

113TH CONGRESS
1ST SESSION

H. R. 3317

To strengthen the Federal statutes designed to deter money laundering and terrorism financing, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 23, 2013

Ms. WATERS (for herself, Mrs. CAROLYN B. MALONEY of New York, Mr. AL GREEN of Texas, Mr. CLAY, Mr. CAPUANO, Mr. MEEKS, Ms. MOORE, and Mr. LYNCH) introduced the following bill; which was referred to the Committee on Financial Services, and in addition to the Committee on the Judiciary, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To strengthen the Federal statutes designed to deter money laundering and terrorism financing, and for other purposes.

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

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Holding Individuals Accountable and Deterring Money
6 Laundering Act”.

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

- Sec. 1. Short title; table of contents.
 Sec. 2. Findings.

TITLE I—HOLDING EXECUTIVES RESPONSIBLE FOR VIOLATIONS

- Sec. 101. Penalties for violations of the Bank Secrecy Act.
 Sec. 102. Criminal penalties.
 Sec. 103. Strengthening civil injunctive authority.
 Sec. 104. Clarification of removal and prohibition authority under the FDIA.
 Sec. 105. Independent litigation authority for FinCEN.
 Sec. 106. Treatment of executive compensation and personal liability.
 Sec. 107. Corporate governance and the legal responsibilities.

TITLE II—STRENGTHENING OF REGULATORY OVERSIGHT AND ACCOUNTABILITY

- Sec. 201. Reporting and oversight of Bank Secrecy Act-related enforcement actions.
 Sec. 202. Consideration of BSA compliance in management ratings.

TITLE III—CLARIFICATION OF SAFE HARBOR PROTECTIONS

- Sec. 301. Safe harbor protections.

TITLE IV—STRENGTHENING REQUIREMENTS AND CLOSING LOOPHOLES

- Sec. 401. Expanding the crimes that can be a predicate offense to money laundering.
 Sec. 402. Closing loopholes in Bank Secrecy Act reporting.
 Sec. 403. Definition of an institution-affiliated party.

TITLE V—WHISTLEBLOWER PROTECTIONS

- Sec. 501. Modernization and upgrading whistleblower protections.

TITLE VI—SENSE OF THE CONGRESS REGARDING CRIMINAL PENALTIES

- Sec. 601. Sense of the Congress.

TITLE VII—STRENGTHENING GLOBAL COMMITMENTS

- Sec. 701. International coordination.
 Sec. 702. Sense of Congress regarding list of countries at high risk for money laundering.

1 **SEC. 2. FINDINGS.**

2 The Congress finds the following:

- 3 (1) Money laundering is a serious threat to our
 4 national and economic security. The scale, efficiency,
 5 and complexity of the U.S. financial system make it

1 a prime target for those who seek to conceal and
2 move the proceeds of illicit activity.

3 (2) The spate of recent high-profile enforcement
4 actions against some of the largest and most sophis-
5 ticated financial institutions raises troubling ques-
6 tions about the effectiveness of U.S. domestic anti-
7 money laundering and counter-terrorism financing
8 regulatory, compliance and enforcement efforts.

9 (3) Money launderers have proven to adapt
10 quickly in order to avoid detection. U.S. anti-money
11 laundering laws and regulations must be rigorously
12 reviewed and constantly updated to close loopholes
13 and address the changing tactics employed by bad
14 actors.

15 (4) Given the global nature of money laun-
16 dering and terrorist financing and the increasing
17 interrelatedness of the global financial system, a se-
18 cure global framework is essential to the integrity of
19 the U.S. financial system.

20 (5) Efforts to stanch the flow of illegal money
21 across the world to drug cartels and terrorist organi-
22 zations should be a top U.S. priority. To achieve this
23 mission, extensive collaboration among financial reg-
24 ulators, the Department of Treasury, the Depart-

1 ment of State, the Department of Justice and state
2 and federal law enforcement agencies is required.

3 (6) U.S. anti-money laundering laws should
4 meet international standards set by the Financial
5 Action Task Force.

