conducted through international cash couriers as well as through informal banking systems, like the ancient South Asian money exchange system called hawala. The latter consists of an international network of non-bank financial agents, often built on trusted family or cultural relationships. In most cases, the funds themselves are never transferred, just messages relating to receipt or disbursement of funds. These underground systems are exploited by terrorists and other financial criminals because of the lack of record-keeping and opportunity for anonymity.

Immediately after the September 11 terrorist attacks, the Administration mounted an aggressive strategy to track and disrupt the financial networks that sustain international terrorism. On September 14, 2001, the Treasury Department announced the creation of a Foreign Terrorist Asset Tracking Center (FTAT) in Treasury's Office of Foreign Asset Control (OFAC). On September 24, vowing that "we will starve terrorists of funding," the President issued Executive Order 13224 under the International Emergency Economic Powers Act (IEEPA), directing Treasury to freeze any U.S. assets of, and prohibit any financial transactions with, twenty-seven individuals and organizations including Mr. Bin Laden, his top subordinates, Al Qaeda, and business and charitable entities providing support to Al Qaeda. The Executive Order was broader than previous orders, most notably by authorizing the blocking of U.S. assets of foreign banks that refuse to freeze terrorist assets abroad. On October 12, the Administration added 39 more individuals and entities to the blocking list.

In addition to the OFAC order, Federal regulators advised U.S. banks and other financial institutions to search their records for any transactions associated with the FBI's list of 19 hijacking suspects, and Treasury's Financial Crimes Enforcement Network (FinCEN) established a 24-hour hotline for banks and other financial institutions to report suspicious transactions that may be related to terrorist activity against the United States. To further bolster its efforts to disrupt terrorist financing, Treasury is accelerating the implementation of registration and suspicious activity reporting (SAR) requirements for non-bank financial institutions, including hawala. At the international level, the Administration has been working with the G–8 countries and the United Nations to tackle the financial underpinnings of terrorism. Several allies, including Switzerland and Britain, have already frozen accounts of suspected terrorists and, on September 28, the U.N. Security Council unanimously passed a U.S.-drafted resolution directing all member nations to freeze the assets of terrorists and to prohibit all financial support to terrorist organizations. All countries were urged to report to the Security Council within 90 days on steps they have taken to implement the resolution.

Despite the provisions of the 1970 Bank Secrecy Act and various money laundering laws enacted since, the current money laundering regime appears to have been ineffective in detecting or preventing the terrorist hijackers from operating freely in the United States. For example, current law requires that U.S. banks file Currency Transaction Reports (CTRs) for financial transactions in excess of $10,000, and Suspicious Activity Reports (SARs) for potentially criminal financial transactions of $5,000 or more. The evidence gathered thus far indicates that these thresholds exceeded many of the reported financial transactions of the terrorists. Even the Currency or Monetary Instrument Reports (CMIRs) which must be filed by any person transporting more than $10,000 into or out of the United States may have proved futile in detecting any large cash flows through U.S. ports of entry.

At the Committee's October 3, 2001, hearing on terrorist funding, Treasury Under Secretary Gurule testified how Al Qaeda operatives "use checks, credit cards, ATM cards, and wire-transfer systems and brokerage accounts throughout the world, including the U.S." He explained how some Islamic charities have been penetrated and their fund-raising activities exploited by terrorists. He also testified that Al Qaeda uses banks, legal businesses, front companies, and underground financial systems to finance the organization's activities, and that some elements of the organization rely on profits from the drug trade. Under Secretary Gurule outlined the steps U.S. officials are taking to address financial networks and transactions that support terrorism including: (1) investigating terrorist organizations and their supporters; (2) identifying assets to be blocked; (3) figuring out the methods terrorists use to move funds for operational support; (4) identifying the gaps in U.S. law enforcement and regulatory regimes that terrorists exploit in order to move funds; (5) sharing information with law enforcement agencies and other organizations around the world; and (6) utilizing the powers of existing laws and regulations, such as the International Emergency Economic Powers Act, the Bank Secrecy

Act, and the Anti-Terrorism Act, to deprive terrorists of access to any funds or other financial assets in the United States.

In testimony presented on behalf of Assistant Attorney General Michael Chertoff, Deputy Assistant Attorney General Mary Lee Warren warned that "we are fighting with outdated weapons in the money laundering arena today." She described money laundering as an increasingly global problem involving cross-border smuggling of bulk cash and the international electronic transfer of funds enabling criminals in one country to conceal their funds in another.

Mr. Dennis Lormel, Chief of the Financial Crimes Section of the Federal Bureau of Investigation's (FBI's) Criminal Investigations Division expressed support for the money laundering legislation proposed by the Administration and described the Bureau's concerns regarding vulnerabilities in the current financial system which facilitate movement of terrorist funds. Like Ms. Warren, he warned that terrorist and other criminal organizations "rely heavily upon wire transfers" and called for greater transparency in the originators of such funds. Mr. Lormel also cited correspondent banking as another "potential vulnerability in the financial services sector that can offer terrorist organizations a gateway into U.S. banks," and called for banks to "more thoroughly screen and monitor foreign banks as clients." He also warned of the problems associated with nonbank financial institutions, so-called "Money Services Businesses" (MSBs), which terrorists are able to exploit because of heretofore inadequate regulation.

Industry witnesses from the American Bankers Association and the Securities Industry Association discussed their current efforts to cooperate with law enforcement to stop terrorist funding and outlined some of the obstacles they are encountering in that endeavor. Both called for enhanced efforts to strengthen the ongoing public-private partnership.

Former Deputy Secretary of Treasury Stuart Eizenstat underscored the need for new tools to deal in a "measured, precise, and cost-effective way with particular money laundering threats," and endorsed legislation passed by the House Banking Committee in the last Congress and reintroduced in the 107th Congress as H.R. 1114. Finally, money laundering expert John Moynihan of BERG Associates noted that the "Achilles heel of any criminal organization is its financial infrastructure" and described in detail how underground "black market banking" operations—like hawala systems—are used by criminals to finance their trade.

Bulk Cash Smuggling.—As recent Congressional hearings have demonstrated, currency smuggling is an extremely serious law enforcement problem. Hundreds of millions of dollars in U.S. currency-representing the proceeds of drug trafficking and other criminal offenses—is annually transported out of the United States to foreign countries in shipments of bulk cash. Smugglers use all available means to transport the currency out of the country, from false bottoms in personal luggage, to secret compartments in automobiles, to concealment in durable goods exported for sale abroad.

Even more serious, press reports indicate that persons involved in planning and perpetrating terrorist acts in the United States may have smuggled currency into the United States from abroad.

Presently, the only law enforcement weapon against such smuggling is section 5316 of title 31, United States Code, which makes

it an offense to transport more than $10,000 in currency or monetary instruments into, or out of, the United States without filing a report with the United States Customs Service. The effectiveness of section 5316 as a law enforcement tool has been diminished, however, by a recent Supreme Court decision. In *United States* v. *Bajakajian,* 118 S. Ct. 2028 (1998), the Supreme Court held that section 5316 constitutes a mere reporting violation, which is not a serious offense for purposes of the Excessive Fines Clause of the Eighth Amendment. Accordingly, confiscation of the full amount of the smuggled currency is unconstitutional, even if the smuggler took elaborate steps to conceal the currency and otherwise obstruct justice.

Confiscation of the smuggled currency is, of course, the most effective weapon that can be employed against currency smugglers. Accordingly, in response to the *Bajakajian* decision, the Department of Justice proposed making the act of bulk cash smuggling itself a criminal offense, and to authorize the imposition of the full range of civil and criminal sanctions when the offense is discovered. Because the act of concealing currency for the purpose of smuggling it out of the United States is inherently more serious than simply failing to file a Customs report, strong and meaningful sanctions, such as confiscation of the smuggled currency, are likely to withstand Eighth Amendment challenges to the new statute.

The Committee felt that this proposal would be an important weapon in the arsenal against terrorism, and included these provisions in the legislation.

Interstate Currency Couriers.—An essential component of the money laundering cycle in drug cases is the consolidation of cash proceeds of drug sales at a collection point. Typically, money-laundering organizations employ couriers to pick-up cash at various locations and transport it to another location. A number of recent cases illustrate this process. See *United States* v. *$141,770.00 in U.S. Currency,* 157 F.3d 600 (8th Cir. 1998) (currency packaged in three-layers of zip-lock bags wrapped in fabric-softener sheets found in hidden vehicle compartment); *United States* v. *$189,825.00 in U.S. Currency,* 8 F. Supp.2d 1300 (N.D. Okla. 1998) (currency bundled and hidden in gas tank); *United States* v. *$206,323.56 in U.S. Currency,* 998 F. Supp. 693 (S.D. W. Va. 1998) (courier flees during highway stop when drug dog detects concealed currency); *United States* v. *$94,010 U.S. Currency,* 1998 WL 567837 (W.D.N.Y. 1998) (currency concealed in false compartment).

The common elements in these cases include the transportation of a large quantity of currency, bundled in street denominations and concealed in a vehicle, on an interstate or other major highway, by a person or persons who disclaim any knowledge of where the currency came from or where it is to be delivered. Yet under current law, the person transporting the currency may not be guilty of any money laundering offense. See *United States* v. *Puig-Infante,* 19 F.3d 929 (5th Cir. 1994) (simply transporting drug proceeds from Fla. to Tex. not a money laundering offense).

Having the tools to stop interstate currency smuggling is particularly important in terrorism cases because terrorists, as press reports reveal, engage in a form of reverse money laundering: instead of conducting transactions to conceal or disguise criminal proceeds, terrorists transport funds from seemingly legitimate sources, but

with the intent to use those funds for an illegal purpose. Criminalizing such activity at the Federal level follows the example of the State of Florida, which has made such transportation an offense under State money laundering laws. See Florida Statutes, section 896.101(b).

Improving Money Laundering Laws.—The Committee's review of current law regarding money laundering revealed a number of shortcomings. For instance, section 1956 of title 18, United States Code, makes it an offense to conduct a transaction involving a financial institution if the transaction involves criminally derived property. Similarly, 18 U.S.C. § 1957 creates an offense relating to the deposit, withdrawal, transfer or exchange of criminally derived funds "by, to or through a financial institution." For the purposes of both statutes, the term "financial institution" is defined in 31 U.S.C. § 5312. See 18 U.S.C. § 1956(c)(6); 18 U.S.C. § 1957(f).

The definition of "financial institution" in § 5312 does not explicitly include foreign banks. Such banks may well be covered because they fall within the meaning of "commercial bank" or other terms in the statute, but as presently drafted, there is some confusion over whether the government can rely on section 5312 to prosecute an offense under either §1956 or §1957 involving a transaction through a foreign bank, even if the offense occurs in part in the United States. For example, if a person in the United States sends criminal proceeds abroad—say to a Mexican bank—and launders them through a series of financial transactions, the government conceivably could not rely on the definition of a "financial institution" in §1956(c)(6) to establish that the transaction was a "financial transaction" within the meaning of §1956(c)(4)(B) (defining a "financial transaction" as a transaction involving the use of a "financial institution"), or that it was a "monetary transaction" within the meaning of §1957(f) (defining "monetary transaction" as, inter alia, a transaction that would be a "financial transaction" under §1956(c)(4)(B)).

Similarly, the money laundering laws in effect in most countries simply make it an offense to launder the proceeds of any crime, foreign or domestic. In the United States, however, the money laundering statute is violated only when a person launders the proceeds of one of the crimes set forth on a list of "specified unlawful activities." 18 U.S.C. §1956(c)(7). Currently only a handful of foreign crimes appear on that list. See §1956(c)(7)(B).

Most importantly, the Committee found significant shortcomings in the use of information already in possession of the government. Section 6050I of the Internal Revenue Code requires 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, lead to the detection and prosecution of money laundering activity.

Under current law, non-financial institutions are required to report cash transactions exceeding $10,000 to the Internal Revenue Service (IRS) 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

is 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. For that reason, Federal, State and local law enforcement agencies are not given access to the Form 8300s as Congress anticipated when it last amended this statute. See 26 U.S.C. § 6103(l)(15).

While the IRS uses Form 8300 to identify individuals who may be engaged in tax evasion, Form 8300 information can also 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 authorities 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.

The Committee believes that these are significant oversights, and has included provisions intended to address these shortcomings.

Internet Gambling.—Among the subjects covered at the hearing was offshore Internet gambling operations. The FBI, the Department of Justice, and an investigator specializing in money laundering cases testified that Internet gambling serves as a vehicle for money laundering activities and can be exploited by terrorists to launder money. The FBI currently has at least two pending cases involving Internet gambling as a conduit for money laundering, as well as a number of pending cases linking Internet gambling to organized crime.

As the Committee learned at earlier Subcommittee hearings, unlike casino gambling, State lotteries, and horse racing—which are highly regulated, and legal when licensed by a particular State—Internet gambling is illegal in most U.S. jurisdictions, and operates largely from offshore sites that are outside the reach of U.S. regulators and law enforcement. The National Gambling Impact Study Commission, in a final report in June 1999, recommended that wire transfers to Internet gambling sites or their banks be outlawed.

The vast majority of an estimated 1,500 Internet gambling sites operate offshore—outside the coverage of U.S. law. These "virtual casinos" are free to misuse a bettor's credit card information or manipulate the odds of a particular wager to the casino's advantage.

The only effective way to curb these abuses is by implementing effective civil remedies such as those contained in this legislation.

Summary.—In sum, H.R. 3004 is designed to supplement and reinforce existing U.S. money laundering laws by expanding the strategies the United States can employ to combat international money laundering. Numerous provisions in the bill have been drawn from anti-terrorism and anti-money laundering legislation the Administration submitted to Congress. In addition, the bill draws on provisions contained in H.R. 3886 from the 106th Congress, reintroduced as H.R. 1114 in this Congress. Finally, the bill also incorporates bulk cash smuggling language from H.R. 2920 and H.R. 2922, and H.R. 556 (similar to H.R. 4419 which was approved by the Committee on Banking and Financial Services in the 106th Congress), which addresses Internet gambling.

HEARINGS

The full Committee held a hearing on October 3, 2001, entitled "Dismantling the Financial Infrastructure of Global Terrorism" to examine the methods by which Osama Bin Laden, his terrorist organization Al Qaeda, and other terrorist organizations finance their operations. Treasury Secretary Paul O'Neill and Under Secretary for Enforcement Jimmy Gurule testified, as well as Mary Lee Warren, Deputy Assistant Attorney General for the Criminal Division of the Justice Department, and Special Agent Dennis Lormel, Chief of the Financial Crimes Section of the FBI's Criminal Investigations Division. Private witnesses included Ed Yingling of the American Bankers Association (ABA), Marc Lackritz of the Securities Industry Association (SIA), former Deputy Secretary of Treasury Stuart Eizenstat, and money laundering expert John Moynihan of BERG Associates. Written testimony was received jointly from the Independent Community Bankers of America (ICBA) and America's Community Bankers (ACB).

COMMITTEE CONSIDERATION

On October 11, 2001, the Committee met in open session and ordered H.R. 3004 reported, with an amendment, to the House with a favorable recommendation by a record vote of 62 yeas and 1 nay.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. A motion by Mr. Oxley to report the bill to the House with a favorable recommendation was agreed to by a record vote of 62 yeas and 1 nay (Record vote no. 9). The names of members voting for and against follow:

YEAS	NAYS
Mr. Oxley	Mr. Paul
Mr. Leach	
Mrs. Roukema	
Mr. Bereuter	
Mr. Baker	
Mr. Bachus	
Mr. Castle	

Mr. Royce
Mr. Lucas of Oklahoma
Mr. Ney
Mr. Barr of Georgia
Mrs. Kelly
Mr. Gillmor
Mr. Cox
Mr. Weldon of Florida
Mr. Ryun of Kansas
Mr. Riley
Mr. LaTourette
Mr. Manzullo
Mr. Jones of North Carolina
Mr. Ose
Mrs. Biggert
Mr. Green of Wisconsin
Mr. Toomey
Mr. Shadegg
Mr. Fossella
Mr. Gary G. Miller of California
Mr. Cantor
Mr. Grucci
Ms. Hart
Mrs. Capito
Mr. Ferguson
Mr. Rogers of Michigan
Mr. Tiberi
Mr. LaFalce
Mr. Frank
Mr. Kanjorski
Ms. Waters
Mr. Sanders
Mrs. Maloney of New York
Mr. Gutierrez
Mr. Watt of North Carolina
Mr. Ackerman
Mr. Bentsen
Mr. Maloney of Connecticut
Ms. Hooley of Oregon
Ms. Carson of Indiana
Mr. Sherman
Mr. Sandlin
Ms. Lee
Mr. Mascara
Mr. Inslee
Ms. Schakowsky
Mr. Moore
Mr. Capuano
Mr. Ford
Mr. Lucas of Kentucky
Mr. Shows
Mr. Crowley
Mr. Clay
Mr. Israel
Mr. Ross

The following amendments were not agreed to by a record vote. The names of Members voting for and against follow:

An amendment to the amendment in the nature of a substitute by Mr. Barr, no. 1m, prohibiting the Customs Service from opening outgoing international mail without a warrant during cross-border searches, was not agreed to by a record vote of 20 yeas and 43 nays (Record vote no. 8).[1]

YEAS	NAYS
Mr. Barr of Georgia	Mr. Oxley
Mr. Paul	Mr. Leach
Mr. Jones of North Carolina	Mrs. Roukema
Mr. Ose	Mr. Bereuter
Ms. Hart	Mr. Baker
Mr. Frank	Mr. Bachus
Mr. Kanjorski	Mr. Castle
Ms. Waters	Mr. Royce
Mr. Sanders	Mr. Lucas of Oklahoma
Mrs. Maloney of New York	Mr. Ney
Mr. Gutierrez	Mrs. Kelly
Mr. Watt of North Carolina	Mr. Gillmor
Mr. Ackerman	Mr. Cox
Ms. Carson of Indiana	Mr. Weldon of Florida
Mr. Sandlin	Mr. Ryun of Kansas
Ms. Lee	Mr. Riley
Mr. Inslee	Mr. LaTourette
Ms. Schakowsky	Mr. Manzullo
Mr. Capuano	Mrs. Biggert
Mr. Clay	Mr. Green of Wisconsin
	Mr. Toomey
	Mr. Shays
	Mr. Shadegg
	Mr. Fossella
	Mr. Gary G. Miller of California
	Mr. Cantor
	Mr. Grucci
	Mrs. Capito
	Mr. Ferguson
	Mr. Rogers of Michigan
	Mr. Tiberi
	Mr. LaFalce
	Mr. Bentsen
	Mr. Maloney of Connecticut
	Ms. Hooley of Oregon
	Mr. Sherman
	Mr. Mascara
	Mr. Moore
	Mr. Ford
	Mr. Lucas of Kentucky
	Mr. Shows
	Mr. Crowley
	Mr. Israel

[1] An earlier voice vote on which the nays prevailed was vacated by unanimous consent, and the question put to the Committee de novo.

An amendment to the amendment in the nature of a substitute by Mr. Castle, no. 1p, striking provisions relating to Internet gambling, was not agreed to by a record vote of 25 yeas and 37 nays (Record vote no. 7).

YEAS	NAYS
Mr. Baker	Mr. Oxley
Mr. Castle	Mr. Leach
Mr. Ney	Mrs. Roukema
Mr. Barr of Georgia	Mr. Bereuter
Mr. Paul	Mr. Bachus
Mr. Gillmor	Mr. Royce
Mr. Cox	Mr. Lucas of Oklahoma
Mr. Jones of North Carolina	Mrs. Kelly
Mr. Ose	Mr. Weldon of Florida
Mrs. Biggert	Mr. Ryun of Kansas
Mr. Toomey	Mr. Riley
Mr. Fossella	Mr. Green of Wisconsin
Mr. Cantor	Mr. Shays
Mr. Tiberi	Mr. Shadegg
Mr. Frank	Mr. Gary G. Miller of California
Mr. Kanjorski	Mr. Grucci
Mr. Watt of North Carolina	Ms. Hart
Mr. Ackerman	Mrs. Capito
Mr. Bentsen	Mr. Ferguson
Mr. Sandlin	Mr. Rogers of Michigan
Ms. Schakowsky	Mr. LaFalce
Mr. Moore	Ms. Waters
Mr. Capuano	Mr. Sanders
Mr. Crowley	Mrs. Maloney of New York
Mr. Clay	Mr. Gutierrez
	Mr. Maloney of Connecticut
	Ms. Hooley of Oregon
	Ms. Carson of Indiana
	Mr. Sherman
	Ms. Lee
	Mr. Mascara
	Mr. Inslee
	Mr. Ford
	Mr. Lucas of Kentucky
	Mr. Shows
	Mr. Israel
	Mr. Ross

The following amendments were agreed to by a voice vote:

An amendment in the nature of a substitute by Mr. Oxley, no. 1, making various changes to the bill;

An amendment to the amendment in the nature of a substitute by Mr. LaFalce, no. 1a, making technical changes requested by the Administration;

An amendment to the amendment in the nature of a substitute by Mr. Bentsen, no. 1c, striking a study of the feasibility of imposing sanctions against financial institutions that file currency transaction reports that qualify for exemptions;

An amendment to the amendment in the nature of a substitute by Ms. Waters, no. 1e, requiring the consideration of a financial in-

stitution's money laundering record in reviewing of merger applications;

An amendment to the amendment in the nature of a substitute by Mr. Leach, no. 1f, reinstating coverage for checks and drafts;

An amendment to the amendment in the nature of a substitute by Mr. Israel, no. 1g, addressing the consideration of charitable organizations by the public-private anti-terrorism task force;

An amendment to the amendment in the nature of a substitute by Mrs. Kelly, no. 1h, addressing the date of application of regulations requiring financial institutions to establish anti-money laundering programs and the factors to be taken into account for anti-money laundering programs;

An amendment to the amendment in the nature of a substitute by Mr. Maloney of Connecticut, no. 1i, making explicit that hawala-type systems are covered by certain statutory requirements;

An amendment to the amendment in the nature of a substitute by Mr. Sherman, no. 1k, regarding Presidential sanctions on non-cooperating countries;

An amendment to the amendment in the nature of a substitute by Mr. Baker, no. 1l, modifying the Secretary's authority to require financial institutions to apply enhanced due diligence standards to correspondent accounts;

A substitute amendment to the amendment offered by Mr. Baker by Mr. LaFalce, no. 1l(1), clarifying the circumstances under which the Secretary of the Treasury must require financial institutions to apply enhanced due diligence standards to correspondent accounts, as modified by unanimous consent;

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1o, clarifying the term "compliance officer"; and

An amendment to the amendment in the nature of a substitute by Mr. Watt, no. 1q, clarifying the exemption for Internet service providers from certain Internet gambling provisions.