6 (7) Without serious consequences for institu-
7 tions and individuals who fail to protect financial in-
8 stitutions from illicit financial activity – including
9 significant fines, banning individuals from the indus-
10 try, and prison sentences for those who seek to ac-
11 tively evade anti-money laundering controls, finan-
12 cial institutions and individuals will continue to
13 avoid compliance with U.S. anti-money laundering
14 rules and regulations.

15 (8) Effective anti-money laundering programs
16 must emphasize sound corporate governance includ-
17 ing business line accountability and clear lines of
18 legal responsibility for individuals, including board
19 members and chief executive officers.

20 (9) Avoiding money laundering risks requires
21 an effective anti-money laundering program and a
22 strong institutional compliance culture, with written
23 standards, knowledgeable and adequate staff, strong
24 monitoring processes, effective anti-money laun-

1 dering training, and compensation structures that
2 reward compliance.

3 (10) Anti-money laundering deficiencies often
4 reflect weaknesses in the management of a financial
5 firm, which can in turn adversely affect the firm's
6 overall safety and soundness. Failure to account for
7 management deficiencies in this context may perpet-
8 uate a false perception of the stability of financial
9 firms.

10 (11) Anti-money laundering examinations in re-
11 cent years at times failed to recognize the cumu-
12 lative effect of the violations they cited, instead nar-
13 rowly focusing their attention on individual banking
14 units. The failure to review the cumulative effect of
15 such violations permitted national banks to avoid
16 and delay correcting problems, which allowed mas-
17 sive problems to occur before serious enforcement
18 actions were taken.

19 (12) Independent contractors often play a cen-
20 tral role in monitoring and auditing the overall ade-
21 quacy and effectiveness of a bank's compliance pro-
22 gram under the Bank Secrecy Act. Any failure to
23 hold these independent entities to the same standard
24 as any other party who participates in the affairs of

1 a bank may jeopardize the efficacy of a bank’s anti-
2 money laundering program.

3 (13) Collaboration is an essential component of
4 the U.S. strategy against money laundering, and is
5 critical to our national security. U.S. law enforce-
6 ment agencies are most effective when they work to-
7 gether by sharing information, insight, and data.

8 (14) The flow of information related to sus-
9 picious activity from financial institutions to law en-
10 forcement plays a key role in facilitating the disrupt-
11 tion of terrorist networks that seek to harm the
12 United States. The flow of such information depends
13 on a high degree of certainty that financial institu-
14 tions will be protected from civil liability when shar-
15 ing such information with federal law enforcement
16 agencies.

17 (15) Whistleblower rights and protections play
18 an important role in helping to ensure corporate in-
19 tegrity. Robust protections for whistleblowers and
20 enhanced rewards for informants will incentivize
21 compliance with anti-money laundering rules and
22 procedures, and encourage the provision of valuable
23 information to regulators and law enforcement agen-
24 cies.

1 **TITLE I—HOLDING EXECUTIVES**
2 **RESPONSIBLE FOR VIOLATIONS**

3 **SEC. 101. PENALTIES FOR VIOLATIONS OF THE BANK SE-**
4 **CRECY ACT.**

5 (a) CIVIL MONETARY PENALTIES FOR WILLFUL VIO-
6 LATIONS.—Section 5321(a) of title 31, United States
7 Code, is amended—

8 (1) by striking “(a)(1) A domestic financial in-
9 stitution” and inserting the following:

10 “(a) IN GENERAL.—

11 “(1) CIVIL MONETARY PENALTIES FOR WILL-
12 FUL VIOLATIONS.—A domestic financial institution”;

13 (2) in paragraph (1)—

14 (A) by striking “willfully violating” each
15 place such term appears and inserting “willfully
16 violating, or willfully causing any violation of,”;

17 (B) by striking “the amount (not to exceed
18 \$100,000) involved in the transaction (if any)
19 or \$25,000” and inserting “10 times the
20 amount (not to exceed \$10,000,000) involved in
21 the transaction (if any) or \$250,000”; and

22 (C) by adding at the end the following: “In
23 determining appropriate monetary penalty
24 amounts under this paragraph, the Secretary
25 has the authority to ensure that penalty

1 amounts are commensurate with the nature of
2 the violations, any patterns of violations, and,
3 with respect to a financial institution or non-
4 financial trade or business, the size, capitaliza-
5 tion and market share of such institution or
6 trade or business.”; and

7 (3) in paragraph (4)(A), by inserting after
8 “who violates” the following: “, or causes any viola-
9 tion of,”.