The following amendment was not agreed to by a voice vote:

An amendment to the amendment in the nature of a substitute by Mr. Sherman, no. 1n, authorizing the President to prohibit certain credit and contract transactions with non-cooperative countries.

The following amendments were withdrawn:

An amendment to the amendment in the nature of a substitute by Mr. Weldon of Florida, no. 1b, relating to the sharing of grand jury information relating to money laundering and bulk cash smuggling;

An amendment to the amendment in the nature of a substitute by Mr. Leach, no. 1d, eliminating the exemption for ISPs from Internet gambling restrictions; and,

An amendment to the amendment in the nature of a substitute by Mr. Weldon of Florida, no. 1j, striking certain factors from those the Secretary of the Treasury must consider in designating jurisdictions as "primary money laundering concerns".

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee held a hearing and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The President and the Secretary of the Treasury will use the authority granted by this legislation to track and prevent individuals from laundering the proceeds of criminal activity and from diverting funds to terrorist or criminal activities.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee finds that this legislation would result in no new budget authority, entitlement authority, or tax expenditures or revenues.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 16, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3004, the Financial Anti-Terrorism Act of 2001.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Mark Grabowicz and Mark Hadley (for federal costs), Susan Sieg Tompkins (for the state and local impact), and Jean Talarico (for the private-sector impact).

Sincerely,

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

Enclosure.

H.R. 3004—Financial Anti-Terrorism Act of 2001

Summary: H.R. 3004 would expand the powers of federal financial regulators to prevent money laundering, internet gambling, and smuggling of currency. It also would establish new federal crimes relating to such acts. H.R. 3004 would authorize the appropriation of such sums as necessary for each of fiscal years 2002 through 2005 for the Financial Crimes Enforcement Network (FINCEN), an agency in the Department of the Treasury that col-

lects data from banks and other financial institutions and serves as a clearinghouse for financial intelligence. The bill would authorize the Secretary of the Treasury, through financial regulators, to impose special requirements on U.S. financial institutions if the Secretary suspects the transactions of their foreign clients are tied to money laundering.

Assuming appropriation of the necessary amounts, CBO estimates that implementing H.R. 3004 would cost about $36 million in fiscal year 2002 and about $210 million over the 2002–2006 period, mostly for FINCEN. This estimate assumes adjustments for anticipated inflation. Without such adjustments, we estimate that implementation would cost $202 million over the 2002–2006 period. H.R. 3004 would affect direct spending and receipts, so pay-as-you-go procedures would apply, but CBO estimates that any such effects would be less than $500,000 a year.

H.R. 3004 contains intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA) because it would impose requirements on certain state and local agencies and because it includes a preemption of state laws. CBO estimates that the total cost of complying with those mandates would be small, and would not exceed the threshold established in UMRA ($56 million in 2001, adjusted annually for inflation).

The bill also contains private-sector mandates as defined in UMRA. The bill would impose new information collection, reporting, and recordkeeping requirements on financial institutions and agencies as defined in the bill. Because those new requirements would depend on specific regulations that would be established by the Secretary of the Treasury, CBO cannot determine whether the direct cost to the private sector would exceed the annual threshold specified in UMRA ($113 million in 2001, adjusted annually for inflation).

Estimated cost to the Federal Government: For this estimate, CBO assumes that the bill will be enacted near the start of fiscal year 2002 and that the necessary amount will be appropriated each year. The estimated budgetary impact of H.R. 3004 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

	By fiscal year, in millions of dollars—				
	2002	2003	2004	2005	2006
CHANGES IN SPENDING SUBJECT TO APPROPRIATION [1]					
FINCEN:					
Estimated authorization level [2]	48	49	51	52	0
Estimated outlays	33	49	50	52	15
Administrative cost to regulatory agencies:					
Estimated authorization level	2	2	2	2	2
Estimated outlays	2	2	2	2	2
Reports by Department of Treasury:					
Estimated authorization level	1	(3)	(3)	(3)	(3)
Estimated outlays	1	(3)	(3)	(3)	(3)
Total:					
Estimated authorization level	51	51	53	54	2
Estimated outlays	36	51	52	54	17

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

[2] FINCEN received an appropriation of $38 million for fiscal year 2001. For fiscal year 2002, there is no authorization in current law for the agency and a full-year appropriation has not yet been enacted.

[3] Less than $500,000.

Basis of estimate

CBO estimates that implementing H.R. 3004 would cost about $50 million annually for FINCEN, about $2 million annually for increased administrative costs at agencies that regulate financial institutions, and about $1 million in 2002 for additional reports by the Secretary of the Treasury. In addition to these effects on discretionary spending, the bill also would have a negligible effect on the collection and spending of civil and criminal penalties. Finally, the legislation would have a small effect on the operating costs of the Federal Deposit Insurance Corporation (FDIC).

Spending subject to appropriation

FINCEN.—H.R. 3004 would authorize the appropriation of such sums as necessary for FINCEN for each of fiscal years 2002 through 2005. Based on information from the agency, CBO estimates that FINCEN would need about $46 million in 2002 to carry out its current statutory responsibilities and an additional $2 million to perform new duties required by the bill. Thus, CBO estimates that implementing H.R. 3004 would require appropriations of $48 million in fiscal year 2002 and $200 million over the 2002–2005 period, assuming annual adjustments for inflation.

Administrative costs.—H.R. 3004 would authorize the Secretary of the Treasury to impose special measures on U.S. financial institutions if the Secretary suspects the transactions of their foreign clients are tied to money laundering. Such measures would be implemented by the Department of the Treasury, the Securities and Exchange Commission (SEC), the Commodity Futures Trading Commission, and other financial regulators, and could include increasing recordkeeping and reporting requirements and regulating or prohibiting certain types of financial accounts. Based on information from the affected agencies, CBO estimates that implementing H.R. 3004 would cost a total of about $2 million a year over the 2002–2006 period. Most of these funds would pay for additional SEC staff to examine the records of investment advisors and investment companies for transactions that may involve money laundering, and to oversee the efforts of self-regulating securities markets to detect money laundering.

Reports.—H.R. 3004 would require the Department of Treasury to develop regulations and prepare studies for the Congress relating to financial crimes. CBO estimates these requirements would cost $1 million in fiscal year 2002 and less than $500,000 in each of the subsequent years.

Direct spending and revenues

Trustees' Administrative Costs.—The National Credit Union Administration (NCUA), Office of the Comptroller of the Currency, and the Office of Thrift Supervision charge fees to the institutions they regulate to cover all of their administrative costs; therefore, any additional spending by these agencies to implement the bill would have no net budget effect. That is not the case with the FDIC, however, which uses deposit insurance premiums paid by all banks to cover the expenses it incurs to supervise state-chartered banks. The bill would cause a small increase in FDIC spending, but would probably not affect its premium income. In any case, CBO estimates that imposing special measures would increase direct

spending and offsetting receipts for those agencies by less than $500,000 a year over the 2002–2006 period.

Bureau of Engraving and Printing.—H.R. 3004 would allow the Bureau of Engraving and Printing (BEP) to impose charges for any BEP services provided to any foreign government or any territory of the United States. Because foreign governments or territories of the United States would pay BEP for the full cost of producing any documents, and because BEP has the authority to retain and spend such collections without further appropriation this would have no significant net budgetary impact.

Additional Fines.—Enacting H.R. 3004 would establish civil and criminal fines for new crimes that would be established by the bill. Civil fines are classified as governmental receipts (revenues). Criminal fines are recorded as receipts and deposited in the Crime Victims Fund, and spent without further appropriation action. Based on information from the Department of the Treasury and the Department of Justice, CBO estimates that any net increase in collections would not be significant because of the small number of individuals that are likely to be subject to such fines.

Federal Reserve.—Budgetary effects on the Federal Reserve are also recorded as changes in revenues. Based on information from the Federal Reserve, CBO estimates that enforcing the special requirements on U.S. Financial Trustees under the bill would reduce such revenues by less than $500,000 a year over the 2002–2006 period.

Pay-as-you-go considerations: The Balanced Budget and Emergency Deficit Control Act sets up pay-as-you go procedures for legislation affecting direct spending or receipts. CBO estimates that enacting H.R. 3004 would affect direct spending and governmental receipts but that there would be no significant impact in any year.

Estimated impact on state, local, and tribal governments: H.R. 3004 contains intergovernmental mandates as defined in UMRA, but CBO estimates that the total cost of complying with these mandates would be small, and would not exceed the threshold established in that act ($56 million in 2001, adjusted annually for inflation). Provisions in several sections of this bill would place new reporting, monitoring, recordkeeping, and other procedural requirements on financial institutions. (Financial institutions include certain state and local agencies acting in that capacity.) Largely because the number of affected agencies would be very small, CBO estimates that state and local governments would incur minimal costs to comply with these requirements. Another provision would impose a mandate by prohibiting employees of state, local, tribal, and territorial governments from disclosing certain information.

This bill also includes a preemption of state and local laws. It would require consumer reporting agencies to furnish a report and all other information in a consumer's file, without notifying the consumer, to a government agency authorized to conduct investigations, intelligence, and or counterintelligence activities. The legislation would explicitly preempt state law by exempting these agencies from liability for violating the constitution of any state, or the law or regulations of any state or local government. Such a preemption would be a mandate under UMRA. CBO estimates, however, that it would not affect the budgets of state, local, or tribal governments, because, while it would limit the application of state

law, it would impose no duty on states that would result in additional spending.

Estimated impact on the private sector: The bill also contains private-sector mandates as defined in UMRA. The bill would impose new information collection, reporting, and recordkeeping requirements on financial institutions and agencies as defined in the bill. Because those new requirements would depend on specific regulations that would be established by the Secretary of the Treasury, CBO cannot determine whether the direct cost to the private sector would exceed the annual threshold specified in UMRA ($113 million in 2001, adjusted annually for inflation).

Although H.R. 3004 would prohibit gambling businesses from accepting credit card payments and other bank instruments from gamblers who bet illegally over the Internet, the bill would not create a new private-sector mandate. Under current federal and state law, gambling businesses are generally prohibited from accepting bets or wagers over the Internet. Thus, H.R. 3004 does not contain a new mandate relative to current law.

H.R. 3004 would authorize federal banking regulators to require depository institutions that have knowingly participated in transactions with unlawful Internet gambling businesses to cease doing so. This provision would not create a new private-sector mandate for depository institutions because federal banking regulators already have such powers under current law.

Estimate prepared by: Federal spending: Mark Grabowicz, Mark Hadley, Ken Johnson, Matthew Pickford, and Lanette Walker; Federal revenues: Carolyn Lynch and Erin Whitaker; impact on state, local, and tribal governments: Susan Sieg Tompkins; impact on the private sector: Jean Talarico.

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

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

Section 205 of the bill directs the Secretary of the Treasury to establish, either within the Bank Secrecy Act Advisory Group or a subcommittee or other adjunct of that advisory group, a task force comprised of representatives of the agencies and officers represented on the advisory group, a representative from the Office of Homeland Security, and representatives of financial institutions, private organizations that represent the financial services industry, and other interested parties to focus on the finances of terrorist groups, the financial relationships between international narcotics traffickers and foreign terrorist organizations, and the means of facilitating the identification of accounts and transactions involving foreign terrorist organizations. Pursuant to the requirements of subsection 5(b) of the Federal Advisory Committee Act, the Committee finds that the functions of the proposed advisory committees are not and cannot be performed by an existing Federal agency or

advisory commission requiring the enlargement of the mandate of the Bank Secrecy Act Advisory Group.

CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 3(d)(1) of rule XIII of the Rules of the House of Representatives, the Committee finds that the Constitutional Authority of Congress to enact this legislation is provided by Article 1, section 8, clause 1 (relating to the general welfare of the United States), clause 3 (relating to the power to regulate interstate commerce), and clause 5 (relating to the power to coin money and regulate the value thereof).

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

EXCHANGE OF COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, April 2, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, House Committee on Financial Services, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OXLEY: I understand that the Committee on Financial Services recently ordered H.R. 3004, the "Financial Anti-Terrorism Act of 2001", reported to the House. Further, it is my understanding that your Committee amended this legislation in a manner that effects certain entities registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act. As you know, the Committee on Agriculture has jurisdiction over that Act under rule X of the Rules of the House of Representatives, which grants the Agriculture Committee jurisdiction over "commodity exchanges".

Because of the importance of this matter, I recognize your desire to bring this legislation before the House in an expeditious manner and will waive consideration of the bill by the Agriculture Committee. By agreeing to waive its consideration of the bill, the Agriculture Committee does not waive its jurisdiction over H.R. 3004. In addition, the Committee reserves its authority to seek conferees on any provisions of the bill that are within the Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Agriculture for conferees on H.R. 3004 or related legislation.

I request that you include this letter and your response as part of the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

LARRY COMBEST, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, April 2, 2001.

Hon. LARRY COMBEST,
Chairman, House Committee on Agriculture, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN COMBEST: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 3004, the "Financial Anti-Terrorism Act of 2001".

I acknowledge your committee's jurisdictional interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on Agriculture with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

MICHAEL G. OXLEY, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON AGRICULTURE,
Washington, DC, October 15, 2001.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services, Rayburn House Office Building, Washington, DC.

DEAR CHAIRMAN OXLEY: I understand that the Committee on Financial Services recently ordered H.R. 3004, the "Financial Anti-Terrorism Act of 2001", reported to the House. Further, it is my understanding that your Committee amended this legislation in a manner that effects certain entities registered with the Commodity Futures Trading Commission pursuant to the Commodity Exchange Act. As you know, the Committee on Agriculture has jurisdiction over that Act under rule X of the Rules of the House of Representatives, which grants the Agriculture Committee jurisdiction over "commodity exchanges".

Because of the importance of this matter, I recognize your desire to bring this legislation before the House in an expeditious manner and will waive consideration of the bill by the Agriculture Committee. By agreeing to waive its consideration of the bill, the Agriculture Committee does not waive its jurisdiction over H.R. 3004. In addition, the Committee reserves its authority to seek conferees on any provisions of the bill that are within the Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Agriculture for conferees on H.R. 3004 or related legislation.

I request that you include this letter and your response as part of the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

LARRY COMBEST, *Chairman.*

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, October 15, 2001.

Hon. LARRY COMBEST,
Chairman, Committee on Agriculture, Longworth House Office Building, Washington, DC.

DEAR CHAIRMAN COMBEST: Thank you for your letter regarding your Committee's jurisdictional interest in H.R. 3004, the "Financial Anti-Terrorism Act of 2001".

I acknowledge your committee's jurisdictional interest in this legislation and appreciate your cooperation in moving the bill to the House floor expeditiously. I agree that your decision to forego further action on the bill will not prejudice the Committee on Agriculture with respect to its jurisdictional prerogatives on this or similar legislation. I will include a copy of your letter and this response in the Committee's report on the bill and the Congressional Record when the legislation is considered by the House.

Thank you again for your cooperation.

Sincerely,

MICHAEL G. OXLEY, *Chairman.*

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short Title; Table of Contents

This section provides the short title of the bill, the "Financial Anti-Terrorism Act of 2001" and a table of contents.

TITLE I—STRENGTHENING LAW ENFORCEMENT

Section 101. Bulk Cash Smuggling Into or Out of the United States

Subsections (a) through (c) set forth the new bulk cash smuggling offense as well as a set of findings explaining why the smuggling of bulk cash is a serious law enforcement problem. The new offense, which would be codified at 31 U.S.C. § 5331, would make it an offense for anyone to knowingly conceal more than $10,000 in currency or other monetary instruments on his person or in any conveyance, article of luggage, merchandise or other container, and to transport or attempt to transport that currency across the border with the intent to avoid the reporting requirements in section 5316. In other words, the offense has three elements: (1) concealment; (2) transportation (or attempted transportation); and (3) specific intent to evade filing a complete and accurate report with the Customs Service.

The penalty section provides for incarceration of up to 5 years. In addition, and in lieu of any criminal fine, the penalty section authorizes the confiscation of the smuggled money in accordance with the usual procedures for criminal and civil forfeiture, including all of the due process protections enacted as part of the Civil Asset Forfeiture Reform Act of 2000. Confiscation of smuggled goods has been regarded as the appropriate penalty for smuggling offenses

since the first Customs laws were enacted in the 18th Century. In the alternative, in accordance with rule 32.2 of the Federal Rules of Criminal Procedure and existing case law, the court may enter a personal money judgment against the defendant. See *United States* v. *Candelaria-Silva,* 166 F.3d 19 (1st Cir. 1999) (criminal forfeiture order may take several forms: money judgment, directly forfeitable property, and substitute assets).

To address concerns that such confiscation is a blunt instrument that should be mitigated in some circumstances to avoid a hardship, the bill explicitly authorizes courts to mitigate forfeitures of currency involved in currency reporting offenses to avoid Eighth Amendment violations by considering a range of aggravating and mitigating circumstances. Those circumstances include the value of the currency or other monetary instruments involved in the offense; efforts by the person committing the offense to structure currency transactions, conceal property or otherwise obstruct justice; and whether the offense is part of a pattern of repeated violations.

The Committee believes, however, that bulk cash smuggling is an inherently more serious offense than simply failing to file a Customs report. Because the constitutionality of a forfeiture is dependent on the "gravity of the offense" under *Bajakajian,* it is anticipated that the full forfeiture of smuggled money will withstand constitutional scrutiny in most cases. For the confiscation to be reduced at all, the smuggler will have to show that the money was derived from a legitimate source and not intended to be used for any unlawful purpose. Even then, the court's duty will be to reduce the amount of confiscation to the maximum that would be permitted in accordance with the Eighth Amendment and the aggravating and mitigating factors set forth in the statute. The civil forfeiture provision would apply to conduct occurring before the effective date of the act.

Section 102. Forfeiture in Currency Reporting Cases

Section 102 makes conforming amendments to the existing criminal and civil forfeiture provisions for the reporting and structuring violations in title 31. The section creates parallel forfeiture authority for violating the currency reporting requirements applicable to businesses under 26 U.S.C. § 6050I and sets forth rules for mitigating the forfeitures to avoid constitutional violations in accordance with *Bajakajian.* This is necessary to address the concern expressed by the Court in *Bajakajian* that Congress had not made it clear that trial courts are authorized to reduce forfeitures down to the maximum level permissible to avoid violating the Excessive Fines Clause when a statute, on its face, appears to authorize only the forfeiture of the full amount of structured or unreported currency.

Section 103. Interstate Currency Couriers

This section amends the money laundering statute to make it an offense for anyone to transport more than $10,000 in currency concealed in a vehicle traveling in interstate commerce (e.g. on an interstate highway) knowing that the currency was derived from some kind of unlawful activity, or knowing that the currency was intended to be used to promote such activity. The courier's willful

blindness regarding the source or intended use of the currency would be sufficient to establish the requisite knowledge.

Section 104. Illegal Money Transmitting Businesses

The operation of an unlicensed money transmitting business is a violation of Federal law under 18 U.S.C. § 1960. First, section 104 clarifies the scienter requirement in § 1960 to avoid the problems that occurred when the Supreme Court interpreted the currency transaction reporting statutes to require proof that the defendant knew that structuring a cash transaction to avoid the reporting requirements had been made a criminal offense. See *Ratzlaf* v. *United States,* 114 S. Ct. 655 (1994). The proposal makes clear that an offense under §1960 is a general intent crime for which a defendant is liable if he knowingly operates an unlicensed money transmitting business. For purposes of a criminal prosecution, the Government would not have to show that the defendant knew that a State license was required or that the Federal registration requirements promulgated pursuant to 31 U.S.C. § 5330 applied to the business.

Second, section 104 expands the definition of an unlicensed money transmitting business to include a business engaged in the transportation or transmission of funds that the defendant knows are derived from a criminal offense, or are intended to be used for an unlawful purpose. Thus, a person who agrees to transmit or to transport drug proceeds for a drug dealer, or funds from any source for a terrorist, knowing such funds are to be used to commit a terrorist act, would be engaged in the operation of an unlicensed money transmitting business. It would not be necessary for the Government to show that the business was a storefront or other formal business open to walk-in trade. To the contrary, it would be sufficient to show that the defendant offered his services as a money transmitter to another.

Finally, when Congress enacted § 1960 in 1992, it provided for criminal but not civil forfeiture. The proposal corrects this oversight, and allows the government to obtain forfeiture of property involved in the operation of an illegal money transmitting business even if the perpetrator is a fugitive.

Section 105. Long-Arm Jurisdiction over Foreign Money Launderers

The first provision in this section creates a long arm statute that gives the district court jurisdiction over a foreign person, including a foreign bank, that commits a money laundering offense in the United States or converts laundered funds that have been forfeited to the Government to his own use. Thus, if the Government files a civil enforcement action under section 1956(b), or files a civil lawsuit to recover forfeited property from a third party, the district court would have jurisdiction over the defendant if the defendant has been served with process pursuant to the applicable statutes or rules of procedure, and the constitutional requirement of minimum contacts is satisfied in one of three ways: the money laundering offense took place in the United States; in the case of converted property, the property was the property of the United States by virtue of a civil or criminal forfeiture judgment; or in the case of a financial institution, the defendant maintained a correspondent bank account at another bank in the United States.

Under this provision, for example, the district courts would have had jurisdiction over the defendant in the circumstances described in *United States* v. *Swiss American Bank,* 191 F.3d 30 (1st Cir. 1999).

The second provision, modeled on 18 U.S.C. § 1345(b), gives the district court the power to restrain property, issue seizure warrants, or take other action necessary to ensure that a defendant in an action covered by the statute does not dissipate the assets that would be needed to satisfy a judgment.

This section also authorizes a court, on the motion of the Government or a State or Federal regulator, to appoint a receiver to gather and protect assets needed to satisfy a judgment under sections 1956 and 1957, and the forfeiture provisions in sections 981 and 982. This authority is intended to apply in three circumstances: (1) when there is a judgment in a criminal case, including an order of restitution, following a conviction for a violation of section 1956 or 1957; (2) when there is a judgment in a civil case under section 1956(b) assessing a penalty for a violation of either section 1956 or 1957; and (3) when there is a civil forfeiture judgment under section 981 or a criminal forfeiture judgment, including a personal money judgment, under section 982.

The amendment also makes section 1956(b) applicable to violations of section 1957. It applies to conduct occurring before the effective date of the Act.

Section 106. Laundering Money through a Foreign Bank

This section eliminates the ambiguity in current law regarding money laundering through foreign banks by including foreign banks within the definition of "financial institution" in § 1956(c)(6). The definition is the same as the one set forth in 12 U.S.C. § 3101(7), which is already employed in § 1956(c)(7)(B) for another purpose.

Section 107. Specified Unlawful Activity for Money Laundering

This amendment enlarges the list of foreign crimes that can lead to money laundering prosecutions in this country when the proceeds of additional foreign crimes are laundered in the United States. The additional crimes include all crimes of violence, public corruption, and offenses covered by existing bilateral extradition treaties. The Committee intends this provision to send a strong signal that the United States will not tolerate the use of its financial institutions for the purpose of laundering the proceeds of such activities.

Section 108. Laundering the Proceeds of Terrorism

The Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) made it a criminal offense to provide material support or resources to an organization designated by the Secretary of State as a "foreign terrorist organization." 18 U.S.C. § 2339B.

Section 2339B, however, was not added to the list of money laundering predicate offenses in section 1956(c)(7)(D). This provision adds § 2339B to the list of money laundering predicates.

Section 109. Violations of Reporting Requirements for Nonfinancial Trades and Businesses

18 U.S.C. §§ 981 and 982 are the civil and criminal forfeiture statutes pertaining to money laundering. Presently, they provide for forfeiture for money laundering violations under the Bank Secrecy Act (31 U.S.C. § 5311 et seq.) and the Money Laundering Control Act (18 U.S.C. §§ 1956–57). This section would add 26 U.S.C. § 6050I of the Internal Revenue Code to this list in both statutes.

Section 6050I is the statute that requires any trade or business receiving more than $10,000 in cash to report the transaction to the IRS on Form 8300. Subsection (f) makes it an offense to structure a transaction with the intent to avoid the filing of such form. Thus, section 6050I is the counterpart to 31 U.S.C. §§ 5313 and 5324 which require the filing of Currency Transaction Reports (CTRs) and Currency or Monetary Instrument Report (CMIRs) by financial institutions whenever a $10,000 cash transaction takes place, and by other persons whenever they send more than $10,000 in currency into or out of the United States. Including a reference to section 6050I in sections 981 and 982 thus means that violations of the Form 8300 requirement will be treated the same as CTR and CMIR violations for forfeiture purposes.

Section 110. Proceeds of Foreign Crimes

This section is intended to reinforce the United States' compliance with the Vienna Convention. It amends 18 U.S.C. § 981(a)(1)(B) to allow the United States to institute its own action against the proceeds of foreign criminal offenses when such proceeds are found in the United States. As required by the Vienna Convention, it also authorizes the confiscation of property used to facilitate such crimes. The list of foreign crimes to which this section applies is determined by cross-reference to the foreign crimes that are money laundering predicates under § 1956(c)(7)(B). This section will permit the forfeiture of property involved in conduct occurring before the effective date of the Act.

Section 111. Availability of Reports Relating to Coins and Currency Received in Non-Financial Trade or Business

Section 111 addresses the problem of the accessibility of the Form 8300 information by directing the Secretary of the Treasury to take the necessary actions and establish the necessary procedures to make the information contained on Form 8300 available to government agencies through the network administered by FinCEN. The Secretary is given six months from date of enactment to achieve this objective, and is required to report to Congress on the actions taken pursuant to this section, together with recommendations for any legislative or administrative action determined to be appropriate by the Secretary.

The Committee believes that safeguards built into the FinCEN information-sharing protocols currently satisfies appropriate confidentiality concerns, as specified by section 6103 (p)(4), but expects the Secretary to address—and resolve—the issue squarely within the six-month timeline specified. The Committee is aware that some of the "outreach" and data-sharing aspects of FinCEN's duties might be problematic with regards the sharing of other tax data,

specifically personal or corporate income data. However, the Committee does not view what is essentially law-enforcement data about specific transactions to be personal or corporate "income data," regardless of the fact that it is collected by the Internal Revenue Service.

Section 112. Penalties for Violations of Geographic Targeting Orders and Certain Record Keeping Requirements

31 U.S.C. §§ 5321 and 5322 impose civil and criminal penalties, respectively, for violations of the Bank Secrecy Act (BSA) and BSA regulations; 31 U.S.C. § 5324 creates additional criminal offenses for failing to file a report, filing a false or incomplete report, and structuring currency transactions in order to evade a reporting requirement under the BSA. Those statutes, however, do not specifically refer to reports required by GTOs (geographic targeting orders) issued under 31 U.S.C. § 5326. This provision eliminates any ambiguity concerning the applicability of these provisions to GTOs by inserting specific references to 31 U.S.C. § 5326 in the respective statutes.

Section 113. Exclusion of Aliens Involved in Money Laundering

This section will provide for inadmissibility of any individual who a consular officer has reason to believe has or is engaged in certain money laundering offenses, or any criminal activity in a foreign country that would constitute such an offense if committed in the United States, regardless of whether a judgment of conviction has been entered or avoided due to flight, corruption, etc. This section treats money launderers with the same standard applicable to drug traffickers and will make the United States' ability to exclude aliens involved in such activities less dependent upon the Nation's ability to draw inferences about a person's intent to do something illicit in the United States. Money laundering offenses are, in general, related to underlying crimes involving moral turpitude that are already grounds for exclusion under the Immigration and Nationality Act.

As an added deterrent, the amendment allows the consular officer to exclude the money launderer's family members, while also giving the Attorney General the authority to waive such exclusion if he determines that exceptional circumstances exist.

Section 114. Standing to Contest Forfeiture of Funds Deposited Into Foreign Bank that has a Correspondent Account in the United States

Section 114 creates a new provision in the civil forfeiture statute, 18 U.S.C. § 981(k), authorizing the forfeiture of funds found in an interbank account. The new provision is necessary to reconcile the law regarding the forfeiture of funds in bank accounts with the realities of the global movement of electronic funds and the use of offshore banks to insulate criminal proceeds from forfeiture.

To prevent drug dealers and other criminals from taking advantage of certain nuances of forfeiture law to insulate their property from forfeiture even though it is deposited in a bank account in the United States, it is necessary to change the law regarding the location of the debt that a bank owes to its depositor, and the identity of the real party in interest with standing to contest the forfeiture.

The amendment in this section addresses the location issue by treating a deposit made into an account in a foreign bank that has a correspondent account at a U.S. bank as if the deposit had been made into the U.S. bank directly. Second, the section treats the deposit in the correspondent account as a debt owed directly to the depositor, and not as a debt owed to the respondent bank. In other words, the correspondent account is treated as if it were the foreign bank itself, and the funds in the correspondent account were debts owed to the foreign bank's customers.

Under this arrangement, if funds traceable to criminal activity are deposited into a foreign bank, the Government may bring a forfeiture action against funds in that bank's correspondent account, and only the initial depositor, and not the intermediary bank, would have standing to contest it.

The section authorizes the Attorney General to suspend or terminate a forfeiture in cases where there exists a conflict of laws between the U.S. and the jurisdiction in which the foreign bank is located, where such suspension or termination would be in the interest of justice and not harm U.S. national interests.

Section 115. Subpoenas for Records Regarding Funds in Correspondent Bank Accounts

Section 115 gives the Attorney General and the Secretary of the Treasury new authority to subpoena records from a foreign bank that relate to transactions occurring overseas. Under this provision, a foreign bank that maintains a correspondent account in the United States must have a representative in the United States who will accept service of a subpoena for any records of any transaction with the foreign bank that occurs overseas. This is necessary to enable law enforcement to determine the source of money being placed in the United States through the correspondent banking system. The duty to comply with such a subpoena is now a requirement for foreign banks that choose to avail themselves of access to that system in the United States.

Subsection (c) delays the effective date for the requirement to appoint a person authorized to accept service of a subpoena for 30 days, but once in effect, the provision allows the Government to subpoena records relating to transactions occurring before the effective date of the Act.

Subsection (d) contains a conforming amendment, revising the existing authority in 18 U.S.C. § 3486 to allow the Attorney General to issue subpoenas in money laundering cases. Currently, section 3486 contains such authority in health care fraud and child pornography cases. Thus, the subpoena would be issued in the manner and for the purposes previously authorized for the issuance of such subpoenas in those cases. See *United States* v. *Doe*, 235 F.3d 256 (6th Cir. 2001) (discussing standard for enforcement of administrative subpoena issued under section 3486).

Section 116. Authority to Order Convicted Criminal to Return Property Located Abroad

Section 116 authorizes a court to order a criminal defendant to repatriate his property to the United States in criminal cases. In criminal forfeiture cases, the sentencing court is authorized to order the forfeiture of "substitute assets" when the defendant has

placed the property otherwise subject to forfeiture "beyond the jurisdiction of the court." Frequently, this provision is applied when a defendant has transferred drug proceeds or other criminally derived property to a foreign country. In many cases, however, the defendant has no other assets in the United States of a value commensurate with the forfeitable property overseas. In such cases, ordering the forfeiture of substitute assets is a hollow sanction.

This section amends 21 U.S.C. § 853 to make clear that a court in a criminal case may issue a repatriation order—either post-trial as part of the criminal sentence and judgment, or pre-trial pursuant to the court's authority under 21 U.S.C. § 853(e) to restrain property—so that they will be available for forfeiture. Failure to comply with such an order would be punishable as a contempt of court, or it could result in a sentencing enhancement, such as a longer prison term, under the U.S. Sentencing Guidelines, or both.

Section 117. Corporation Represented by a Fugitive

Currently, 28 U.S.C. § 2466 permits a court to disallow the claim filed in a forfeiture proceeding by a person who is a fugitive in a related criminal case. The amendment clarifies that a natural person who is a fugitive may not circumvent this provision by filing, or having another person file, a claim on behalf of a corporation that the fugitive controls.

Section 118. Enforcement of Foreign Judgments

Under current law, 28 U.S.C. § 2467(d) gives Federal courts the authority to enforce civil and criminal forfeiture judgments entered by foreign courts. This section amends that provision to include a mechanism for preserving property subject to forfeiture in a foreign country.

Specifically, a Federal court could issue a restraining order under 18 U.S.C. § 983(j) or register and enforce a foreign restraining order, if the Attorney General certified that such foreign order was obtained in accordance with the principles of due process. A person seeking to contest the restraining order could do so on the ground that 28 U.S.C. § 2467 was not properly applied to the particular case, but could not oppose the restraining order on any ground that could also be raised in the proceedings pending in a foreign court. This provision prevents a litigant from taking "two bites at the apple" by raising objections to the basis for the forfeiture in the Federal court that he also raised, or is entitled to raise, in the foreign court where the forfeiture action is pending. It complements the existing provision in section 2467(e) providing that the Federal court is bound by the findings of fact of the foreign court, and may not look behind such findings in determining whether to enter an order enforcing a foreign forfeiture judgment.

This section also amends 28 U.S.C. § 2467 to make clear that it is not necessary to prove that the person asserting an interest in the property received actual notice of the forfeiture proceedings. As is the case with respect to forfeitures under U.S. law, it is sufficient if the foreign nation takes steps to provide notice, in accordance with the principles of due process. See *Gonzalez* v. *United States,* 1997 WL 278123 (S.D.N.Y. 1997) ("the [G]overnment is not required to ensure actual receipt of notice that is properly mailed"); *Albajon* v. *Gugliotta*, 72 F. Supp. 2d 1362 (S.D. Fla. 1999) (notice

sent to various addresses on claimant's identifications, and mailed after claimant released from jail, is sufficient to satisfy due process, even if claimant never received notice); *United States* v. *Schiavo*, 897 F. Supp. 644, 648–49 (D. Mass. 1995) (sending notice to fugitive's last known address is sufficient; due process satisfied even if he did not receive the notice).

Finally, 28 U.S.C. § 2467 is amended to authorize the enforcement of a forfeiture judgment based on any foreign offense that would constitute an offense giving rise to a civil or criminal forfeiture of the same property if the offense had been committed in the United States. This is one of two safeguards that the statute contains against the enforcement of judgments that the United States does not consider appropriate for enforcement: if the judgment is based on an act that would not constitute a crime in the United States, such as removing assets from the reach of a repressive regime, it could not be enforced. In addition, section 2467 already provides that a foreign judgment may only be enforced by a Federal court at the request of the United States, and only after the Attorney General has certified that the judgment was obtained in accordance with the principles of due process. Thus, neither a foreign Government nor a foreign private party could enforce a foreign judgment on its own under this provision.

Section 119. Reporting Provisions and Anti-Terrorist Activities of United States Intelligence Agencies

This section clarifies the authority of the Secretary of the Treasury to share Bank Secrecy Act information with the intelligence community for intelligence or counterintelligence activities related to domestic or international terrorism. Under current law, the Secretary may share BSA information with the intelligence community for the purpose of investigating and prosecuting terrorism. This section would make clear that the intelligence community may use this information for purposes unrelated to law enforcement.

The provision would also expand a Right to Financial Privacy Act (RFPA) exemption, currently applicable to law enforcement inquiries, to allow an agency or department to share relevant financial records with another agency or department involved in intelligence or counterintelligence activities, investigations, or analyses related to domestic or international terrorism. The section would also exempt from most provisions of the RFPA a government authority engaged in investigations of or analyses related to domestic or international terrorism. This section would also authorize the sharing of financial records obtained through a Federal grand jury subpoena when relevant to intelligence or counterintelligence activities, investigations, or analyses related to domestic or international terrorism. In each case, the transferring governmental entity must certify that there is reason to believe that the financial records are relevant to such an activity, investigation, or analysis.

Finally, this section facilitates government access to information contained in suspected terrorists' credit reports when the governmental inquiry relates to an investigation of, or intelligence activity or analysis relating to, domestic or international terrorism. Even though private entities such as lenders and insurers can access an individual's credit history, the government is strictly limited in its ability under current law to obtain the information. This section

would permit those investigating suspected terrorists prompt access to credit histories that may reveal key information about the terrorist's plan or source of funding—without notifying the target. To obtain the information, the governmental authority must certify to the credit bureau that the information is necessary to conduct a terrorism investigation or analysis. The amendment would also create a safe harbor from liability for credit bureaus acting in good faith that comply with a government agency's request for information.

Section 120. Financial Crimes Enforcement Network

The Financial Crimes Enforcement Network, or FinCEN, was created by executive order in 1990, and its duties augmented by several subsequent orders. Its mission is to create and maintain a computer system that holds information on financial crimes—allowing law enforcement agencies to view and query the data with appropriate safeguards—and to analyze the information to identify leads for further investigation or possible prosecution.

This section codifies the executive orders, establishing FinCEN as a permanent bureau of the Treasury, giving it a separate authorization (FY 2002 through FY 2005) and assigning duties consistent with those of the executive orders. This section also makes the Director of FinCEN a Presidential appointee, with a four year term. Additionally, the section establishes a special unit within FinCEN to deal with informal value-transferring arrangements such as the hawala organizations thought to be a method by which some terrorists transfer funds outside of normal banking channels. Also assigned as a new duty is support of the Treasury Secretary's efforts in tracking and controlling foreign terrorists' assets by providing computer storage and analysis to the new Foreign Terrorist Asset Tracking Center recently established at the Office of Foreign Assets Control.

References in section 120(c)(2) to section 552(a) of title V and the Right to Financial Privacy Act are not intended by the Committee to impose additional and/or more stringent standards than what the Privacy Act outlines.

This section also requires the Treasury Secretary to report to Congress regularly on compliance with laws requiring the reporting of foreign bank accounts, along with methods for improving compliance. The Committee is aware that non-compliance with such regulations is a possible method of laundering money or financing terrorism, and that compliance over the last decades has been unacceptably low—probably in the single-digit percentages.

Section 121. Customs Service Border Searches

This section authorizes the U.S. Customs Service to conduct warrantless searches of outbound mail transmitted by or for the Postal Service for bulk cash, dangerous contraband, and other items subject to the laws enforced by Customs. Because the Customs Service is responsible for enforcing laws vital to the national interest, including provisions on the export of weapons of mass destruction, child pornography, and munitions, there is a critical need for Customs to have this authority.

The Customs Service currently has the authority to conduct such warrantless searches in virtually every situation in which people or

merchandise cross the U.S. border, including the authority to search shipments sent by private carrier, such as Federal Express or United Parcel Service. This section simply extends this authority to outbound mail sent via the Postal Service, and is intended to ensure that in rule and practice Postal mail is subject to the same types of border searches as currently are authorized for private carrier shipments. This section is not intended to change in any way the existing authority of Customs to conduct border searches of shipments sent by private carriers.

The provision includes safeguards prohibiting Customs officers from reading any correspondence in mail sent by the Postal Service without a search warrant or the written consent of the sender or addressee. Finally, with regard to sealed letter class mail exported by the Postal Service, it is intended that Customs officers must have reasonable suspicion that such mail contains merchandise before opening or examining it. This parallels the existing rule for Customs border searches of imported letter class mail. See 19 C.F.R. § 145.3.

Section 122. Prohibition on False Statements to Financial Institutions Concerning the Identity of a Customer

This section makes it a Federal crime, punishable by up to 5 years in prison, for a person submitting information to a financial institution to knowingly falsify or conceal their true identity in a transaction with a financial institution, including a bank, securities firm, or insurance company.

Section 123. Verification of Identification

Section 123(a) amends 31 U.S.C. § 5318 by adding a new subsection governing the identification of account holders. Paragraph (1) directs Treasury to prescribe regulations setting forth minimum standards for customer identification by financial institutions in connection with the opening of an account. By referencing "customers" in this section, the Committee intends that the regulations prescribed by Treasury take an approach similar to that of regulations promulgated under title V of the Gramm-Leach-Bliley Act of 1999, where the functional regulators defined "customers" and "customer relationship" for purposes of the financial privacy rules. Under this approach, for example, where a mutual fund sells its shares to the public through a broker-dealer and maintains a "street name" or omnibus account in the broker-dealer's name, the individual purchasers of the fund shares are customers of the broker-dealer, rather than the mutual fund. The mutual fund would not be required to "look through" the broker-dealer to identify and verify the identities of those customers. Similarly, where a mutual fund sells its shares to a qualified retirement plan, the plan, and not its participants, would be the fund's customers. Thus, the fund would not be required to "look through" the plan to identify its participants.

Paragraph (2) requires that the regulations must, at a minimum, require financial institutions to implement procedures to verify (to the extent reasonable and practicable) the identity of any person seeking to open an account, maintain records of the information used to do so, and consult applicable lists of known or suspected terrorist or terrorist organizations. The lists of known or suspected

terrorists that the Committee intends financial institutions to consult are those already supplied to financial institutions by the Office of Foreign Asset Control (OFAC), and occasionally by law enforcement and regulatory authorities, as in the days immediately following the September 11, 2001, attacks on the World Trade Center and the Pentagon. It is the Committee's intent that the verification procedures prescribed by Treasury make use of information currently obtained by most financial institutions in the account opening process. It is not the Committee's intent for the regulations to require verification procedures that are prohibitively expensive or impractical.