10 (b) CIVIL MONETARY PENALTIES FOR NEGLIGENT
11 VIOLATIONS.—Section 5321(a)(6) of title 31, United
12 States Code, is amended to read as follows:

13 “(6) NEGLIGENCE.—

14 “(A) IN GENERAL.—The Secretary of the
15 Treasury may impose a civil money penalty, for neg-
16 ligent violations of any provision of this subchapter
17 or any regulation prescribed under this subchapter,
18 of not more than—

19 “(i) \$50,000, with respect to a financial in-
20 stitution or nonfinancial trade or business; and

21 “(ii) \$5,000, with respect to any partner,
22 director, officer, or employee of an institution,
23 trade, or business.

24 “(B) VIOLATIONS OF THE REQUIREMENT TO
25 MAINTAIN PROCEDURES TO ENSURE COMPLIANCE.—

1 For a violation of a regulation prescribed under sec-
2 tion 5318(a)(2), a separate violation occurs for each
3 day the violation continues and at each office,
4 branch, or place of business at which a violation oc-
5 curs or continues.

6 “(C) DETERMINATION OF PENALTY AMOUNT.—
7 In determining appropriate monetary penalty
8 amounts under this paragraph, the Secretary has
9 the authority to ensure that penalty amounts are
10 commensurate with the nature of the violations, any
11 patterns of violations, and, with respect to a finan-
12 cial institution or nonfinancial trade or business, the
13 size, capitalization and market share of such institu-
14 tion or trade or business.”.

15 **SEC. 102. CRIMINAL PENALTIES.**

16 (a) IN GENERAL.—Section 5322 of title 31, United
17 States Code, is amended—

18 (1) by redesignating subsections (c) and (d) as
19 subsections (d) and (e), respectively;

20 (2) by inserting after subsection (b) the fol-
21 lowing:

22 “(c) FACILITATING EVASION.—In the case of a per-
23 son described under subsection (a) or (b) who additionally
24 takes steps to facilitate evasion of a program or controls
25 under a regulation prescribed or order issued under this

1 subchapter (except section 5315 or 5324 of this title or
2 a regulation prescribed under section 5315 or 5324), sec-
3 tion 21 of the Federal Deposit Insurance Act, or section
4 123 of Public Law 91–508, the maximum prison terms
5 under such subsections shall be treated as 20 years.”; and

6 (3) by adding at the end the following:

7 “(f) REPORT.—In any case in which the Department
8 of Justice settles a case with an individual or institution
9 for violations under the this subchapter in exchange for
10 a monetary penalty, the Department shall report to the
11 Congress on why it did or did not pursue prison sentences
12 in conjunction with the monetary penalty.”.

13 (b) GAO REVIEW OF BANK SECRECY ACT CRIMINAL
14 SENTENCES AND MANDATORY MINIMUM SENTENCING.—

15 (1) STUDY.—The Comptroller General of the
16 United States shall carry out a study of the manda-
17 tory minimum sentencing laws and guidelines for
18 narcotics-related offenses and the prosecutorial dis-
19 cretion provided to the Department of Justice in de-
20 termining criminal penalties for persons found guilty
21 of violating Federal anti-money laundering laws. In
22 carrying out such study, the Comptroller General
23 shall compare and contrast the severity of the two
24 sets of felonies.

1 (2) REPORT.—Not later than the end of the 6-
2 month period following the date of the enactment of
3 this Act, the Comptroller General shall issue a re-
4 port to the Congress containing all findings and de-
5 terminations made in carrying out the study re-
6 quired by subsection (a), including any disparities
7 identified in the appropriateness of the differing sen-
8 tencing procedures and recommendations for estab-
9 lishing a more balanced sentencing system for Fed-
10 eral felonious acts.