Paragraph (3) requires that Treasury consider the various types of accounts maintained by various financial institutions, the various methods of opening accounts, and the various types of identifying information available in promulgating its regulations. This would require Treasury to consider, for example, the feasibility of obtaining particular types of information for accounts opened through the mail, electronically, or in other situations where the accountholder is not physically present at the financial institution. Millions of Americans open accounts at mutual funds, broker-dealers, and other financial institutions in this manner; it is not the Committee's intent that the regulations adopted pursuant to this legislation impose burdens that would make this prohibitively expensive or impractical. This provision allows Treasury to adopt regulations that are appropriately tailored to these types of accounts.

Current regulatory guidance instructs depository institutions to make reasonable efforts to determine the true identity of all customers requesting an institution's services. (See, e.g., FDIC Division of Supervision Manual of Exam Policies, section 9.4 VI.) The Committee intends that the regulations prescribed under this section adopt a similar approach, and impose requirements appropriate to the size, location, and type of business of an institution.

Paragraph (4) requires that Treasury consult with the appropriate functional regulator in developing the regulations. This will help ensure that the regulations are appropriately tailored to the business practices of various types of financial institutions, and the risks that such practices may pose.

Paragraph (5) gives each functional regulator the authority to exempt, by regulation or order, any financial institution or type of account from the regulations prescribed under paragraph (1).

Paragraph (6) requires that Treasury's regulations prescribed under paragraph (1) become effective within one year after enactment of this bill.

Section 124. Consideration of Anti-Money Laundering Record

This section amends the Bank Holding Company Act and Federal Deposit Insurance Act to require Federal banking regulators, when considering merger applications, to take into account the effectiveness of all parties to the transaction in combating and preventing money laundering activities, including in overseas branches.

Section 125. Reporting of Suspicious Activities by Informal Underground Banking Systems, such as Hawalas

Although the Committee believes that informal value transfer banking systems like hawalas are already adequately covered by

references to money transmitting businesses in certain provisions of existing law, this section makes that understanding explicit. First, it makes clear that informal value transfer banking systems are included in the definition of "financial institutions" under the Bank Secrecy Act. Second, it makes clear such systems are included under statutory registration requirements for money transmitting businesses. Third, it makes clear that informal value transfer banking systems are included under record-keeping rules for international wire transfers.

The section requires the Secretary of the Treasury to report to Congress within one year from the date of enactment on the need for any additional legislation relating to informal value transfer banking systems. The report is to cover such items as anti-money laundering and other regulatory controls, including a discussion of whether the $5,000 threshold for the filing of suspicious activity reports (SARs) should be lowered for hawalas and similar systems.

TITLE II—PUBLIC-PRIVATE COOPERATION

Section 201. Establishment of Highly Secure Network

This section directs the Secretary of the Treasury to establish a highly secure computer network dedicated to (1) receiving electronic filings of reports of suspicious activity and large currency transactions filed by financial institutions; and (2) providing financial institutions with alerts and other information regarding suspicious activity that warrants immediate and enhanced scrutiny. The network is to be fully operational within nine months of the date of enactment of this legislation.

Section 202. Report on Improvements in Data Access and Other Issues

The section requires the Secretary of the Treasury to file three separate reports to Congress within six months of enactment, covering:

(1) Progress made in the improvements of data entry, data access and data analysis with respect to the computer systems maintained by the Financial Crimes Enforcement Network (FinCEN);

(2) Technical, legal and other barriers to the exchange of financial crime prevention and detection information between Federal law-enforcement agencies; and,

(3) The nature and extent of private banking activities in the United States.

The Committee continues to be concerned that FinCEN computer systems are not used to their maximum efficiency because it is difficult, costly and time-consuming to enter data into them; analytical tools need constant improvement; and a number of technical and legal constraints as well as some inter-agency "turf" issues appear to prevent all financial crime data from being housed in a single system to which all Federal law enforcement has access. The Committee believes that constant improvement must be made to the FinCEN system's hardware and software to improve its effectiveness, and that until such barriers to data-sharing are eliminated, FinCEN will be impaired in performance of its mission, and enforcement of anti-money-laundering and anti-terrorism laws will suffer as a result.

Section 203. Reports to the Financial Services Industry on Suspicious Financial Activities

This section directs the Secretary of the Treasury to disseminate quarterly reports to the financial services industry identifying and analyzing patterns of suspicious financial activity disclosed by the reports filed by the industry pursuant to the Bank Secrecy Act.

Section 204. Efficient Use of Currency Transaction Report System

This section requires the Secretary of the Treasury to report to Congress within 90 days of enactment on (1) possible expansion of the statutory exemptions to the CTR requirement available under current law; and (2) methods for improving compliance by financial institutions with the exemptions. The Committee intends that the Secretary's report look specifically at methods to reduce unnecessary filing of CTRs, and to improve the quality of data available to law enforcement. The Committee does not intend that the Secretary's review encompass the issue of increasing the monetary thresholds for filing CTRs.

Section 205. Public-Private Task Force on Terrorist Financing Issues

This section mandates the creation of a public-private task force, under the aegis of the Bank Secrecy Act Advisory Group, to focus on issues related to terrorist financing. Among the issues to be addressed by the task force are the methods used by terrorist organizations to transfer funds globally and within the U.S., including through the use of charitable organizations; the relationship between international narcotics traffickers and foreign terrorist organizations; and the means of facilitating the identification of accounts and transactions involving terrorist groups, and facilitating the exchange of information concerning terrorist financing between financial institutions and law enforcement organizations.

Section 206. Suspicious Activity Reporting Requirements

This section directs the Secretary of the Treasury, in consultation with the Securities Exchange Commission (SEC), to publish by no later than December 31, 2001, a proposed regulation requiring securities broker-dealers to file Suspicious Activity Reports. The Secretary is also authorized, in consultation with the Commodity Futures Trading Commission (CFTC), to prescribe regulations requiring futures commission merchants, commodity trading advisors, and commodity pool operators registered under the Commodity Exchange Act (CEA) to file Suspicious Activity Reports.

At the time the Secretary of the Treasury proposes any reporting rules for futures commission merchants, the Secretary should consult with the Securities and Exchange Commission and the Commodity Futures Trading Commission and take steps to provide for a reporting process for entities registered as both securities brokers or dealers and futures commission merchants that requires only a single report, to the extent practicable and consistent with the Bank Secrecy Act. The Secretary should also act to prevent inconsistent regulations being applied to dually registered entities. Further, the Secretary should consult with the Commodity Futures Trading Commission to promote the use of a single reporting form

for the Commodity Futures Trading Commission and Treasury, to the extent practicable and consistent with the Bank Secrecy Act.

The Committee notes that, under the Bank Secrecy Act, the Secretary currently has the authority to require Suspicious Activity Reports of entities similar to futures commission merchants, commodity trading advisors, and commodity pool operators, namely registered investment advisors and registered investment companies. Accordingly, registered investment advisors and registered investment companies are not specifically identified in section 206(a). The Secretary and the Commodity Futures Trading Commission should consider the money laundering regulations and requirements imposed on registered investment companies and investment advisors when considering what regulations, if any, should apply to registered commodity pool operators and commodity trading advisors so as to ensure that these similar entities are treated in a comparable manner.

Section 207. Amendments Relating to Reporting of Suspicious Activities

Subsection (a) of section 207 makes certain technical and clarifying amendments to 31 U.S.C. §5318(g)(3), the Bank Secrecy Act's "safe harbor" provision that protects financial institutions that disclose possible violations of law or regulation from civil liability for reporting their suspicions and for not alerting those identified in the reports. The safe harbor is directed at Suspicious Activity Reports and similar reports to the government and regulatory authorities under the Bank Secrecy Act.

First, section 207(a) amends section 5318(g)(3) to make clear that the safe harbor from civil liability applies in arbitration, as well as judicial, proceedings. Second, it amends section 5318(g)(3) to clarify the safe harbor's coverage of voluntary disclosures (that is, those not covered by the SAR regulatory reporting requirement). The language in section 5318(g)(3)(A) providing that "any financial institution that * * * makes a disclosure pursuant to * * * any other authority * * * shall not be liable to any person" is not intended to avoid the application of the reporting and disclosure provisions of the Federal securities laws to any person, or to insulate any issuers from private rights of actions for disclosures made under the Federal securities laws.

Subsection 207(b) amends section 5318(g)(2) of title 31—which currently prohibits notification of any person involved in a transaction reported in a SAR that a SAR has been filed—to clarify (1) that any government officer or employee who learns that a SAR has been filed may not disclose that fact to any person identified in the SAR, except as necessary to fulfill the officer or employee's official duties, and (2) that disclosure by a financial institution of potential wrongdoing in a written employment reference provided in response to a request from another financial institution pursuant to section 18(v) of the Federal Deposit Insurance Act, or in a written termination notice or employment reference provided in accordance with the rules of a securities self-regulatory organization, is not prohibited simply because the potential wrongdoing was also reported in a SAR.

Section 208. Authorization to Include Suspicions of Illegal Activity in Written Employment References

This section deals with the same employment reference issue addressed in section 207 but with respect to title 12. Occasionally banks develop suspicions that a bank officer or employee has engaged in potentially unlawful activity. These suspicions typically result in the bank filing a SAR. Under present law, however, the ability of banks to share these suspicions in written employment references with other banks when such an officer or employee seeks new employment is unclear. Section 208 would amend 12 U.S.C. § 1828 to permit a bank, upon request by another bank, to share information in a written employment reference concerning the possible involvement of a current or former officer or employee in potentially unlawful activity without fear of civil liability for sharing the information, but only to the extent that the disclosure does not contain information which the bank knows to be false, and the bank has not acted with malice or with reckless disregard for the truth in making the disclosure.

Section 209. International Cooperation on Identification of Originators of Wire Transfers

This section directs the Secretary of the Treasury, in consultation with the Attorney General and the Secretary of State, to (1) take all reasonable steps to encourage foreign governments to require the inclusion of the name of the originator in wire transfer instructions sent to the U.S. and other countries; and (2) report annually to Congress on Treasury's progress in achieving this objective, and on impediments to instituting a regime in which all appropriate identification about wire transfer recipients is included with wire transfers from their point of origination until disbursement.

The Committee is concerned that inadequate information on the originator of wire transfers from a number of foreign jurisdictions makes it difficult for both law enforcement and financial institutions to properly understand the source of funds entering the United States in wire transfers. Such a lack of clarity could aid money launderers or terrorists in moving their funds into the United States financial system. Additionally, while arguments have been made that there are technical impediments to requiring that complete addressee information appear on all wire transfers terminating in or passing through the United States, the Committee believes that having such information is technically feasible and would aid both financial institutions in performing due diligence and law enforcement in tracking or seizing money that is the derivative of or would be used in the commission of a crime.

Section 210. Check Truncation Study

This section directs the Secretary of the Treasury, in consultation with the Attorney General and the Federal Reserve Board of Governors, to study the impact on crime prevention, law enforcement, and the administration of consumer protection laws of check electronification, through truncation or migration from paper checks.

Section 301. Special Measures for Jurisdictions, Financial Institutions, or International Transactions of Primary Money Laundering Concern

Section 301 adds a new section 5318A to the Bank Secrecy Act, authorizing the Secretary of the Treasury to require domestic financial institutions and agencies to take one or more of five "special measures" if the Secretary finds that reasonable grounds exist to conclude that a foreign jurisdiction, a financial institution operating outside the United States, a class of international transactions, or one or more types of accounts is a "primary money laundering concern." Prior to invoking any of the special measures contained in section 5318A(b), the Secretary is required to consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency, the Securities and Exchange Commission, the National Credit Union Administration Board, and, in the sole discretion of the Secretary, such other agencies and interested parties as the Secretary may find to be appropriate. Among other things, this consultation is designed to ensure that the Secretary possesses information on the effect that any particular special measure may have on the domestic and international banking system. In addition, the Committee encourages the Secretary to consult with non-governmental "interested parties," including, for example, the Bank Secrecy Act Advisory Group, to obtain input from those who may be subject to a regulation or order under this section.

Prior to invoking any of the special measures contained in section 5318A, the Secretary must consider three discrete factors, namely (1) whether other countries or multilateral groups have taken similar action; (2) whether the imposition of the measure would create a significant competitive disadvantage, including any significant cost or burden associated with compliance, for firms organized or licensed in the United States; and (3) the extent to which the action would have an adverse systemic impact on the payment system or legitimate business transactions.

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

Subsection (b) of the new section 5318A outlines the five "special measures" the Secretary may invoke against a foreign jurisdiction, financial institution operating outside the U.S., class of transaction within, or involving, a jurisdiction outside the U.S., or one or more types of accounts, that he finds to be of primary money laundering concern.

The first such measure would require domestic financial institutions[2] to maintain records and/or file reports on certain transactions involving the primary money laundering concern, to include any information the Secretary requires, such as the identity and address of participants in a transaction, the legal capacity in which the participant is acting, the beneficial ownership of the funds (in accordance with steps that the Secretary determines to be reason-

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

able and practicable to obtain such information), and a description of the transaction. The records and/or reports authorized by this section must involve transactions from a foreign jurisdiction, a financial institution operating outside the United States, or class of international transactions within, or involving, a foreign jurisdiction, and are not to include transactions that both originate and terminate in, and only involve, domestic financial institutions.

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

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

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

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

The five special measures authorized by this section may be imposed in any sequence or combination as the Secretary determines. The first four special measures may be imposed by regulation, order, or otherwise as permitted by law. However, if the Secretary proceeds by issuing an order, the order must be accompanied by a

notice of proposed rulemaking relating to the imposition of the special measure, and may not remain in effect for more than 120 days, except pursuant to a regulation prescribed on or before the end of the 120-day period. The fifth special measure may be imposed only by regulation.

Section 5318A(c) guides the Secretary's determination whether reasonable grounds exist to conclude that a jurisdiction, financial institution class of international transactions or type of account is of "primary money laundering concern." In determining whether reasonable grounds exist for reaching this conclusion regarding a particular jurisdiction, the Secretary is to consider relevant information, including: (1) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction; (2) the extent to which the jurisdiction or financial institutions operating in the jurisdiction offer bank secrecy or other regulatory advantages to nonresidents; (3) the quality of the jurisdiction's bank supervision and anti-money laundering laws; (4) the volume of financial transactions occurring in the jurisdiction relative to its economic size; (5) whether credible international entities characterize the jurisdiction as a bank secrecy haven; (6) whether the United States has a mutual legal assistance treaty with the jurisdiction and what the U.S. experience in obtaining information from the jurisdiction has been; and (7) the extent to which the jurisdiction is characterized by high levels of official or institutional corruption.

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

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

Subsection (d) requires the Secretary to notify, in writing, the relevant Committees in the House and Senate within 10 days of taking a special measure to address a primary money laundering concern.

Subsection (e) defines the terms "account," "correspondent account," and "payable-through account" for banks, and requires the Secretary, in consultation with the appropriate Federal functional regulators, to define these terms for application to non-bank financial institutions.

Subsection (e) also requires the Secretary of the Treasury to promulgate regulations defining beneficial ownership of an account for purposes of subchapter II of title 31. The regulations are required

to address issues related to an individual's authority to fund, direct or manage the account (including the power to direct payments into or out of the account), and an individual's material interest in the income or corpus of the account, and must ensure that the identification of individuals under this section does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

Section 301 also amends the definition of "financial institution" in 31 U.S.C. §5312 to include credit unions, futures commission merchants, commodity trading advisors, and commodity pool operators registered, or required to register, under the Commodity Exchange Act. The section also clarifies that for purposes of this Act and any amendment made by this Act to any other provision of law, the term "Federal functional regulator" includes the Commodity Futures Trading Commission.

Section 302. Special Due Diligence for Correspondent Accounts and Private Banking Accounts

Section 302 amends 31 U.S.C. §5318 to require financial institutions that establish, maintain, administer, or manage private banking or correspondent accounts for non-U.S. persons to establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls to detect and report instances of money laundering through those accounts.

The section requires financial institutions to apply enhanced due diligence procedures when opening or maintaining a correspondent account for a foreign bank operating (1) under a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license; or (2) under a license issued by a foreign country that has been designated (a) as non-cooperative with international anti-money laundering principles by an intergovernmental group or organization of which the United States is a member, with which designation the Secretary of the Treasury concurs, or (b) by the Secretary as warranting special measures due to money laundering concerns.

The enhanced due diligence procedures include (1) ascertaining the identity of each of the owners of the foreign bank (except for banks that are publicly traded); (2) conducting enhanced scrutiny of the correspondent account to guard against money laundering and report any suspicious activity; and (3) ascertaining whether the foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information.

For private banking accounts requested or maintained by a non-United States person, a financial institution is required to implement procedures for (1) ascertaining the identity of the nominal and beneficial owners of, and the source of funds deposited into, the account as needed to guard against money laundering and report suspicious activity; and (2) conducting enhanced scrutiny of any such account requested or maintained by, or on behalf of, a senior foreign political figure, or his immediate family members or close associates, to prevent, detect and report transactions that may involve the proceeds of foreign corruption. A private bank ac-

count is defined as an account (or any combination of accounts) that requires a minimum aggregate deposit of funds or other assets of not less than $1 million; is established on behalf of one or more individuals who have a direct or beneficial ownership in the account; and is assigned to, or administered or managed by, an officer, employee or agent of a financial institution acting as a liaison between the institution and the direct or beneficial owner of the account.

This section directs the Secretary of the Treasury, within 6 months of enactment of this bill and in consultation with appropriate Federal functional regulators, to further define and clarify, by regulation, the requirements imposed by this section.

Section 303. Prohibition on United States Correspondent Accounts with Foreign Shell Banks

This section bars U.S. depository institutions from providing correspondent banking services to foreign shell banks that have no physical presence in any country. It also requires depository institutions to take reasonable steps to ensure that any correspondent account established, maintained, administered or managed for a foreign bank is not being used to indirectly provide banking services to another foreign bank that does not have a physical presence in any country. This section does not prevent a U.S. bank from opening a correspondent account for a foreign bank that is (1) affiliated with a depository institution, credit union, or other foreign bank that maintains a physical presence in the U.S. or a foreign country, and (2) is subject to supervision by a banking authority in the country regulating the affiliated entity.

The Secretary of the Treasury is directed to prescribe regulations delineating reasonable steps necessary for a depository institution to comply with this section.

Section 304. Anti-Money Laundering Programs

This section directs financial institutions to establish anti-money laundering programs, including the development of internal policies, procedures, and controls; the designation of an officer of the financial institution responsible for compliance; an ongoing employee training program; and an independent audit function to test programs.

The Secretary of the Treasury is required to prescribe regulations implementing this section within 180 days of enactment of this Act, taking into consideration the extent to which the requirements imposed by such regulations are commensurate with the size, location and activities of the financial institutions to which such regulations apply. The Committee believes that the regulations to be issued by the Secretary under this section, and those issued by banking and thrift regulators as well under other authority, could contribute to the detection and prevention of money laundering crimes by reconciling rules that could be interpreted in a way that places conflicting burdens on financial institutions.

Section 305. Concentration Accounts at Financial Institutions

This section gives the Secretary of the Treasury discretionary authority to prescribe regulations governing the maintenance of concentration accounts by financial institutions, to ensure that these

accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner. If promulgated, the regulations are required to prohibit financial institutions from allowing clients to direct transactions into, out of, or through the concentration accounts of the institution; prohibit financial institutions and their employees from informing customers of the existence of, or means of identifying, the concentration accounts of the institution; and to establish written procedures governing the documentation of all transactions involving a concentration account.

Section 306. International Cooperation in Investigations of Money Laundering, Financial Crimes, and the Finances of Terrorist Groups

This section directs the Secretary of the Treasury, in consultation with the Attorney General, the Secretary of State, and the Board of Governors of the Federal Reserve, to enter into negotiations with the appropriate financial supervisory agencies and other officials of any foreign country whose financial institutions do business with United States financial institutions or which may be utilized by any foreign terrorist organization, any person who is a member or representative of any such organization, or any person engaged in money laundering or financial or other crimes. The purpose of the negotiations is to further cooperative efforts to (1) ensure that foreign banks and other financial institutions maintain adequate records of large United States currency transactions, and transaction and account information relating to any foreign terrorist organization or member or representative thereof, or any person engaged in money laundering or financial or other crimes; and (2) establish a mechanism for making such records available to United States law enforcement officials and domestic financial institution supervisors, where appropriate.

The Secretary of the Treasury is required to submit an interim report to Congress on progress in the negotiations outlined above within one year of the date of enactment of this Act, and a final report on the outcome of the negotiations to the President and the Congress within two years. In the final report, the Secretary is directed to identify countries whose financial institutions are being utilized by any foreign terrorist organization or representative or member thereof, or any person engaged in money laundering or financial or other crimes, and which have not reached agreement with the United States on the maintenance and exchange of information relating to such activities.

If the President determines that a country identified in the report is not negotiating in good faith with the United States to reach agreement on matters identified in this section, or that a financial institution in such country has not complied with a United States request for information regarding a foreign terrorist organization or a person engaged in money laundering for any such organization, the President may impose appropriate penalties on such country. The penalties imposed by the President may include prohibiting persons, institutions, or other entities in the relevant foreign country from (1) participating in any United States dollar clearing or wire transfer system; and (2) maintaining an account

with any bank or other financial institution chartered under United States law.

Section 307. Prohibition on Acceptance of Any Bank Instrument for Unlawful Internet Gambling

This section prohibits a gambling business from accepting bank instruments in connection with unlawful Internet gambling. Covered instruments include credit cards, electronic fund transfers, and checks. A financial intermediary would not be held responsible under this section unless it was involved in the actual operation of an illegal Internet gambling site. The legislation covers only unlawful Internet gambling, and would not apply to future lawful Internet gambling should a State decide to authorize it, as Nevada did this year in passing legislation to authorize in-State Internet gambling, provided such operations do not violate Federal law.

Subsection (b) defines the term "bets or wagers" as the staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game predominantly subject to chance with the agreement that the winner will receive something of greater value than the amount staked or risked. This subsection clarifies that "bets or wagers" does not include a bona fide business transaction governed by the securities laws; a transaction subject to the Commodity Exchange Act; an over-the-counter derivative instrument; a contract of indemnity or guarantee; a contract for life, health, or accident insurance; a deposit with a depository institution; or certain participation in a simulation sports game or education game. The subsection also clarifies that "business of betting or wagering" does not generally include any financial intermediary (creditor, credit card issuer, insured depository institution, transmitter of an electric fund transfer, money transmitting business, or network used to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or any participant in such network). Subsection (b) also defines the terms "Internet" and "unlawful Internet gambling."

Subsection (c) authorizes civil remedies, including a preliminary injunction, or injunction against any person other than an Internet service provider (unless that Internet service provider is acting in concert or participation with a person violating this section and receives actual knowledge of the order) to prevent or restrain a violation of this section, including expedited proceedings in exigent circumstances. The subsection authorizes such proceedings to be brought by the U.S. Attorney General, or the attorney general of a State or other appropriate State official. The subsection clarifies that this section should not be construed as altering, superseding, or otherwise affecting the application of the Indian Gaming Regulatory Act. The subsection requires that, before any proceeding under this subsection is initiated against an insured depository institution, notification must be made to the appropriate Federal banking agency and such agency must be allowed a reasonable time to issue the appropriate regulatory order.

Subsection (d) authorizes criminal penalties for violation of 307(a), including fines or imprisonment for not more than five years, or both. The subsection also authorizes a permanent injunction against a person convicted under this subsection, enjoining

such person from placing, receiving, or otherwise making bets or wagers or sending, receiving, or inviting information assisting in the placing of bets or wagers.

Subsection (e) provides that the safe harbor provided to a financial intermediary (creditor, credit card issuer, financial institution, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or national, regional, or local network) under subsection (b)(2) does not apply to a financial intermediary that operates, manages, supervises, or directs an Internet website at which unlawful bets or wagers are or may be placed, received, or otherwise made; or is owned or controlled by any person who operates, manages, supervises, or directs such an Internet website.

Subsection (f) allows the appropriate Federal banking agency to prohibit an insured depository institution from extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service, or from paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution, where the institution has actual knowledge that a person is violating this section in connection with such activities. This subsection, in conjunction with subsections (b)(2) and (e), is intended to ensure that a financial intermediary is not held liable for a violation of this section solely based on the unknowing and unintentional involvement of the intermediary through the use of the facilities of such intermediary in an unlawful Internet gambling transaction, unless the intermediary acted as an agent of a gambling business and had: (1) actual knowledge that the specific transaction is an unlawful Internet gambling transaction; and (2) the intent to engage in the business of submitting into the payment system Internet gambling transactions prohibited by this section.

Section 308. Internet Gambling In or Through Foreign Jurisdictions

This section provides that, in deliberations between the U.S. Government and any other country on money laundering, corruption, and crime issues, the U.S. Government should encourage cooperation by foreign governments in identifying whether Internet gambling operations are being used for money laundering, corruption, or other crimes, advance policies that promote the cooperation by foreign governments in the enforcement of this Act, and encourage the Financial Action Task Force on Money Laundering to study the extent to which Internet gambling operations are being used for money laundering.

TITLE IV—CURRENCY PROTECTION

Section 401. Counterfeiting Domestic Currency and Obligations

This section makes it a criminal offense to possess an electronic image of an obligation or security document of the United States with intent to defraud. The provision harmonizes counterfeiting language to clarify that possessing either analog or digital copies with intent to defraud constitutes an offense. This section mimics existing language that makes it a felony to possess the plates from which currency can be printed, and takes into account the fact that most counterfeit currency seized today is generated by computers

or computer-based equipment. The section also increases maximum sentences for a series of counterfeiting offenses.

Section 402. Counterfeiting Foreign Currency and Obligations

This section conforms the legal prohibition on counterfeiting foreign security documents or obligations within the U.S. to that of counterfeiting U.S. security documents or obligations, and raises penalties to parity with those established in section 401.

Section 403. Production of Documents

This section allows the Secretary of the Treasury to authorize production of currency, stamps or other security documents for foreign countries if such work does not interfere with the production of such documents for the U.S. and if the Secretary of State has concurred in the production.

Section 404. Reimbursement

This section provides that the Treasury be fully reimbursed for the printing authorized in section 403, including all real, administrative and other costs, by the foreign nation for which production services are performed.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

TITLE 31, UNITED STATES CODE

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CHAPTER 3—DEPARTMENT OF THE TREASURY

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SUBCHAPTER I—ORGANIZATION

Sec.
301. Department of the Treasury.
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310. Financial Crimes Enforcement Network
[310.] *311.* Continuing in office.
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SUBCHAPTER I—ORGANIZATION

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§ 310. Financial Crimes Enforcement Network

(a) IN GENERAL.—The Financial Crimes Enforcement Network established by order of the Secretary of the Treasury (Treasury Order Numbered 105-08) on April 25, 1990, shall be a bureau in the Department of the Treasury.

(b) DIRECTOR.—

(1) APPOINTMENT.—The head of the Financial Crimes Enforcement Network shall be the Director who shall be appointed

by the President, by and with the consent of the Senate, to a term of 4 years.

(2) DUTIES AND POWERS.—The duties and powers of the Director are as follows:

(A) Advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary for Enforcement.

(B) Maintain a government-wide data access service, with access, in accordance with applicable legal requirements, to the following:

(i) Information collected by the Department of the Treasury, including report information filed under subchapters II and III of chapter 53 of this title (such as reports on cash transactions, foreign financial agency transactions and relationships, foreign currency transactions, exporting and importing monetary instruments, and suspicious activities), chapter 2 of Public Law 91–508, section 21 of the Federal Deposit Insurance Act and section 6050I of the Internal Revenue Code of 1986.

(ii) Information regarding national and international currency flows.

(iii) Other records and data maintained by other Federal, State, local, and foreign agencies, including financial and other records developed in specific cases.

(iv) Other privately and publicly available information.

(C) Analyze and disseminate the available data in accordance with applicable legal requirements and policies and guidelines established by the Secretary of the Treasury and the Under Secretary for Enforcement to—

(i) identify possible criminal activity to appropriate Federal, State, local, and foreign law enforcement agencies;

(ii) support ongoing criminal financial investigations and prosecutions and related proceedings, including civil and criminal tax and forfeiture proceedings;

(iii) identify possible instances of noncompliance with subchapters II and III of chapter 53 of this title, chapter 2 of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act to Federal agencies with statutory responsibility for enforcing compliance with such provisions and other appropriate Federal regulatory agencies;

(iv) evaluate and recommend possible uses of special currency reporting requirements under section 5326; and

(v) determine emerging trends and methods in money laundering and other financial crimes.

(D) Establish and maintain a financial crimes communications center to furnish law enforcement authorities with intelligence information related to emerging or ongoing investigations and undercover operations.

(E) Furnish research, analytical, and informational services to financial institutions, appropriate Federal regulatory agencies with regard to financial institutions, and appropriate Federal, State, local, and foreign law enforcement authorities, in accordance with policies and guidelines established by the Secretary of the Treasury or the Under Secretary of the Treasury for Enforcement, in the interest of detection, prevention, and prosecution of terrorism, organized crime, money laundering, and other financial crimes.

(F) Establish and maintain a special unit dedicated to combatting the use of informal, nonbank networks and payment and barter system mechanisms that permit the transfer of funds or the equivalent of funds without records and without compliance with criminal and tax laws.

(G) Provide computer and data support and data analysis to the Secretary of the Treasury for tracking and controlling foreign assets.

(H) Coordinate with financial intelligence units in other countries on anti-terrorism and anti-money laundering initiatives, and similar efforts.

(I) Administer the requirements of subchapters II and III of chapter 53 of this title, chapter 2 of Public Law 91–508, and section 21 of the Federal Deposit Insurance Act, to the extent delegated such authority by the Secretary of the Treasury.

(J) Such other duties and powers as the Secretary of the Treasury may delegate or prescribe.

(c) REQUIREMENTS RELATING TO MAINTENANCE AND USE OF DATA BANKS.—The Secretary of the Treasury shall establish and maintain operating procedures with respect to the government-wide data access service and the financial crimes communications center maintained by the Financial Crimes Enforcement Network which provide—

(1) for the coordinated and efficient transmittal of information to, entry of information into, and withdrawal of information from, the data maintenance system maintained by the Network, including—

(A) the submission of reports through the Internet or other secure network, whenever possible;

(B) the cataloguing of information in a manner that facilitates rapid retrieval by law enforcement personnel of meaningful data; and

(C) a procedure that provides for a prompt initial review of suspicious activity reports and other reports, or such other means as the Secretary may provide, to identify information that warrants immediate action; and

(2) in accordance with section 552a of title 5 and the Right to Financial Privacy Act of 1978, appropriate standards and guidelines for determining—

(A) who is to be given access to the information maintained by the Network;

(B) what limits are to be imposed on the use of such information; and

(C) how information about activities or relationships which involve or are closely associated with the exercise of constitutional rights is to be screened out of the data maintenance system.

(d) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated for the Financial Crimes Enforcement Network such sums as may be necessary for fiscal years 2002, 2003, 2004, and 2005.

§ [310] *311*. Continuing in office

When the term of office of an officer of the Department of the Treasury ends, the officer may continue to serve until a successor is appointed and qualified.

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SUBTITLE IV—MONEY

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CHAPTER 51—COINS AND CURRENCY

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SUBCHAPTER II—GENERAL AUTHORITY

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§ 5114. Engraving and printing currency and security documents

[(a) The Secretary of the Treasury]

(a) AUTHORITY TO ENGRAVE AND PRINT.—

(1) IN GENERAL.—The Secretary of the Treasury shall engrave and print United States currency and bonds of the United States Government and currency and bonds of United States territories and possessions from intaglio plates on plate printing presses the Secretary selects. However, other security documents and checks may be printed by any process the Secretary selects. Engraving and printing shall be carried out within the Department of the Treasury if the Secretary decides the engraving and printing can be carried out as cheaply, perfectly, and safely as outside the Department.

(2) ENGRAVING AND PRINTING FOR OTHER GOVERNMENTS.—The Secretary of the Treasury may, if the Secretary determines that it will not interfere with engraving and printing needs of the United States, produce currency, postage stamps, and other security documents for foreign governments, subject to a determination by the Secretary of State that such production would be consistent with the foreign policy of the United States.

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SUBCHAPTER IV—BUREAU OF ENGRAVING AND PRINTING

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§ 5143. Payment for services

The Secretary of the Treasury shall impose charges for Bureau of Engraving and Printing services the Secretary provides to an agency*, any foreign government, or any territory of the United States*. The charges shall be in amounts the Secretary considers adequate to cover the costs of the services (including administrative *and other* costs related to providing the services). The agency*, foreign government, or territory of the United States* shall pay promptly bills submitted by the Secretary.

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CHAPTER 53—MONETARY TRANSACTIONS

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SUBCHAPTER II—RECORDS AND REPORTS ON MONETARY INSTRUMENTS TRANSACTIONS

§ 5311. Declaration of purpose.

It is the purpose of this subchapter (except section 5315) to require certain reports or records where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings*, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism*.

§ 5312. Definitions and application

(a) In this subchapter—
(1) * * *
(2) "financial institution" means—
(A) * * *

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[(E) an insured institution (as defined in section 401(a) of the National Housing Act (12 U.S.C. 1724(a)));**]**
(E) any credit union;

* * * * * * *

[(R) a licensed sender of money;**]**
(R) a licensed sender of money or any other person who engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system;

* * * * * * *

(c) ADDITIONAL DEFINITIONS.—For purposes of this subchapter, the following definitions shall apply:

(1) CERTAIN INSTITUTIONS INCLUDED IN DEFINITION.—The term "financial institution" (as defined in subsection (a)) includes the following:

(A) Any futures commission merchant, commodity trading advisor, or commodity pool operator registered, or required to register, under the Commodity Exchange Act.

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§ 5317. Search and forfeiture of monetary instruments

(a) * * *

[(b) SEARCHES AT BORDER.—For purposes of ensuring compliance with the requirements of section 5316, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering or departing from the United States.

[(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), 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.]

(b) SEARCHES AT BORDER.—

(1) IN GENERAL.—For purposes of ensuring compliance with the laws enforced by the United States Customs Service, a customs officer may stop and search, at the border and without a search warrant, any vehicle, vessel, aircraft, or other conveyance, any envelope or other container, and any person entering, transiting, or departing from the United States.

(2) INTERNATIONAL SHIPMENTS OF MAIL.—With respect to shipments of international mail that are exported or imported by the United States Postal Service, the Customs Service and other appropriate Federal agencies shall, subject to paragraph (3), apply the customs laws of the United States and all other laws relating to the importation or exportation of such shipments in the same manner to both shipments by the United States Postal Service and similar shipments by private companies.

(3) SAFEGUARDS.—No provision of this subsection shall be construed as authorizing any customs officer or any other person to read any correspondence unless—

(A) a search warrant has been issued pursuant to Rule 41 of the Federal Rules of Criminal Procedure which permits such correspondence to be read; or

(B) the sender or addressee of the correspondence has given written consent for any such action.

(c) FORFEITURE.—

(1) IN GENERAL.—The court in imposing sentence for any violation of section 5313, 5316, or 5324 of this title, or section 6050I of the Internal Revenue Code of 1986, or any conspiracy to commit such violation, shall order the defendant to forfeit all property, real or personal, involved in the offense and any property traceable thereto.

(2) PROCEDURE.—Forfeitures under this subsection shall be governed by the procedures established in section 413 of the Controlled Substances Act and the guidelines established in paragraph (4).

(3) CIVIL FORFEITURE.—Any property involved in a violation of section 5313, 5316, or 5324 of this title, or section 6050I of the Internal Revenue Code of 1986, or any conspiracy to commit any such violation, and any property traceable to any such violation or conspiracy, may be seized and, subject to paragraph (4), forfeited to the United States in accordance with the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(4) PROPORTIONALITY OF FORFEITURE.—

(A) IN GENERAL.—Upon a showing by the property owner by a preponderance of the evidence that any currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source, and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense.

(B) FACTORS TO BE CONSIDERED.—In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances that have a bearing on the gravity of the offense, including the following:

(i) The value of the currency or other monetary instruments involved in the offense.

(ii) Efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice.

(iii) Whether the offense is part of a pattern of repeated violations of Federal law.

§ 5318. Compliance, exemptions, and summons authority

(a) * * *

* * * * * * *

(g) REPORTING OF SUSPICIOUS TRANSACTIONS.—

(1) * * *

[(2) NOTIFICATION PROHIBITED.—A financial institution, and a director, officer, employee, or agent of any financial institution, who voluntarily reports a suspicious transaction, or that reports a suspicious transaction pursuant to this section or any

other authority, may not notify any person involved in the transaction that the transaction has been reported.

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

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

(ii) no officer or employee of the Federal Government or of any State, local, tribal, or territorial government within the United States, who has any knowledge that such report was made may disclose to any person involved in the transaction that the transaction has been reported other than as necessary to fulfill the official duties of such officer or employee.

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

(3) LIABILITY FOR DISCLOSURES.—

(A) IN GENERAL.—Any financial institution that makes a voluntary disclosure of any possible violation of law or regulation to a government agency or makes a disclosure pursuant to this subsection or any other authority, and any director, officer, employee, or agent of such institution who makes, or requires another to make any such disclosure, shall not be liable to any person under any law or regulation of the United States, any constitution, law, or regulation of any State or political subdivision of any State, or under any contract or other legally enforceable agreement

(including any arbitration agreement), for such disclosure or for any failure to provide notice of such disclosure to any person.

(B) RULE OF CONSTRUCTION.—Subparagraph (A) shall not be construed as creating—

(i) any inference that the term "person", as used in such subparagraph, may be construed more broadly than its ordinary usage so to include any government or agency of government; or

(ii) any immunity against, or otherwise affecting, any civil or criminal action brought by any government or agency of government to enforce any constitution, law, or regulation of such government or agency.

(4) SINGLE DESIGNEE FOR REPORTING SUSPICIOUS TRANSACTIONS.—

(A) * * *

(B) DUTY OF DESIGNEE.—The officer or agency of the United States designated by the Secretary of the Treasury pursuant to subparagraph (A) shall refer any report of a suspicious transaction to any appropriate law enforcement [or supervisory agency]*, supervisory agency, or United States intelligence agency for use in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism*.

* * * * * * *

[(h) ANTI-MONEY LAUNDERING PROGRAMS.—

[(1) IN GENERAL.—In order to guard against money laundering through financial institutions, the Secretary may require financial institutions to carry out anti-money laundering programs, including at a minimum

[(A) the development of internal policies, procedures, and controls,

[(B) the designation of a compliance officer,

[(C) an ongoing employee training program, and

[(D) an independent audit function to test programs.

[(2) REGULATIONS.—The Secretary may prescribe minimum standards for programs established under paragraph (1).]

(h) ANTI-MONEY LAUNDERING PROGRAMS.—

(1) IN GENERAL.—In order to guard against money laundering through financial institutions, each financial institution shall establish anti-money laundering programs, including, at a minimum—

(A) the development of internal policies, procedures, and controls;

(B) the designation of an officer of the financial institution responsible for compliance;

(C) an ongoing employee training program; and

(D) an independent audit function to test programs.

(2) REGULATIONS.—The Secretary may, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), prescribe minimum standards for programs established under paragraph (1), and may exempt from the application of those standards any financial institution that is not subject to the provisions of the regulations contained in part 103 of title 31, of the Code of Fed-

eral Regulations, as in effect on the date of the enactment of the Financial Anti-Terrorism Act of 2001, or any successor to such regulations, for so long as such financial institution is not subject to the provisions of such regulations.

(3) CONCENTRATION ACCOUNTS.—The Secretary may prescribe regulations under this subsection that govern maintenance of concentration accounts by financial institutions, in order to ensure that such accounts are not used to prevent association of the identity of an individual customer with the movement of funds of which the customer is the direct or beneficial owner, which regulations shall, at a minimum—

(A) prohibit financial institutions from allowing clients to direct transactions that move their funds into, out of, or through the concentration accounts of the financial institution;

(B) prohibit financial institutions and their employees from informing customers of the existence of, or the means of identifying, the concentration accounts of the institution; and

(C) require each financial institution to establish written procedures governing the documentation of all transactions involving a concentration account, which procedures shall ensure that, any time a transaction involving a concentration account commingles funds belonging to 1 or more customers, the identity of, and specific amount belonging to, each customer is documented.

(i) IDENTIFICATION AND VERIFICATION OF ACCOUNTHOLDERS.—

(1) IN GENERAL.—Subject to the requirements of this subsection, the Secretary of the Treasury shall prescribe regulations setting forth the minimum standards regarding customer identification that shall apply in connection with the opening of an account at a financial institution.

(2) MINIMUM REQUIREMENTS.—The regulations shall, at a minimum, require financial institutions to implement procedures for—

(A) verifying the identity of any person seeking to open an account to the extent reasonable and practicable;

(B) maintaining records of the information used to verify a person's identity, including name, address, and other identifying information;

(C) consulting applicable lists of known or suspected terrorists or terrorist organizations generated by government agencies to determine whether a person seeking to open an account appears on any such list.

(3) FACTORS TO BE CONSIDERED.—In prescribing regulations under this subsection, the Secretary shall take into consideration the various types of accounts maintained by various types of financial institutions, the various methods of opening accounts, and the various types of identifying information available.

(4) CERTAIN FINANCIAL INSTITUTIONS.—In the case of any financial institution the business of which is engaging in financial activities described in section 4(k) of the Bank Holding Company Act of 1956 (including financial activities subject to the jurisdiction of the Commodity Futures Trading Commis-

sion), the regulations prescribed by the Secretary under paragraph (1) shall be prescribed jointly with each Federal functional regulator (as defined in section 509 of the Gramm-Leach-Bliley Act, including the Commodity Futures Trading Commission) appropriate for such financial institution.