11 **SEC. 103. STRENGTHENING CIVIL INJUNCTIVE AUTHORITY.**

12 Section 5320 of title 31, United States Code, is
13 amended—

14 (1) by striking “When the Secretary” and in-
15 serting the following:

16 “(a) IN GENERAL.—When the Secretary”; and

17 (2) by inserting after “will violate” the fol-
18 lowing: “or has caused, is causing, or will cause a
19 violation of”; and

20 (3) by inserting at the end the following:

21 “(b) PROHIBITION ON CERTAIN INDIVIDUALS.—In
22 any proceeding under subsection (a), the court may pro-
23 hibit, conditionally or unconditionally, and permanently or
24 for such period of time as it shall determine, any indi-
25 vidual who violated this subchapter, or a regulation pre-

1 scribed or order issued under this subchapter, from acting
2 as an officer or director of a financial institution if the
3 person’s conduct demonstrates unfitness to serve as an of-
4 ficer or director of a financial institution.”.

5 **SEC. 104. CLARIFICATION OF REMOVAL AND PROHIBITION**
6 **AUTHORITY UNDER THE FDIA.**

7 Section 8(e)(2)(A) of the Federal Deposit Insurance
8 Act (12 U.S.C. 1818(e)(2)(A)) is amended—

9 (1) in clause (i), by striking “was not inad-
10 vertent or unintentional” and inserting “involved a
11 reckless disregard for the law or any applicable regu-
12 lations or prior order of the appropriate Federal
13 banking agency”; and

14 (2) in clause (ii), by striking “has knowledge”
15 and inserting “knew, or should have known,”.

16 **SEC. 105. INDEPENDENT LITIGATION AUTHORITY FOR**
17 **FINCEN.**

18 Section 310 of title 31, United States Code, is
19 amended—

20 (1) by redesignating subsection (d) as sub-
21 section (e); and

22 (2) by inserting after subsection (c) the fol-
23 lowing:

24 “(d) INDEPENDENT LITIGATION AUTHORITY.—
25 FinCEN may act in its own name and through its own

1 attorneys in enforcing any provision of subchapter II of
2 chapter 53, section 21 of the Federal Deposit Insurance
3 Act, section 123 of Public Law 91–508, any rules there-
4 under, or any other law or regulation, or in any action,
5 suit, or proceeding relating to such laws or regulations to
6 which the Financial Crimes Enforcement Network is a
7 party.”.

8 **SEC. 106. TREATMENT OF EXECUTIVE COMPENSATION AND**
9 **PERSONAL LIABILITY.**

10 (a) CERTAIN EXECUTIVE COMPENSATION INCEN-
11 TIVES BARRED.—The appropriate Federal banking agen-
12 cies, the Securities and Exchange Commission, the Com-
13 modities Futures Trading Commission, and the Financial
14 Crimes Enforcement Network shall issue regulations pro-
15 hibiting financial institutions that are subject to an anti-
16 money laundering program requirement under chapter X
17 of title 31, Code of Federal Regulations, from providing
18 executive compensation based on any criteria that could
19 undermine compliance by individuals with the require-
20 ments of subchapter II of chapter 53 of title 31, United
21 States Code, section 21 of the Federal Deposit Insurance
22 Act (12 U.S.C. 1829b), or section 123 of Public Law 91–
23 508.

24 (b) NO AVOIDANCE OF PERSONAL LIABILITY.—

1 (1) IN GENERAL.—An officer, director, em-
2 ployee, or other institution-affiliated party of a fi-
3 nancial institution that is subject to an anti-money
4 laundering program requirement under chapter X of
5 title 31, Code of Federal Regulations, who is re-
6 quired by a Federal bank secrecy law that provides
7 for personal liability, or any rule or order promul-
8 gated by an appropriate Federal banking agency, the
9 Securities and Exchange Commission, the Com-
10 modity Futures Trading Commission, or the Finan-
11 cial Crimes Enforcement Network thereunder, to
12 repay previously earned executive compensation or
13 pay a civil money penalty—

14 (A) shall be personally liable for the
15 amounts so owed; and

16 (B) may not, directly or indirectly, insure
17 or hedge against, or otherwise transfer the risks
18 associated with, personal liability for the
19 amounts so owed.