(5) EXEMPTIONS.—The Secretary of the Treasury (and, in the case of any financial institution described in paragraph (4), any Federal agency described in such paragraph) may, by regulation or order, exempt any financial institution or type of account from the requirements of any regulation prescribed under this subsection in accordance with such standards and procedures as the Secretary may prescribe.

(6) EFFECTIVE DATE.—Final regulations prescribed under this subsection shall take effect before the end of the 1-year period beginning on the date of the enactment of the Financial Anti-Terrorism Act of 2001.

(j) DUE DILIGENCE FOR UNITED STATES PRIVATE BANKING AND CORRESPONDENT BANK ACCOUNTS INVOLVING FOREIGN PERSONS.—

(1) IN GENERAL.—Each financial institution that establishes, maintains, administers, or manages a private banking account or a correspondent account in the United States for a non-United States person, including a foreign individual visiting the United States, or a representative of a non-United States person, shall establish appropriate, specific, and, where necessary, enhanced due diligence policies, procedures, and controls to detect and report instances of money laundering through those accounts.

(2) MINIMUM STANDARDS FOR CORRESPONDENT ACCOUNTS.—

(A) IN GENERAL.—Subparagraph (B) shall apply if a correspondent account is requested or maintained by, or on behalf of, a foreign bank operating—

(i) under an offshore banking license; or

(ii) under a banking license issued by a foreign country that has been designated—

(I) as noncooperative with international anti-money laundering principles or procedures by an intergovernmental group or organization of which the United States is a member with which designation the Secretary of the Treasury concurs; or

(II) by the Secretary as warranting special measures due to money laundering concerns.

(B) POLICIES, PROCEDURES, AND CONTROLS.—The enhanced due diligence policies, procedures, and controls required under paragraph (1) for foreign banks described in subparagraph (A) shall, at a minimum, ensure that the financial institution in the United States takes reasonable steps—

(i) to ascertain for any such foreign bank, the shares of which are not publicly traded, the identity of each of the owners of the foreign bank, and the nature and extent of the ownership interest of each such owner;

(ii) to conduct enhanced scrutiny of such account to guard against money laundering and report any suspicious transactions under section 5318(g); and

(iii) to ascertain whether such foreign bank provides correspondent accounts to other foreign banks and, if so, the identity of those foreign banks and related due diligence information, as appropriate under paragraph (1).

(3) MINIMUM STANDARDS FOR PRIVATE BANKING ACCOUNTS.—If a private banking account is requested or maintained by, or on behalf of, a non-United States person, then the due diligence policies, procedures, and controls required under paragraph (1) shall, at a minimum, ensure that the financial institution takes reasonable steps—

(A) to ascertain the identity of the nominal and beneficial owners of, and the source of funds deposited into, such account as needed to guard against money laundering and report any suspicious transactions under section 5318(g); and

(B) to conduct enhanced scrutiny of any such account that is requested or maintained by, or on behalf of, a senior foreign political figure, or any immediate family member or close associate of a senior foreign political figure, to prevent, detect, and report transactions that may involve the proceeds of foreign corruption.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) OFFSHORE BANKING LICENSE.—The term "offshore banking license" means a license to conduct banking activities which, as a condition of the license, prohibits the licensed entity from conducting banking activities with the citizens of, or with the local currency of, the country which issued the license.

(B) PRIVATE BANK ACCOUNT.—The term "private bank account" means an account (or any combination of accounts) that—

(i) requires a minimum aggregate deposits of funds or other assets of not less than $1,000,000;

(ii) is established on behalf of 1 or more individuals who have a direct or beneficial ownership interest in the account; and

(iii) is assigned to, or is administered or managed by, in whole or in part, an officer, employee, or agent of a financial institution acting as a liaison between the financial institution and the direct or beneficial owner of the account.

(5) REGULATORY AUTHORITY.—Before the end of the 6-month period beginning on the date of the enactment of the Financial Anti-Terrorism Act of 2001, the Secretary, in consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act) shall further define and clarify, by regulation, the requirements of this subsection.

(k) PROHIBITION ON UNITED STATES CORRESPONDENT ACCOUNTS WITH FOREIGN SHELL BANKS.—

(1) IN GENERAL.—A depository institution shall not establish, maintain, administer, or manage a correspondent account in the United States for, or on behalf of, a foreign bank that does not have a physical presence in any country.

(2) PREVENTION OF INDIRECT SERVICE TO FOREIGN SHELL BANKS.—

(A) IN GENERAL.—A depository institution shall take reasonable steps to ensure that any correspondent account established, maintained, administered, or managed by that institution in the United States for a foreign bank is not being used by that foreign bank to indirectly provide banking services to another foreign bank that does not have a physical presence in any country.

(B) REGULATIONS.—The Secretary shall, in regulations, delineate reasonable steps necessary for a depository institution to comply with this subsection.

(3) EXCEPTION.—Paragraphs (1) and (2) shall not be construed as prohibiting a depository institution from providing a correspondent account to a foreign bank, if the foreign bank—

(A) is an affiliate of a depository institution, credit union, or other foreign bank that maintains a physical presence in the United States or a foreign country, as applicable; and

(B) is subject to supervision by a banking authority in the country regulating the affiliated depository institution, credit union, or foreign bank, described in subparagraph (A), as applicable.

(4) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(A) AFFILIATE.—The term "affiliate" means a foreign bank that is controlled by or is under common control with a depository institution, credit union, or foreign bank.

(B) DEPOSITORY INSTITUTION.—The "depository institution"—

(i) has the meaning given such term in section 3 of the Federal Deposit Insurance Act; and

(ii) includes a credit union.

(C) PHYSICAL PRESENCE.—The term "physical presence" means a place of business that—

(i) is maintained by a foreign bank;

(ii) is located at a fixed address (other than solely an electronic address) in a country in which the foreign bank is authorized to conduct banking activities, at which location the foreign bank—

(I) employs 1 or more individuals on a full-time basis; and

(II) maintains operating records related to its banking activities; and

(iii) is subject to inspection by the banking authority which licensed the foreign bank to conduct banking activities.

(l) APPLICABILITY OF RULES.—Any rules prescribed pursuant to the authority contained in section 21 of the Federal Deposit Insurance Act shall apply, in addition to any other financial institution to which such rules apply, to any person that engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system.

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

(a) INTERNATIONAL COUNTER-MONEY LAUNDERING REQUIREMENTS.—

(1) IN GENERAL.—The Secretary may require domestic financial institutions and domestic financial agencies to take 1 or more of the special measures described in subsection (b) if the Secretary finds that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern, in accordance with subsection (c).

(2) FORM OF REQUIREMENT.—The special measures described in—

(A) subsection (b) may be imposed in such sequence or combination as the Secretary shall determine;

(B) paragraphs (1) through (4) of subsection (b) may be imposed by regulation, order, or otherwise as permitted by law; and

(C) subsection (b)(5) may be imposed only by regulation.

(3) DURATION OF ORDERS; RULEMAKING.—Any order by which a special measure described in paragraphs (1) through (4) of subsection (b) is imposed (other than an order described in section 5326)—

(A) shall be issued together with a notice of proposed rulemaking relating to the imposition of such special measure; and

(B) may not remain in effect for more than 120 days, except pursuant to a regulation prescribed on or before the end of the 120-day period beginning on the date of issuance of such order.

(4) PROCESS FOR SELECTING SPECIAL MEASURES.—In selecting which special measure or measures to take under this subsection, the Secretary—

(A) shall consult with the Chairman of the Board of Governors of the Federal Reserve System, any other appropriate Federal banking agency (as defined in section 3 of the Federal Deposit Insurance Act), the Securities and Exchange Commission, the National Credit Union Administration Board, and in the sole discretion of the Secretary such other agencies and interested parties as the Secretary may find to be appropriate; and

(B) shall consider—

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

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

(iii) the extent to which the action or the timing of the action would have a significant adverse systemic

impact on the international payment, clearance, and settlement system, or on legitimate business activities involving the particular jurisdiction, institution, or class of transactions.

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

(b) SPECIAL MEASURES.—The special measures referred to in subsection (a), with respect to a jurisdiction outside of the United States, financial institution operating outside of the United States, class of transaction within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts are as follows:

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

(A) IN GENERAL.—The Secretary may require any domestic financial institution or domestic financial agency to maintain records, file reports, or both, concerning the aggregate amount of transactions, or concerning each transaction, with respect to a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, or class of transactions to be of primary money laundering concern.

(B) FORM OF RECORDS AND REPORTS.—Such records and reports shall be made and retained at such time, in such manner, and for such period of time, as the Secretary shall determine, and shall include such information as the Secretary may determine, including—

(i) the identity and address of the participants in a transaction or relationship, including the identity of the originator of any funds transfer;

(ii) the legal capacity in which a participant in any transaction is acting;

(iii) the identity of the beneficial owner of the funds involved in any transaction, in accordance with such procedures as the Secretary determines to be reasonable and practicable to obtain and retain the information; and

(iv) a description of any transaction.

(2) INFORMATION RELATING TO BENEFICIAL OWNERSHIP.—In addition to any other requirement under any other provision of law, the Secretary may require any domestic financial institution or domestic financial agency to take such steps as the Secretary may determine to be reasonable and practicable to obtain and retain information concerning the beneficial ownership of any account opened or maintained in the United States by a foreign person (other than a foreign entity whose shares are subject to public reporting requirements or are listed and traded on a regulated exchange or trading market), or a representative of such a foreign person, that involves a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions

within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts if the Secretary finds any such jurisdiction, institution, transaction, or account to be of primary money laundering concern.

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

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

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(4) INFORMATION RELATING TO CERTAIN CORRESPONDENT ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary may require any domestic financial institution or domestic financial agency that opens or maintains a correspondent account in the United States for a foreign financial institution involving any such jurisdiction or any such financial institution operating outside of the United States, or a correspondent account through which any such transaction may be conducted, as a condition of opening or maintaining such account—

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

(B) to obtain, with respect to each such customer (and each such representative), information that is substantially comparable to that which the depository institution obtains in the ordinary course of business with respect to its customers residing in the United States.

(5) PROHIBITIONS OR CONDITIONS ON OPENING OR MAINTAINING CERTAIN CORRESPONDENT OR PAYABLE-THROUGH ACCOUNTS.—If the Secretary finds a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, or 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States to be of primary money laundering concern, the Secretary, in consulta-

tion with the Secretary of State, the Attorney General, and the Chairman of the Board of Governors of the Federal Reserve System, may prohibit, or impose conditions upon, the opening or maintaining in the United States of a correspondent account or payable- through account by any domestic financial institution or domestic financial agency for or on behalf of a foreign banking institution, if such correspondent account or payable-through account involves any such jurisdiction or institution, or if any such transaction may be conducted through such correspondent account or payable-through account.

(c) CONSULTATIONS AND INFORMATION TO BE CONSIDERED IN FINDING JURISDICTIONS, INSTITUTIONS, TYPES OF ACCOUNTS, OR TRANSACTIONS TO BE OF PRIMARY MONEY LAUNDERING CONCERN.—

(1) IN GENERAL.—In making a finding that reasonable grounds exist for concluding that a jurisdiction outside of the United States, 1 or more financial institutions operating outside of the United States, 1 or more classes of transactions within, or involving, a jurisdiction outside of the United States, or 1 or more types of accounts is of primary money laundering concern so as to authorize the Secretary to take 1 or more of the special measures described in subsection (b), the Secretary shall consult with the Secretary of State, and the Attorney General.

(2) ADDITIONAL CONSIDERATIONS.—In making a finding described in paragraph (1), the Secretary shall consider in addition such information as the Secretary determines to be relevant, including the following potentially relevant factors:

(A) JURISDICTIONAL FACTORS.—In the case of a particular jurisdiction—

(i) evidence that organized criminal groups, international terrorists, or both, have transacted business in that jurisdiction;

(ii) the extent to which that jurisdiction or financial institutions operating in that jurisdiction offer bank secrecy or special regulatory advantages to nonresidents or nondomiciliaries of that jurisdiction;

(iii) the substance and quality of administration of the bank supervisory and counter-money laundering laws of that jurisdiction;

(iv) the relationship between the volume of financial transactions occurring in that jurisdiction and the size of the economy of the jurisdiction;

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

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

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

(B) INSTITUTIONAL FACTORS.—In the case of a decision to apply 1 or more of the special measures described in subsection (b) only to a financial institution or institutions, or to a transaction or class of transactions, or to a type of account, or to all 3, within or involving a particular jurisdiction—

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

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

(iii) the extent to which such action is sufficient to ensure, with respect to transactions involving the jurisdiction and institutions operating in the jurisdiction, that the purposes of this subchapter continue to be fulfilled, and to guard against international money laundering and other financial crimes.

(d) NOTIFICATION OF SPECIAL MEASURES INVOKED BY THE SECRETARY.—Not later than 10 days after the date of any action taken by the Secretary under subsection (a)(1), the Secretary shall notify, in writing, the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate of any such action.

(e) DEFINITIONS.—Notwithstanding any other provision of this subchapter, for purposes of this section, the following definitions shall apply:

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

(A) ACCOUNT.—The term "account"—

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

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

(B) CORRESPONDENT ACCOUNT.—The term "correspondent account" means an account established to receive deposits from, make payments on behalf of a foreign financial institution, or handle other financial transactions related to such institution.

(C) PAYABLE-THROUGH ACCOUNT.—The term "payable-through account" means an account, including a transaction account (as defined in section 19(b)(1)(C) of the Federal Reserve Act), opened at a depository institution by a foreign financial institution by means of which the foreign financial institution permits its customers to engage, either directly or through a subaccount, in banking activities usual in connection with the business of banking in the United States.

(D) SECRETARY.—The term "Secretary" means the Secretary of the Treasury.

(2) DEFINITIONS APPLICABLE TO INSTITUTIONS OTHER THAN BANKS.—With respect to any financial institution other than a

bank, the Secretary shall, after consultation with the appropriate Federal functional regulators (as defined in section 509 of the Gramm-Leach-Bliley Act), define by regulation the term "account", and shall include within the meaning of that term, to the extent, if any, that the Secretary deems appropriate, arrangements similar to payable-through and correspondent accounts.

(3) REGULATORY DEFINITION.—The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this subchapter. Such regulations shall address issues related to an individual's authority to fund, direct, or manage the account (including the power to direct payments into or out of the account), and an individual's material interest in the income or corpus of the account, and shall ensure that the identification of individuals under this section does not extend to any individual whose beneficial interest in the income or corpus of the account is immaterial.

(4) OTHER TERMS.—The Secretary may, by regulation, further define the terms in paragraphs (1) and (2) and define other terms for the purposes of this section, as the Secretary deems appropriate.

[§ 5319. Availability of reports

The Secretary of the Treasury shall make information in a report filed under section 5313, 5314, or 5316 of this title available to an agency, including any State financial 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 are exempt from disclosure under section 552 of title 5.**]**

§ 5319. Availability of reports

The Secretary of the Treasury shall make information in a report filed under this subchapter available to an agency, including any State financial institutions supervisory agency or United States intelligence agency, upon request of the head of the agency. The report shall be available for a purpose that is consistent with this subchapter. The Secretary may only require reports on the use of such information by any State financial institutions supervisory agency for other than supervisory purposes or by United States intelligence agencies. However, a report and records of reports are exempt from disclosure under section 552 of title 5.

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§ 5321. Civil penalties

(a)(1) A domestic financial institution, and a partner, director, officer, or employee of a domestic financial institution, willfully violating this subchapter or a regulation prescribed *or order issued* under this subchapter (except sections 5314 and 5315 of this title or a regulation prescribed under sections 5314 and 5315*), or willfully violating a regulation prescribed under section 21 of the Fed-*

eral Deposit Insurance Act or section 123 of Public Law 91–508, is liable to the United States Government for a civil penalty of not more than the greater of the amount (not to exceed $100,000) involved in the transaction (if any) or $25,000. For a violation of section 5318(a)(2) of this title or a regulation prescribed under section 5318(a)(2), a separate violation occurs for each day the violation continues and at each office, branch, or place of business at which a violation occurs or continues.

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§ 5322. Criminal penalties

(a) A person willfully violating this subchapter or a regulation prescribed *or order issued* under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324)*, or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,* shall be fined not more than $250,000, or imprisoned for not more than five years, or both.

(b) a person willfully violating this subchapter or a regulation prescribed *or order issued* under this subchapter (except section 5315 or 5324 of this title or a regulation prescribed under section 5315 or 5324), *or willfully violating a regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91–508,* while violating another law of the United States or as part of a pattern of any illegal activity involving more than $100,000 in a 12-month period, shall be fined not more than $500,000, imprisoned for not more than 10 years, or both.

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§ 5324. Structuring transactions to evade reporting requirement prohibited

(a) DOMESTIC COIN AND CURRENCY TRANSACTIONS.—No person shall*,* for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such [section—] *section, the reporting requirements imposed by any order issued under section 5326, or the record keeping 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

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§ 5330. Registration of money transmitting businesses

(a) * * *

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(d) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) MONEY TRANSMITTING BUSINESS.—The term "money transmitting business" means any business other than the United States Postal Service which—

(A) provides check cashing, currency exchange, or money transmitting or remittance services, or issues or redeems money orders, travelers' checks, and other similar instruments *or any other person who engages as a business in the transmission of funds, including through an informal value transfer banking system or network of people facilitating the transfer of value domestically or internationally outside of the conventional financial institutions system*;

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§ 5331. Bulk cash smuggling into or out of the United States

(a) CRIMINAL OFFENSE.—

(1) IN GENERAL.—Whoever, with the intent to evade a currency reporting requirement under section 5316, knowingly conceals more than $10,000 in currency or other monetary instruments on the person of such individual or in any conveyance, article of luggage, merchandise, or other container, and transports or transfers or attempts to transport or transfer such currency or monetary instruments from a place within the United States to a place outside of the United States, or from a place outside the United States to a place within the United States, shall be guilty of a currency smuggling offense and subject to punishment pursuant to subsection (b).

(2) CONCEALMENT ON PERSON.—For purposes of this section, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

(b) PENALTY.—

(1) TERM OF IMPRISONMENT.—A person convicted of a currency smuggling offense under subsection (a), or a conspiracy to commit such offense, shall be imprisoned for not more than 5 years.

(2) FORFEITURE.—In addition, the court, in imposing sentence under paragraph (1), shall order that the defendant forfeit to the United States, any property, real or personal, involved in the offense, and any property traceable to such property, subject to subsection (d) of this section.

(3) PROCEDURE.—The seizure, restraint, and forfeiture of property under this section shall be governed by section 413 of the Controlled Substances Act.

(4) PERSONAL MONEY JUDGMENT.—If the property subject to forfeiture under paragraph (2) is unavailable, and the defendant has insufficient substitute property that may be forfeited pursuant to section 413(p) of the Controlled Substances Act, the court shall enter a personal money judgment against the defendant for the amount that would be subject to forfeiture.

(c) CIVIL FORFEITURE.—

(1) IN GENERAL.—Any property involved in a violation of subsection (a), or a conspiracy to commit such violation, and any property traceable to such violation or conspiracy, may be seized and, subject to subsection (d) of this section, forfeited to the United States.

(2) PROCEDURE.—The seizure and forfeiture shall be governed by the procedures governing civil forfeitures in money laundering cases pursuant to section 981(a)(1)(A) of title 18, United States Code.

(3) TREATMENT OF CERTAIN PROPERTY AS INVOLVED IN THE OFFENSE.—For purposes of this subsection and subsection (b), any currency or other monetary instrument that is concealed or intended to be concealed in violation of subsection (a) or a conspiracy to commit such violation, any article, container, or conveyance used, or intended to be used, to conceal or transport the currency or other monetary instrument, and any other property used, or intended to be used, to facilitate the offense, shall be considered property involved in the offense.

(d) PROPORTIONALITY OF FORFEITURE.—

(1) IN GENERAL.—Upon a showing by the property owner by a preponderance of the evidence that the currency or monetary instruments involved in the offense giving rise to the forfeiture were derived from a legitimate source, and were intended for a lawful purpose, the court shall reduce the forfeiture to the maximum amount that is not grossly disproportional to the gravity of the offense.

(2) FACTORS TO BE CONSIDERED.—In determining the amount of the forfeiture, the court shall consider all aggravating and mitigating facts and circumstances that have a bearing on the gravity of the offense, including the following:

(A) The value of the currency or other monetary instruments involved in the offense.

(B) Efforts by the person committing the offense to structure currency transactions, conceal property, or otherwise obstruct justice.

(C) Whether the offense is part of a pattern of repeated violations of Federal law.

§ 5332. Subpoenas for records

(a) DESIGNATION BY FOREIGN FINANCIAL INSTITUTION OF AGENT.—Any foreign financial institution that has a correspondent bank account at a financial institution in the United States shall designate a person residing in the United States as a person authorized to accept a subpoena for bank records or other legal process served on the foreign financial institution.

(b) MAINTENANCE OF RECORDS BY DOMESTIC FINANCIAL INSTITUTION.—

(1) IN GENERAL.—Any domestic financial institution that maintains a correspondent bank account for a foreign financial institution shall maintain records regarding the names and addresses of the owners of the foreign financial institution, and the name and address of the person who may be served with a subpoena for records regarding any funds transferred to or from the correspondent account.