20 (2) RULE OF CONSTRUCTION.—Paragraph (1)
21 shall not preclude a person from being provided
22 funds necessary to defend against an action to re-
23 cover previously earned executive compensation or a
24 civil money penalty described under paragraph (1)—

1 (A) from the relevant financial institution
2 subject to an anti-money laundering program
3 under chapter X of title 31, Code of Federal
4 Regulations;

5 (B) under an insurance policy; or

6 (C) pursuant to court order.

7 (c) DEFINITIONS.—For purposes of this section:

8 (1) APPROPRIATE FEDERAL BANKING AGEN-
9 CY.—The term “appropriate Federal banking agen-
10 cy” has the meaning given such term under section
11 3 of the Federal Deposit Insurance Act (12 U.S.C.
12 1813).

13 (2) EXECUTIVE COMPENSATION.—The term
14 “executive compensation” means anything of value,
15 regardless of the form in which provided, that is
16 given by any institution subject to subsection (a) or
17 its parent company to an officer, director, employee,
18 or other institution-affiliated party in return for that
19 individual’s service to such entity.

20 (3) FEDERAL BANK SECRECY LAW.—The term
21 “Federal bank secrecy law” means—

22 (A) the reporting requirements set forth in
23 section 21 of the Federal Deposit Insurance Act
24 (12 U.S.C. 1829b);

1 (B) section 123 of Public Law 91–508;
2 and

3 (C) subchapter II of chapter 53 of title 31,
4 United States Code.

5 (4) INSTITUTION-AFFILIATED PARTY.—The
6 term “institution-affiliated party”—

7 (A) has the meaning given such term
8 under subsection (u) of section 3 of the Federal
9 Deposit Insurance Act (12 U.S.C. 1813); and

10 (B) shall apply with respect to an institu-
11 tion subject to subsection (a) and its parent
12 company to the same extent as such subsection
13 applies to an insured depository institution.

14 **SEC. 107. CORPORATE GOVERNANCE AND THE LEGAL RE-**
15 **SPONSIBILITIES.**

16 (a) IN GENERAL.—Chapter 53 of title 31, United
17 States Code, is amended—

18 (1) by inserting after section 5322, the fol-
19 lowing:

20 **“§ 5322A. Corporate governance and the legal respon-**
21 **sibility of officers and employees**

22 “(a) ENSURING COMPLIANCE.—The Secretary of the
23 Treasury, in consultation with the appropriate Federal
24 banking agencies, the Securities and Exchange Commis-
25 sion, and the Commodities Futures Trading Commission,

1 shall issue regulations requiring each financial institution
2 that is subject to an anti-money laundering program re-
3 quirement under chapter X of title 31, Code of Federal
4 Regulations, to ensure compliance with the anti-money
5 laundering program requirements described under section
6 5318(h) by establishing written policies, procedures, and
7 risk management standards for ensuring compliance with
8 the requirements of this subtitle that—

9 “(1) require the head of compliance for each
10 business line of such institution to make regular re-
11 ports directly to the board of directors and the chief
12 executive officer of such institution on the business
13 line’s compliance activities;

14 “(2) require the board to certify each report re-
15 ceived pursuant to paragraph (1);

16 “(3) ensure adequate staffing and funding for
17 entities within the institution responsible for compli-
18 ance with the requirements of this subtitle; and

19 “(4) periodically test the effectiveness of the in-
20 stitution’s programs for compliance with the require-
21 ments of this subtitle.

22 “(b) LEGAL RESPONSIBILITY OF CERTAIN OFFICERS
23 AND EMPLOYEES.—With respect to any violation of this
24 subtitle by a each financial institution that is subject to
25 an anti-money laundering program requirement under

1 chapter X of title 31, Code of Federal Regulations, any
2 officer or other employee who was in a position that would
3 have enabled such officer or employee to materially affect
4 compliance with the requirements of this subtitle shall also
5 be in violation of this subtitle, if such officer or other em-
6 ployee knew, or should have known, that such violation
7 was being committed and did not take meaningful steps
8 to stop such violation.

9 “(c) CLAWBACK EMPLOYMENT PROVISION.—Each fi-
10 nancial institution that is subject to an anti-money laun-
11 dering program requirement under chapter X of title 31,
12 Code of Federal Regulations, shall, in each employment
13 agreement entered into by such institution, include a pro-
14 vision that gives the institution the right to require the
15 repayment of any bonus or other compensation paid to the
16 employee in any case where such employee was violating
17 a provision of this subchapter and knew, or should have
18 known, of such violation.

19 “(d) DEFINITION.—For purposes of this section, the
20 term ‘appropriate Federal banking agency’ has the mean-
21 ing given such term under section 3 of the Federal Deposit
22 Insurance Act (12 U.S.C.1813).”; and

23 (2) in the table of contents for such chapter, by
24 inserting after the item relating to section 5322 the
25 following new item:

“5322A. Corporate governance and the legal responsibility of officers and employees”.

1 (b) **EFFECTIVE DATE.**—The amendments made by
 2 subsection (a) shall apply to a financial institution (as
 3 such term is defined under section 5312 of title 31, United
 4 States Code) after the end of the 6-month period begin-
 5 ning on the date of the enactment of this Act.

6 **TITLE II—STRENGTHENING OF**
 7 **REGULATORY OVERSIGHT**
 8 **AND ACCOUNTABILITY**

9 **SEC. 201. REPORTING AND OVERSIGHT OF BANK SECRECY**
 10 **ACT-RELATED ENFORCEMENT ACTIONS.**

11 (a) **IN GENERAL.**—Chapter 53 of title 31, United
 12 States Code, is amended—

13 (1) by inserting after section 5326 the fol-
 14 lowing:

15 **“§ 5327. Oversight of examination and enforcement**
 16 **activities**

17 “(a) **REPORTING OF ENFORCEMENT ACTIVITIES TO**
 18 **FINCEN.**—Each appropriate Federal banking agency, the
 19 Securities and Exchange Commission, and the Commodity
 20 Futures Trading Commission shall report to FinCEN on
 21 each formal and informal enforcement or supervisory ac-
 22 tion, including each matter requiring attention, and each
 23 matter requiring immediate attention, related to a viola-
 24 tion of this subchapter or anti-money laundering defi-

1 ciency, taken by such agency to enforce the requirements
2 of this subchapter, including, for each such action—

3 “(1) the type of violation or deficiency with re-
4 spect to which the enforcement or supervisory action
5 was taken; and

6 “(2) the specific type of formal or informal en-
7 forcement or supervisory action taken.

8 “(b) REVIEW OF REPORTS BY FINCEN.—

9 “(1) IN GENERAL.—FinCEN shall review all re-
10 ports submitted by agencies under subsection (a) to
11 identify systemic or repeated instances of non-com-
12 pliance and, if FinCEN determines that an agency
13 has failed to adequately or appropriately carry out
14 the agency’s enforcement responsibilities with re-
15 spect to the requirements of this subchapter,
16 FinCEN shall issue a report to such agency con-
17 taining an explanation of FinCEN’s determination.

18 “(2) REPORT TO THE CONGRESS.—FinCEN
19 shall issue an annual report to the Congress con-
20 taining—

21 “(A) a summary of all formal and informal
22 enforcement or supervisory actions for which
23 FinCEN received notification from the agencies
24 under subsection (a), but without any privileged
25 or confidential information contained in such

1 report, as identified by the agency submitting
2 the report; and

3 “(B) any recommendations made by
4 FinCEN to such agencies in response to a de-
5 termination by FinCEN that the agency failed
6 to adequately or appropriately carry out the
7 agency’s enforcement or supervisory responsi-
8 bility or failed to take adequate or appropriate
9 corrective action in response to any individual
10 violation or pattern of violations.

11 “(c) INSPECTOR GENERAL REVIEW OF PROCE-
12 DURES.—The Inspector General of each appropriate Fed-
13 eral banking agency shall—

14 “(1) carry out at least one review each year of
15 the agency’s examination and enforcement activities
16 with respect to ensuring compliance with the re-
17 quirements of this subchapter and ensuring ade-
18 quate resources are being devoted to such enforce-
19 ment; and

20 “(2) make such reviews available to the public,
21 including on the website of the Inspector General.