(2) PROVISION TO LAW ENFORCEMENT AGENCY.—A domestic financial institution shall provide names and addresses maintained under paragraph (1) to a Government authority (as defined in section 1101(3) of the Right to Financial Privacy Act of 1978) within 7 days of the receipt of a request, in writing, for such records.

(c) ADMINISTRATIVE SUBPOENA.—

(1) IN GENERAL.—The Attorney General and the Secretary of the Treasury may each issue an administrative subpoena for records relating to the deposit of any funds into a dollar-denominated account in a foreign financial institution that maintains a correspondent account at a domestic financial institution.

(2) MANNER OF ISSUANCE.—Any subpoena issued by the Attorney General or the Secretary of the Treasury under paragraph (1) shall be issued in the manner described in section 3486 of this title, and may be served on the representative designated by the foreign financial institution pursuant to subsection (a) to accept legal process in the United States, or in a foreign country pursuant to any mutual legal assistance treaty, multilateral agreement, or other request for international law enforcement assistance.

(d) CORRESPONDENT ACCOUNT DEFINED.—For purposes of this section, the term "correspondent account" has the same meaning as the term "interbank account" as such term is defined in section 984(c)(2)(B) of title 18, United States Code.

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TITLE 18, UNITED STATES CODE

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PART I—CRIMES

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CHAPTER 25—COUNTERFEITING AND FORGERY

Sec.

470. Counterfeit acts committed outside the United States.

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474. Plates [or stones], *stones, or analog, digital, or electronic images* for counterfeiting obligations or securities.

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481. Plates [or stones], *stones, or analog, digital, or electronic images* for counterfeiting foreign obligations or securities.

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§ 470. Counterfeit acts committed outside the United States

A person who, outside the United States, engages in the act of—

(1) making, dealing, or possessing any counterfeit obligation or other security of the United States; or

(2) making, dealing, or possessing any plate, stone, *analog, digital, or electronic image,* or other thing, or any part thereof, used to counterfeit such obligation or security,

if such act would constitute a violation of section 471, 473, or 474 if committed within the United States, **[**shall be fined under this title, imprisoned not more than 20 years, or both**]** *shall be punished as is provided for the like offense within the United States*.

§ 471. Obligations or securities of United States

Whoever, with intent to defraud, falsely makes, forges, counterfeits, or alters any obligation or other security of the United States, shall be fined under this title or imprisoned not more than **[**fifteen**]** *20* years, or both.

§ 472. Uttering counterfeit obligations or securities

Whoever, with intent to defraud, passes, utters, publishes, or sells, or attempts to pass, utter, publish, or sell, or with like intent brings into the United States or keeps in possession or conceals any falsely made, forged, counterfeited, or altered obligation or other security of the United States, shall be fined under this title or imprisoned not more than **[**fifteen**]** *20* years, or both.

§ 473. Dealing in counterfeit obligations or securities

Whoever buys, sells, exchanges, transfers, receives, or delivers any false, forged, counterfeited, or altered obligation or other security of the United States, with the intent that the same be passed, published, or used as true and genuine, shall be fined under this title or imprisoned not more than **[**ten**]** *20* years, or both.

§ 474. Plates [or stones], *stones, or analog, digital, or electronic images* for counterfeiting obligations or securities

(a) Whoever, having control, custody, or possession of any plate, stone, or other thing, or any part thereof, from which has been printed, or which may be prepared by direction of the Secretary of the Treasury for the purpose of printing, any obligation or other security of the United States, uses such plate, stone, or other thing, or any part thereof, or knowingly suffers the same to be used for the purpose of printing any such or similar obligation or other security, or any part thereof, except as may be printed for the use of the United States by order of the proper officer thereof; or

Whoever makes or executes any plate, stone, or other thing in the likeness of any plate designated for the printing of such obligation or other security; or

Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any obligation or other security of the United States; or

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(b) [For purposes of this section, the terms "plate", "stone", "thing", or "other thing" includes any electronic method used for the acquisition, recording, retrieval, transmission, or reproduction of any obligation or other security, unless such use is authorized by the Secretary of the Treasury.] *For purposes of this section, the term "analog, digital, or electronic image" includes any analog, digital, or electronic method used for the making, execution, acquisition, scanning, capturing, recording, retrieval, transmission, or reproduction of any obligation or security, unless such use is authorized by the Secretary of the Treasury.* The Secretary shall establish a system (pursuant to section 504) to ensure that the legitimate use of such electronic methods and retention of such reproductions by businesses, hobbyists, press and others shall not be unduly restricted.

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§ 476. Taking impressions of tools used for obligations or securities

Whoever, without authority from the United States, takes, procures, or makes an impression, stamp, *analog, digital, or electronic image,* or imprint of, from or by the use of any tool, implement, instrument, or thing used or fitted or intended to be used in printing, stamping, or impressing, or in making other tools, implements, instruments, or things to be used or fitted or intended to be used in printing, stamping, or impressing any obligation or other security of the United States, shall be fined under this title or imprisoned not more than [ten] *25* years, or both.

§ 477. Possessing or selling impressions of tools used for obligations or securities

Whoever, with intent to defraud, possesses, keeps, safeguards, or controls, without authority from the United States, any imprint, stamp, *analog, digital, or electronic image,* or impression, taken or made upon any substance or material whatsoever, of any tool, implement, instrument or thing, used, fitted or intended to be used, for any of the purposes mentioned in section 476 of this title; or

Whoever, with intent to defraud, sells, gives, or delivers any such imprint, stamp, *analog, digital, or electronic image,* or impression to any other person—

Shall be fined under this title or imprisoned not more than [ten] *25* years, or both.

§ 478. Foreign obligations or securities

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bond, certificate, obligation, or other security of any foreign government, purporting to be or in imitation of any such security issued under the authority of such foreign government, or any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money, shall be fined under this title or imprisoned not more than [five] *20* years, or both.

§ 479. Uttering counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, utters, passes, or puts off, in payment or negotiation, any false, forged, or counterfeited bond, certificate, obligation, security, treasury note, bill, or promise to pay, mentioned in section 478 of this title, whether or not the same was made, altered, forged, or counterfeited within the United States, shall be fined under this title or imprisoned not more than [three] *20* years, or both.

§ 480. Possessing counterfeit foreign obligations or securities

Whoever, within the United States, knowingly and with intent to defraud, possesses or delivers any false, forged, or counterfeit bond, certificate, obligation, security, treasury note, bill, promise to pay, bank note, or bill issued by a bank or corporation of any foreign country, shall be fined under this title or imprisoned not more than [one year] *20 years*, or both.

§ 481. Plates [or stones], *stones, or analog, digital, or electronic images* for counterfeiting foreign obligations or securities

Whoever, within the United States except by lawful authority, controls, holds, or possesses any plate, stone, or other thing, or any part thereof, from which has been printed or may be printed any counterfeit note, bond, obligation, or other security, in whole or in part, of any foreign government, bank, or corporation, or uses such plate, stone, or other thing, or knowingly permits or suffers the same to be used in counterfeiting such foreign obligations, or any part thereof; or

Whoever, except by lawful authority, makes or engraves any plate, stone, or other thing in the likeness or similitude of any plate, stone, or other thing designated for the printing of the genuine issues of the obligations of any foreign government, bank, or corporation; or

Whoever, with intent to defraud, makes, executes, acquires, scans, captures, records, receives, transmits, reproduces, sells, or has in such person's control, custody, or possession, an analog, digital, or electronic image of any bond, certificate, obligation, or other security of any foreign government, or of any treasury note, bill, or promise to pay, lawfully issued by such foreign government and intended to circulate as money; or

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Shall be fined under this title or imprisoned not more than [five] *25* years, or both.

§ 482. Foreign bank notes

Whoever, within the United States, with intent to defraud, falsely makes, alters, forges, or counterfeits any bank note or bill issued by a bank or corporation of any foreign country, and intended by the law or usage of such foreign country to circulate as money, such bank or corporation being authorized by the laws of such country, shall be fined under this title or imprisoned not more than [two] *20* years, or both.

§ 483. Uttering counterfeit foreign bank notes

Whoever, within the United States, utters, passes, puts off, or tenders in payment, with intent to defraud, any such false, forged, altered, or counterfeited bank note or bill, mentioned in section 482 of this title, knowing the same to be so false, forged, altered, and counterfeited, whether or not the same was made, forged, altered, or counterfeited within the United States, shall be fined under this title or imprisoned not more than [one year] *20 years*, or both.

§ 484. Connecting parts of different notes

Whoever so places or connects together different parts of two or more notes, bills, or other genuine instruments issued under the authority of the United States, or by any foreign government, or corporation, as to produce one instrument, with intent to defraud, shall be guilty of forgery in the same manner as if the parts so put together were falsely made or forged, and shall be fined under this title or imprisoned not more than [five] *10* years, or both.

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§ 493. Bonds and obligations of certain lending agencies

Whoever falsely makes, forges, counterfeits or alters any note, bond, debenture, coupon, obligation, instrument, or writing in imitation or purporting to be in imitation of, a note, bond, debenture, coupon, obligation, instrument or writing, issued by the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, or any land bank, intermediate credit bank, insured credit union, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States, shall be fined under this title or imprisoned not more than [five] *10* years, or both.

Whoever passes, utters, or publishes, or attempts to pass, utter or publish any note, bond, debenture, coupon, obligation, instrument or document knowing the same to have been falsely made, forged, counterfeited or altered, contrary to the provisions of this section, shall be fined under this title or imprisoned not more than [five] *10* years, or both.

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CHAPTER 46—FORFEITURE

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§ 981. Civil forfeiture

(a)(1) 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, or] of *section 6050I of the Internal Revenue Code of 1986, or* section 1956 [or 1957], *1957 or 1960* 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.

[(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation involving the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), within whose jurisdiction such offense would be punishable by death or imprisonment for a term exceeding one year and which would be punishable under the laws of the United States by imprisonment for a term exceeding one year if such act or activity constituting the offense against the foreign nation had occurred within the jurisdiction of the United States.]

(B) Any property, real or personal, within the jurisdiction of the United States, constituting, derived from, or traceable to, any proceeds obtained directly or indirectly from an offense against a foreign nation, or any property used to facilitate such offense, if—

(i) the offense involves the manufacture, importation, sale, or distribution of a controlled substance (as such term is defined for the purposes of the Controlled Substances Act), or any other conduct described in section 1956(c)(7)(B),

(ii) the offense would be punishable within the jurisdiction of the foreign nation by death or imprisonment for a term exceeding one year, and

(iii) the offense would be punishable under the laws of the United States by imprisonment for a term exceeding one year if the act or activity constituting the offense had occurred within the jurisdiction of the United States.

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(k) CORRESPONDENT BANK ACCOUNTS.—

(1) TREATMENT OF ACCOUNTS OF CORRESPONDENT BANK IN DOMESTIC FINANCIAL INSTITUTIONS.—

(A) IN GENERAL.—For the purpose of a forfeiture under this section or under the Controlled Substances Act, if funds are deposited into a dollar-denominated bank account in a foreign financial institution, and that foreign financial institution has a correspondent account with a financial institution in the United States, the funds deposited into the foreign financial institution (the respondent bank) shall be deemed to have been deposited into the correspondent account in the United States, and any restraining order, seizure warrant, or arrest warrant in rem regarding such funds may be served on the correspondent bank, and funds in the correspondent account up to the value of the funds deposited into the dollar-denominated account in the foreign financial institution may be seized, arrested or restrained.

(B) AUTHORITY TO SUSPEND.—The Attorney General, in consultation with the Secretary, may suspend or terminate a forfeiture under this section if the Attorney General deter-

mines that a conflict of law exists between the laws of the jurisdiction in which the foreign bank is located and the laws of the United States with respect to liabilities arising from the restraint, seizure, or arrest of such funds, and that such suspension or termination would be in the interest of justice and would not harm the national interests of the United States.

(2) NO REQUIREMENT FOR GOVERNMENT TO TRACE FUNDS.—If a forfeiture action is brought against funds that are restrained, seized, or arrested under paragraph (1), the Government shall not be required to establish that such funds are directly traceable to the funds that were deposited into the respondent bank, nor shall it be necessary for the Government to rely on the application of Section 984 of this title.

(3) CLAIMS BROUGHT BY OWNER OF THE FUNDS.—If a forfeiture action is instituted against funds seized, arrested, or restrained under paragraph (1), the owner of the funds may contest the forfeiture by filing a claim pursuant to section 983.

(4) DEFINITIONS.—For purposes of this subsection, the following definitions shall apply:

(A) CORRESPONDENT ACCOUNT.—The term "correspondent account" has the meaning given to the term "interbank account" in section 984(c)(2)(B).

(B) OWNER.—

(i) IN GENERAL.—Except as provided in clause (ii), the term "owner"—

(I) means the person who was the owner, as that term is defined in section 983(d)(6), of the funds that were deposited into the foreign bank at the time such funds were deposited; and

(II) does not include either the foreign bank or any financial institution acting as an intermediary in the transfer of the funds into the interbank account.

(ii) EXCEPTION.—The foreign bank may be considered the "owner" of the funds (and no other person shall qualify as the owner of such funds) only if—

(I) the basis for the forfeiture action is wrongdoing committed by the foreign bank; or

(II) the foreign bank establishes, by a preponderance of the evidence, that prior to the restraint, seizure, or arrest of the funds, the foreign bank had discharged all or part of its obligation to the prior owner of the funds, in which case the foreign bank shall be deemed the owner of the funds to the extent of such discharged obligation.

§ 982. Criminal forfeiture

(a)(1) The court, in imposing sentence on a person convicted of an offense in violation **[**of section 5313(a), 5316, or 5324 of title 31, or**]** of *section 6050I of the Internal Revenue Code of 1986, or* 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.

* * * * * * *

CHAPTER 47—FRAUD AND FALSE STATEMENTS

§ 1008. False statements concerning the identity of customers of financial institutions

(a) IN GENERAL.—Whoever, in connection with information submitted to or requested by a financial institution, knowingly in any manner—

(1) falsifies, conceals, or covers up, or attempts to falsify, conceal, or cover up, the identity of any person in connection with any transaction with a financial institution;

(2) makes, or attempts to make, any materially false, fraudulent, or fictitious statement or representation of the identity of any person in connection with a transaction with a financial institution;

(3) makes or uses, or attempts to make or use, any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry concerning the identity of any person in connection with a transaction with a financial institution; or

(4) uses or presents, or attempts to use or present, in connection with a transaction with a financial institution, an identification document or means of identification the possession of which is a violation of section 1028;

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

(b) DEFINITIONS.—In this section, the following definitions shall apply:

(1) FINANCIAL INSTITUTION.—The term "financial institution"—

(A) has the same meaning as in section 20; and

(B) in addition, has the same meaning as in section 5312(a)(2) of title 31, United States Code.

(2) IDENTIFICATION DOCUMENT.—The term "identification document" has the same meaning as in section 1028(d).

(3) MEANS OF IDENTIFICATION.—The term "means of identification" has the same meaning as in section 1028(d).

* * * * * * *

CHAPTER 95—RACKETEERING

§ 1956. Laundering of monetary instruments

(a) * * *

(b)*(1)* Whoever conducts or attempts to conduct a transaction described in [subsection (a)(1) or (a)(3),] *subsection (a)(1) or (a)(2) or section 1957,* or a transportation, transmission, or transfer described in subsection (a)(2), is liable to the United States for a civil penalty of not more than the greater of—

[(1)] *(A)* the value of the property, funds, or monetary instruments involved in the transaction; or

[(2)] *(B)* $10,000.

(2) For purposes of adjudicating an action filed or enforcing a penalty ordered under this section, the district courts shall have jurisdiction over any foreign person, including any financial institution authorized under the laws of a foreign country, against whom the action is brought, if—

(A) service of process upon such foreign person is made under the Federal Rules of Civil Procedure or the laws of the country where the foreign person is found; and

(B) the foreign person—

(i) commits an offense under subsection (a) involving a financial transaction that occurs in whole or in part in the United States;

(ii) converts to such person's own use property in which the United States has an ownership interest by virtue of the entry of an order of forfeiture by a court of the United States; or

(iii) is a financial institution that maintains a correspondent bank account at a financial institution in the United States.

(3) The court may issue a pretrial restraining order or take any other action necessary to ensure that any bank account or other property held by the defendant in the United States is available to satisfy a judgment under this section.

(c) As used in this section—

(1) * * *

* * * * * * *

[(6) the term "financial institution" has the definition given that term in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder;]

(6) the term "financial institution" includes any financial institution described in section 5312(a)(2) of title 31, United States Code, or the regulations promulgated thereunder, as well as any foreign bank, as defined in paragraph (7) of section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101(7));

(7) the term "specified unlawful activity" means—

(A) * * *

(B) with respect to a financial transaction occurring in whole or in part in the United States, an offense against a foreign nation involving—

(i) * * *

[(ii) murder, kidnapping, robbery, extortion, or destruction of property by means of explosive or fire;]

(ii) any act or acts constituting a crime of violence, as defined in section 16 of this title;

* * * * * * *

(iv) bribery of a public official, or the misappropriation, theft, or embezzlement of public funds by or for the benefit of a public official;

(v) smuggling or export control violations involving munitions listed in the United States Munitions List or technologies with military applications as defined in the Commerce Control List of the Export Administration Regulations; or

(vi) an offense with respect to which the United States would be obligated by a bilateral treaty either to extradite the alleged offender or to submit the case for prosecution, if the offender were found within the territory of the United States;

* * * * * * *

(D) an offense under section 32 (relating to the destruction of aircraft), section 37 (relating to violence at international airports), section 115 (relating to influencing, impeding, or retaliating against a Federal official by threatening or injuring a family member), section 152 (relating to concealment of assets; false oaths and claims; bribery), section 215 (relating to commissions or gifts for procuring loans), section 351 (relating to congressional or Cabinet officer assassination), any of sections 500 through 503 (relating to certain counterfeiting offenses), section 513 (relating to securities of States and private entities), *section 541 (relating to goods falsely classified),* section 542 (relating to entry of goods by means of false statements), section 545 (relating to smuggling goods into the United States), section 549 (relating to removing goods from Customs custody), section 641 (relating to public money, property, or records), section 656 (relating to theft, embezzlement, or misapplication by bank officer or employee), section 657 (relating to lending, credit, and insurance institutions), section 658 (relating to property mortgaged or pledged to farm credit agencies), section 666 (relating to theft or bribery concerning programs receiving Federal funds), section 793, 794, or 798 (relating to espionage), section 831 (relating to prohibited transactions involving nuclear materials), section 844 (f) or (i) (relating to destruction by explosives or fire of Government property or property affecting interstate or foreign commerce), section 875 (relating to interstate communications), *section 922(1) (relating to the unlawful importation of firearms), section 924(n) (relating to firearms trafficking),* section 956 (relating to conspiracy to kill, kidnap, maim, or injure certain property in a foreign

country), section 1005 (relating to fraudulent bank entries), 1006 (relating to fraudulent Federal credit institution entries), 1007 (relating to Federal Deposit Insurance transactions), [1014 (relating to fraudulent loan] *section 1008 (relating to false statements concerning the identity of customers of financial institutions), section 1014 (relating to fraudulent loan* or credit applications), *section 1030 (relating to computer fraud and abuse),* 1032 (relating to concealment of assets from conservator, receiver, or liquidating agent of financial institution), section 1111 (relating to murder), section 1114 (relating to murder of United States law enforcement officials), section 1116 (relating to murder of foreign officials, official guests, or internationally protected persons), section 1201 (relating to kidnapping), section 1203 (relating to hostage taking), section 1361 (relating to willful injury of Government property), section 1363 (relating to destruction of property within the special maritime and territorial jurisdiction), section 1708 (theft from the mail), section 1751 (relating to Presidential assassination), section 2113 or 2114 (relating to bank and postal robbery and theft), section 2280 (relating to violence against maritime navigation), section 2281 (relating to violence against maritime fixed platforms), or section 2319 (relating to copyright infringement), section 2320 (relating to trafficking in counterfeit goods and services),, section 2332 (relating to terrorist acts abroad against United States nationals), section 2332a (relating to use of weapons of mass destruction), section 2332b (relating to international terrorist acts transcending national boundaries), or section 2339A *or 2339B* (relating to providing material support to terrorists) of this title, section 46502 of title 49, United States Code,, a felony violation of the Chemical Diversion and Trafficking Act of 1988 (relating to precursor and essential chemicals), section 590 of the Tariff Act of 1930 (19 U.S.C. 1590) (relating to aviation smuggling), section 422 of the Controlled Substances Act (relating to transportation of drug paraphernalia), section 38(c) (relating to criminal violations) of the Arms Export Control Act, section 11 (relating to violations) of the Export Administration Act of 1979, section 206 (relating to penalties) of the International Emergency Economic Powers Act, section 16 (relating to offenses and punishment) of the Trading with the Enemy Act, any felony violation of section 15 of the Food Stamp Act of 1977 (relating to food stamp fraud) involving a quantity of coupons having a value of not less than $5,000, any violation of section 543(a)(1) of the Housing Act of 1949 (relating to equity skimming), *any felony violation of the Foreign Agents Registration Act of 1938, as amended,* or any felony violation of the Foreign Corrupt Practices Act; or

* * * * * * *

§ 1957. Engaging in monetary transactions in property derived from specified unlawful activity

(a) * * *

* * * * * * *

(g) Any person who conceals more than $10,000 in currency on his or her person, in any vehicle, in any compartment or container within any vehicle, or in any container placed in a common carrier, and transports, attempts to transport, or conspires to transport such currency in interstate commerce on any public road or highway or on any bus, train, airplane, vessel, or other common carrier, knowing that the currency was derived from some form of unlawful activity, or knowing that the currency was intended to be used to promote some form of unlawful activity, shall be punished as provided in subsection (b). The defendant's knowledge may be established by proof that the defendant was willfully blind to the source or intended use of the currency. For purposes of this subsection, the concealment of currency on the person of any individual includes concealment in any article of clothing worn by the individual or in any luggage, backpack, or other container worn or carried by such individual.