22 “(d) DEFINITIONS.—For purposes of this section:

23 “(1) FINCEN.—The term ‘FinCEN’ means the
24 Financial Crimes Enforcement Network.

1 “(2) OTHER TERMS.—The terms ‘appropriate
2 Federal banking agency’ and ‘insured depository in-
3 stitution’ have the meaning given those terms, re-
4 spectively, under section 3 of the Federal Deposit
5 Insurance Act (12 U.S.C.1813).”;

6 (2) in the table of contents for such chapter, by
7 inserting after the item relating to section 5326 the
8 following new item:

 “5327. Oversight of examination and enforcement activities.”.

9 (b) CONFIDENTIALITY OF INFORMATION SUBMITTED
10 TO FINCEN.—Section 310 of title 31, United States
11 Code, is amended—

12 (1) by redesignating subsection (d) as sub-
13 section (e); and

14 (2) by inserting after subsection (c) the fol-
15 lowing:

16 “(d) CONFIDENTIALITY OF INFORMATION SUB-
17 MITTED TO FINCEN.—The submission by any appro-
18 priate Federal banking agency (as such term is defined
19 under section 3 of the Federal Deposit Insurance Act) of
20 any information to FinCEN for any purpose in the course
21 of any supervisory or regulatory process of such agency
22 shall not be construed as waiving, destroying, or otherwise
23 affecting any privilege, including confidentiality of super-
24 visory information, that any agency or person may claim

1 with respect to such information under Federal or State
2 law.”.

3 **SEC. 202. CONSIDERATION OF BSA COMPLIANCE IN MAN-**
4 **AGEMENT RATINGS.**

5 (a) IN GENERAL.—To the extent there are ratings
6 of a depository institution’s management and internal con-
7 trols, the appropriate Federal banking agencies shall con-
8 sider the extent to which the institution complies with the
9 requirements of the Bank Secrecy Act.

10 (b) DEFINITIONS.—

11 (1) BANK SECRECY ACT.—The term “Bank Se-
12 crecy Act” has the meaning given the term “Federal
13 bank secrecy law” under section 106(c)(5).

14 (2) OTHER DEFINITIONS.—The terms “appro-
15 priate Federal banking agency” and “depository in-
16 stitution” have the meaning given those terms, re-
17 spectively, under section 3 of the Federal Deposit
18 Insurance Act (12 U.S.C. 1813).

19 **TITLE III—CLARIFICATION OF**
20 **SAFE HARBOR PROTECTIONS**

21 **SEC. 301. SAFE HARBOR PROTECTIONS.**

22 (a) DISCLOSURE TO GOVERNMENT AGENCIES.—Sec-
23 tion 5318(g)(3)(B) of title 31, United States Code, is
24 amended—

25 (1) in clause (i), by striking “or” at the end;

1 (2) in clause (ii), by striking the period and in-
2 serting “; or”; and

3 (3) by adding at the end the following:

4 “(iii) any duty or requirement of a fi-
5 nancial institution or any director, officer,
6 employee, or agent of such institution to
7 demonstrate that a disclosure described in
8 subparagraph (A) is made in good faith.”.

9 (b) DISCLOSURE TO FINANCIAL INSTITUTIONS.—
10 Section 314 of the USA PATRIOT Act (31 U.S.C. 5311
11 note) is amended—

12 (1) in subsection (b)—

13 (A) by striking “terrorist or money laun-
14 dering activities” and inserting “terrorist or
15 money laundering activities or a specified un-
16 lawful activity (as defined in section 1956(e)(7)
17 of title 18, United States Code)”; and

18 (B) by striking “terrorist acts or money
19 laundering activities” and inserting “such acts
20 or activities”; and

21 (2) in subsection (c), by striking “terrorist acts
22 or money laundering activities” and inserting “ter-
23 rorist or money laundering activities or a specified
24 unlawful activity (as defined in section 1956(e)(7) of
25 title 18, United States Code)”.