* * * * * * *

[§ 1960. Prohibition of illegal money transmitting businesses

[(a) Whoever conducts, controls, manages, supervises, directs, or owns all or part of a business, knowing the business is an illegal money transmitting business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

[(b) As used in this section—

[(1) the term "illegal money transmitting business" means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

[(A) is intentionally operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law; or

[(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section;

[(2) the term "money transmitting" includes but is not limited to transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

[(3) the term "State" means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.]

§ 1960. Prohibition of unlicensed money transmitting businesses

(a) Whoever knowingly conducts, controls, manages, supervises, directs, or owns all or part of an unlicensed money transmitting

business, shall be fined in accordance with this title or imprisoned not more than 5 years, or both.

(b) As used in this section—

(1) the term "unlicensed money transmitting business" means a money transmitting business which affects interstate or foreign commerce in any manner or degree and—

(A) is operated without an appropriate money transmitting license in a State where such operation is punishable as a misdemeanor or a felony under State law, whether or not the defendant knew that the operation was required to be licensed or that the operation was so punishable;

(B) fails to comply with the money transmitting business registration requirements under section 5330 of title 31, United States Code, or regulations prescribed under such section; or

(C) otherwise involves the transportation or transmission of funds that are known to the defendant to have been derived from a criminal offense or are intended to be used to be used to promote or support unlawful activity;

(2) the term "money transmitting" includes transferring funds on behalf of the public by any and all means including but not limited to transfers within this country or to locations abroad by wire, check, draft, facsimile, or courier; and

(3) the term "State" means any State of the United States, the District of Columbia, the Northern Mariana Islands, and any commonwealth, territory, or possession of the United States.

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PART II—CRIMINAL PROCEDURE

* * * * * * *

CHAPTER 223—WITNESSES AND EVIDENCE

* * * * * * *

§ 3486. Administrative subpoenas

(a) AUTHORIZATION.—(1)(A) In any investigation of—

(i)(I) a Federal health care offense**[**; or (II) a Federal offense involving the sexual exploitation or abuse of children,**]**, *(II) a Federal offense involving the sexual exploitation or abuse of children, or (III) a money laundering offense in violation of section 1956, 1957 or 1960 of this title,* the Attorney General; or

* * * * * * *

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 8. (a) * * *

* * * * * * *

(x) DEPOSITORY INSTITUTION INVOLVEMENT IN INTERNET GAMBLING.—If any appropriate Federal banking agency determines that any insured depository institution is engaged in any of the following activities, the agency may issue an order to such institution prohib-

iting such institution from continuing to engage in any of the following activities:

(1) Extending credit, or facilitating an extension of credit, electronic fund transfer, or money transmitting service with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such extension of credit, electronic fund transfer, or money transmitting service.

(2) Paying, transferring, or collecting on any check, draft, or other instrument drawn on any depository institution with the actual knowledge that any person is violating section 3(a) of the Unlawful Internet Gambling Funding Prohibition Act in connection with such check, draft, or other instrument.

* * * * * * *

SEC. 18. (a) * * *

* * * * * * *

(c)(1) * * *

* * * * * * *

(11) MONEY LAUNDERING.—In every case, the responsible agency shall take into consideration the effectiveness of any insured depository institution involved in the proposed merger transaction in combating and preventing money laundering activities, including in overseas branches.

[(11)**]** *(12)* The provisions of this subsection do not apply to any merger transaction involving a foreign bank if no party to the transaction is principally engaged in business in the United States.

* * * * * * *

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

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

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

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

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

* * * * * * *

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—*

(A) the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred; or

(B) $25,000.

* * * * * * *

ACT OF OCTOBER 26, 1970

(Public Law 91–508)

AN ACT To amend the Federal Deposit Insurance Act to require insured banks to maintain certain records, to require that certain transactions in the 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—*

(1) the amount (not to exceed $100,000) involved in the transaction (if any) with respect to which the violation occurred; or

(2) $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.]

SEC. 126. CRIMINAL PENALTY.

A person that willfully violates this chapter, section 21 of the Federal Deposit Insurance Act, or a regulation prescribed under this

chapter or that section 21, shall be fined not more than $250,000, or imprisoned for not more than 5 years, or both.

SEC. 127. ADDITIONAL CRIMINAL PENALTY IN CERTAIN CASES.

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

* * * * * * *

SECTION 212 OF THE IMMIGRATION AND NATIONALITY ACT

GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND INELIGIBLE FOR ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) CLASSES OF ALIENS INELIGIBLE FOR VISAS OR ADMISSION.—Except as otherwise provided in this Act, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:

(1) * * *

(2) CRIMINAL AND RELATED GROUNDS.—

(A) * * *

* * * * * * *

(D) MONEY LAUNDERING ACTIVITIES.—

(i) IN GENERAL.—Any alien who the consular officer or the Attorney General knows or has reason to believe is or has been engaged in activities which if engaged in within the United States would constitute a violation of the money laundering provisions section 1956, 1957, or 1960 of title 18, United States Code, or has knowingly assisted, abetted, or conspired or colluded with others in any such illicit activity is inadmissible.

(ii) RELATED INDIVIDUALS.—Any alien who the consular officer or the Attorney General knows or has reason to believe is the spouse, son, or daughter of an alien inadmissible under clause (i), has, within the previous 5 years, obtained any financial or other benefit from such illicit activity of that alien, and knew or reasonably should have known that the financial or other benefit was the product of such illicit activity, is inadmissible, except that the Attorney General may, in the full discretion of the Attorney General, waive the exclusion of the spouse, son, or daughter of an alien under this clause if the Attorney General determines that exceptional circumstances exist that justify such waiver.

[(D)] *(E)* PROSTITUTION AND COMMERCIALIZED VICE.—Any alien who—

(i) * * *

* * * * * * *

[(E)] *(F)* CERTAIN ALIENS INVOLVED IN SERIOUS CRIMINAL ACTIVITY WHO HAVE ASSERTED IMMUNITY FROM PROSECUTION.—Any alien—

(i) * * *

* * * * * * *

[(F)] *(G)* WAIVER AUTHORIZED.—For provision authorizing waiver of certain subparagraphs of this paragraph, see subsection (h).

[(G)] *(H)* FOREIGN GOVERNMENT OFFICIALS WHO HAVE ENGAGED IN PARTICULARLY SEVERE VIOLATIONS OF RELIGIOUS FREEDOM.—Any alien who, while serving as a foreign government official, was responsible for or directly carried out, at any time during the preceding 24-month period, particularly severe violations of religious freedom, as defined in section 3 of the International Religious Freedom Act of 1998, and the spouse and children, if any, are inadmissible.

[(H)] *(I)* SIGNIFICANT TRAFFICKERS IN PERSONS.—

(i) * * *

* * * * * * *

(h) The Attorney General may, in his discretion, waive the application of subparagraphs (A)(i)(I), (B), (D), and (E) of subsection (a)(2) and subparagraph (A)(i)(II) of such subsection insofar as it relates to a single offense of simple possession of 30 grams or less of marijuana if—

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that—

(i) the alien is inadmissible only under subparagraph [(D)(i) or (D)(ii)] *(E)(i) or (E)(ii)* of such subsection or the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

* * * * * * *

SECTION 413 OF THE CONTROLLED SUBSTANCES ACT

CRIMINAL FORFEITURES

PROPERTY SUBJECT TO CRIMINAL FORFEITURE

SEC. 413. (a) * * *

* * * * * * *

PROTECTIVE ORDERS

(e)(1) * * *

* * * * * * *

(4) ORDER TO REPATRIATE AND DEPOSIT.—

(A) IN GENERAL.—Pursuant to its authority to enter a pretrial restraining order under this section, including its authority to restrain any property forfeitable as substitute assets, the court may order a defendant to repatriate any property that may be seized and forfeited, and to deposit that property pending trial

in the registry of the court, or with the United States Marshals Service or the Secretary of the Treasury, in an interest-bearing account, if appropriate.

(B) FAILURE TO COMPLY.—Failure to comply with an order under this subsection, or an order to repatriate property under subsection (p), shall be punishable as a civil or criminal contempt of court, and may also result in an enhancement of the sentence of the defendant under the obstruction of justice provision of the Federal Sentencing Guidelines.

* * * * * * *

[(p) If any of the property described in subsection (a), as a result of any act or omission of the defendant—

[(1) cannot be located upon the exercise of due diligence;

[(2) has been transferred or sold to, or deposited with, a third party;

[(3) has been placed beyond the jurisdiction of the court;

[(4) has been substantially diminished in value; or

[(5) has been commingled with other property which cannot be divided without difficulty;

the court shall order the forfeiture of any other property of the defendant up to the value of any property described in paragraphs (1) through (5).]

(p) FORFEITURE OF SUBSTITUTE PROPERTY.—

(1) IN GENERAL.—Paragraph (2) of this subsection shall apply, if any property described in subsection (a), as a result of any act or omission of the defendant—

(A) cannot be located upon the exercise of due diligence;

(B) has been transferred or sold to, or deposited with, a third party;

(C) has been placed beyond the jurisdiction of the court;

(D) has been substantially diminished in value; or

(E) has been commingled with other property which cannot be divided without difficulty.

(2) SUBSTITUTE PROPERTY.—In any case described in any of subparagraphs (A) through (E) of paragraph (1), the court shall order the forfeiture of any other property of the defendant, up to the value of any property described in subparagraphs (A) through (E) of paragraph (1), as applicable.

(3) RETURN OF PROPERTY TO JURISDICTION.—In the case of property described in paragraph (1)(C), the court may, in addition to any other action authorized by this subsection, order the defendant to return the property to the jurisdiction of the court so that the property may be seized and forfeited.

* * * * * * *

TITLE 28, UNITED STATES CODE

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PART VI—PARTICULAR PROCEEDING

* * * * * * *

CHAPTER 163—FINES, PENALTIES AND FORFEITURES

* * * * * * *

§ 2466. Fugitive disentitlement

(a) A judicial officer may disallow a person from using the resources of the courts of the United States in furtherance of a claim in any related civil forfeiture action or a claim in third party proceedings in any related criminal forfeiture action upon a finding that such person—

(1) * * *

* * * * * * *

(b) Subsection (a) may be applied to a claim filed by a corporation if any majority shareholder, or individual filing the claim on behalf of the corporation is a person to whom subsection (a) applies.

§ 2467. Enforcement of foreign judgment

(a) DEFINITIONS.—In this section—

(1) * * *

(2) the term "forfeiture or confiscation judgment" means a final order of a foreign nation compelling a person or entity—

(A) to pay a sum of money representing the proceeds of an offense described in Article 3, Paragraph 1, of the United Nations Convention*, any violation of foreign law that would constitute a violation of an offense for which property could be forfeited under Federal law if the offense were committed in the United States*, or any foreign offense described in section 1956(c)(7)(B) of title 18, or property the value of which corresponds to such proceeds; or

* * * * * * *

(b) REVIEW BY ATTORNEY GENERAL.—

(1) IN GENERAL.—A foreign nation seeking to have a forfeiture or confiscation judgment registered and enforced by a district court of the United States under this section shall first submit a request to the Attorney General or the designee of the Attorney General, which request shall include—

(A) * * *

* * * * * * *

(C) an affidavit or sworn declaration [establishing that the defendant received notice of the proceedings in sufficient time to enable the defendant] *establishing that the foreign nation took steps, in accordance with the principles of due process, to give notice of the proceedings to all persons with an interest in the property in sufficient time to enable such persons* to defend against the charges and that the judgment rendered is in force and is not subject to appeal; and

* * * * * * *

(d) ENTRY AND ENFORCEMENT OF JUDGMENT.—

(1) IN GENERAL.—The district court shall enter such orders as may be necessary to enforce the judgment on behalf of the foreign nation unless the court finds that—

(A) * * *

* * * * * * *

(D) [the defendant in the proceedings in the foreign court did not receive notice] *the foreign nation did not take steps, in accordance with the principles of due process, to give notice of the proceedings to a person with an interest in the property* of the proceedings in sufficient time to enable him or her to defend; or

* * * * * * *

(3) PRESERVATION OF PROPERTY.—To preserve the availability of property subject to a foreign forfeiture or confiscation judgment, the Government may apply for, and the court may issue, a restraining order pursuant to section 983(j) of title 18, United States Code, at any time before or after an application is filed pursuant to subsection (c)(1). The court, in issuing the restraining order—

(A) may rely on information set forth in an affidavit describing the nature of the proceeding or investigation underway in the foreign country, and setting forth a reasonable basis to believe that the property to be restrained will be named in a judgment of forfeiture at the conclusion of such proceeding; or

(B) may register and enforce a restraining order that has been issued by a court of competent jurisdiction in the foreign country and certified by the Attorney General pursuant to subsection (b)(2).

No person may object to the restraining order on any ground that is the subject of parallel litigation involving the same property that is pending in a foreign court.

* * * * * * *

RIGHT TO FINANCIAL PRIVACY ACT OF 1978

TITLE XI—RIGHT TO FINANCIAL PRIVACY

SEC. 1100. This title may be cited as the "Right to Financial Privacy Act of 1978".

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USE OF INFORMATION

SEC. 1112. (a) Financial records originally obtained pursuant to this title shall not be transferred to another agency or department unless the transferring agency or department certifies in writing that there is reason to believe that the records are relevant to a legitimate law enforcement inquiry, *or intelligence or counterintelligence activity, investigation or analysis related to international terrorism* within the jurisdiction of the receiving agency or department.

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SPECIAL PROCEDURES

SEC. 1114. (a)(1) Nothing in this title (except sections 1115, 1117, 1118, and 1121) shall apply to the production and disclosure of financial records pursuant to requests from—

(A) a Government authority authorized to conduct foreign counter- or foreign positive-intelligence activities for purposes of conducting such activities; **[**or**]**

(B) the Secret Service for the purpose of conducting its protective functions (18 U.S.C. 3056; 3 U.S.C. 202, Public Law 90–331, as amended)**[**.**]***; or*

(C) a Government authority authorized to conduct investigations of, or intelligence or counterintelligence analyses related to, international terrorism for the purpose of conducting such investigations or analyses.

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GRAND JURY INFORMATION

SEC. 1120. (a) Financial records about a customer obtained from a financial institution pursuant to a subpena issued under the authority of a Federal grand jury—

(1) * * *

(2) shall be used only for the purpose of considering whether to issue an indictment or presentment by that grand jury, or of prosecuting a crime for which that indictment or presentment is issued, or for a purpose authorized by rule 6(e) of the Federal Rules of Criminal Procedure*, or for a purpose authorized by section 1112(a)*;

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FAIR CREDIT REPORTING ACT

TITLE VI—CONSUMER CREDIT REPORTING

Sec.
601. Short title.

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[624.**]** *625.* Disclosures to FBI for counterintelligence purposes.
626. Disclosures to governmental agencies for counterterrorism purposes.

§ 601. Short title

This title may be cited as the Fair Credit Reporting Act.

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[§ 624.**]** *§ 625.* Disclosures to FBI for counterintelligence purposes

(a) * * *

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§ 626. Disclosures to governmental agencies for counterterrorism purposes

(a) DISCLOSURE.—Notwithstanding section 604 or any other provision of this title, a consumer reporting agency shall furnish a con-

sumer report of a consumer and all other information in a consumer's file to a government agency authorized to conduct investigations of, or intelligence or counterintelligence activities or analysis related to, international terrorism when presented with a written certification by such government agency that such information is necessary for the agency's conduct or such investigation, activity or analysis.

(b) FORM OF CERTIFICATION.—The certification described in subsection (a) shall be signed by the Secretary of the Treasury, or an officer designated by the Secretary from among officers of the Department of the Treasury whose appointments to office are required to be made by the President, by and with the advice and consent of the Senate.

(c) CONFIDENTIALITY.—No consumer reporting agency, or officer, employee, or agent of such consumer reporting agency, shall disclose to any person, or specify in any consumer report, that a government agency has sought or obtained access to information under subsection (a).

(d) RULE OF CONSTRUCTION.—Nothing in section 625 shall be construed to limit the authority of the Director of the Federal Bureau of Investigation under this section.

(e) SAFE HARBOR.—Notwithstanding any other provision of this subchapter, any consumer reporting agency or agent or employee thereof making disclosure of consumer reports or other information pursuant to this section in good-faith reliance upon a certification of a governmental agency pursuant to the provisions of this section shall not be liable to any person for such disclosure under this subchapter, the constitution of any State, or any law or regulation of any State or any political subdivision of any State.

SECTION 3 OF THE BANK HOLDING COMPANY ACT OF 1956

ACQUISITION OF BANK SHARES OR ASSETS

SEC. 3. (a) * * *

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(c) FACTORS FOR CONSIDERATION BY BOARD.—

(1) * * *

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(6) MONEY LAUNDERING.—In every case the Board shall take into consideration the effectiveness of the company or companies in combating and preventing money laundering activities, including in overseas branches.

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ANNUNZIO-WYLIE ANTI-MONEY LAUNDERING ACT

TITLE XV—ANNUNZIO-WYLIE ANTI-MONEY LAUNDERING ACT

SEC. 1500. SHORT TITLE.

This title may be cited as the "Annunzio-Wylie Anti-Money Laundering Act".

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Subtitle F—Miscellaneous Provisions

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SEC. 1564. ADVISORY GROUP ON REPORTING REQUIREMENTS.

(a) * * *

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(d) TERRORIST FINANCING ISSUES.—

(1) IN GENERAL.—The Secretary of the Treasury shall provide, either within the Bank Secrecy Act Advisory Group, or as a subcommittee or other adjunct of the Advisory Group, for a task force of representatives from agencies and officers represented on the Advisory Group, a representative of the Director of the Office of Homeland Security, and representatives of financial institutions, private organizations that represent the financial services industry, and other interested parties to focus on—

(A) issues specifically related to the finances of terrorist groups, the means terrorist groups use to transfer funds around the world and within the United States, including through the use of charitable organizations, nonprofit organizations, and nongovernmental organizations, and the extent to which financial institutions in the United States are unwittingly involved in such finances and the extent to which such institutions are at risk as a result;

(B) the relationship, particularly the financial relationship, between international narcotics traffickers and foreign terrorist organizations, the extent to which their memberships overlap and engage in joint activities, and the extent to which they cooperate with each other in raising and transferring funds for their respective purposes; and

(C) means of facilitating the identification of accounts and transactions involving terrorist groups and facilitating the exchange of information concerning such accounts and transactions between financial institutions and law enforcement organizations.

(2) APPLICABILITY OF OTHER PROVISIONS.—Sections 552, 552a, and 552b of title 5, United States Code, and the Federal Advisory Committee Act shall not apply to the task force established pursuant to paragraph (1).

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DISSENTING VIEWS

The so-called Financial Anti-Terrorism Act of 2001 (HR 3004) has more to do with the ongoing war against financial privacy than with the war against international terrorism. Of course, the federal government should take all necessary and constitutional actions to enhance the ability of law enforcement to locate and seize funds flowing to known terrorists and their front groups. For example, America should consider signing more mutual legal assistance treaties with its allies so we can more easily locate the assets of terrorists and other criminals.

Unfortunately, instead of focusing on reasonable measures aimed at enhancing the ability to reach assets used to support terrorism, HR 3004 is a laundry list of dangerous, unconstitutional power grabs. Many of these proposals have already been rejected by the American people when presented as necessary to "fight the war on drugs" or "crackdown on white-collar crime." Even a ban on Internet gambling has somehow made it into this "anti-terrorism" bill!

Among the most obnoxious provisions of this bill are: expanding the war on cash by creating a new federal crime of taking over $10,000 cash into or out of the United States; codifying the unconstitutional authority of the Financial Crimes Enforcement Network (FinCEN) to snoop into the private financial dealings of American citizens; and expanding the "suspicious activity reports" mandate to broker-dealers, even though history has shown that these reports fail to significantly aid in apprehending criminals. These measures will actually distract from the battle against terrorism by encouraging law enforcement authorities to waste time snooping through the financial records of innocent Americans who simply happen to demonstrate an "unusual" pattern in their financial dealings.

HR 3004 also attacks the Fourth Amendment by allowing Customs officials to open incoming or outgoing mail without a search warrant. Allowing government officials to read mail going out of or coming into the country at whim is characteristic of totalitarian regimes, not free societies.

The Financial Anti-Terrorism Act of 2001 (HR 3004) is a package of unconstitutional expansions of the financial police state, most of which will prove ultimately ineffective in the war against terrorism. I therefore urge my colleagues to reject this bill and work to fashion a measure aimed at giving the government a greater ability to locate and seize the assets of terrorists while respecting the constitutional rights of American citizens.

RON PAUL.