1 **TITLE IV—STRENGTHENING RE-**
2 **QUIREMENTS AND CLOSING**
3 **LOOPHOLES**

4 **SEC. 401. EXPANDING THE CRIMES THAT CAN BE A PREDI-**
5 **CATE OFFENSE TO MONEY LAUNDERING.**

6 Section 1956(c)(7) of title 18, United States Code,
7 is amended to read as follows:

8 “(7) the term ‘specified unlawful activity’
9 means any act or activity constituting an offense in
10 violation of the laws of the United States punishable
11 by imprisonment for a term exceeding 1 year;”.

12 **SEC. 402. CLOSING LOOPHOLES IN BANK SECRECY ACT RE-**
13 **PORTING.**

14 (a) REPORT TO CONGRESS ON THE STATUS OF THE
15 TEMPORARY EXEMPTIONS.—FinCEN shall issue a report
16 to Congress on the status of the temporary exemptions
17 under section 1010.205(b) of title 31, Code of Federal
18 Regulations, including any reviews, studies, or proposed
19 or notice of a rulemaking that FinCEN has undertaken
20 with regard to each financial institution that is exempted
21 from the requirement concerning the establishment of
22 anti-money laundering programs. The report shall also in-
23 clude a justification for the exemption of each category
24 of financial institution exempted under the regulation.

1 (b) REPORTING BY CERTAIN TRANSPORTERS.—Not
2 later than the end of the 270-day period beginning on the
3 date of the enactment of this Act, the Secretary of the
4 Treasury shall issue final regulations to establish the man-
5 ner in which operators of armored cars and other commer-
6 cial monetary instrument transport enterprises are to
7 comply with the reporting requirements under section
8 5316 of title 31, United States Code.

9 **SEC. 403. DEFINITION OF AN INSTITUTION-AFFILIATED**
10 **PARTY.**

11 (a) DEFINITION.—Section 3 of the Federal Deposit
12 Insurance Act (12 U.S.C. 1813(u)) is amended—

13 (1) in subsection (u)(4), by striking “know-
14 ingly” and all that follows through the end of the
15 paragraph and inserting “participates in the conduct
16 of, the affairs of, or conducts the business of an in-
17 sured depository institution.”; and

18 (2) by adding at the end the following:

19 “(aa) UNSAFE OR UNSOUND PRACTICE.—The term
20 ‘unsafe or unsound practice’ means, any action, or lack
21 of action, which is contrary to generally accepted stand-
22 ards of prudent operation, the possible consequences of
23 which, if continued, would be abnormal risk or loss or
24 damage to an institution, its shareholders, or the Deposit
25 Insurance Fund.”.

1 (b) RULE OF CONSTRUCTION RELATED TO INDE-
 2 PENDENT CONTRACTORS.—Section 8 of the Federal De-
 3 posit Insurance Act (12 U.S.C. 1818) is amended by add-
 4 ing at the end the following:

5 “(x) RULE OF CONSTRUCTION RELATED TO INDE-
 6 PENDENT CONTRACTORS.—For purposes of this Act, an
 7 independent contractor participates in the conduct of the
 8 affairs of, or conducts the business of, an insured deposi-
 9 tory institution by performing services for the institu-
 10 tion.”.

11 **TITLE V—WHISTLEBLOWER**
 12 **PROTECTIONS**

13 **SEC. 501. MODERNIZATION AND UPGRADING WHISTLE-**
 14 **BLOWER PROTECTIONS.**

15 (a) IN GENERAL.—Section 5328 of title 31, United
 16 States Code, is amended—

17 (1) by striking subsections (a) and (b) and in-
 18 serting the following:

19 “(a) PROHIBITION AGAINST DISCRIMINATION.—No
 20 financial institution or nonfinancial trade or business may
 21 discharge or otherwise discriminate against any applicant
 22 for employment, employee, or former employee with re-
 23 spect to compensation, terms, conditions, or privileges of
 24 employment because the applicant, employee, or former

1 employee (or any person acting pursuant to the request
2 of the employee)—

3 “(1) provided, was about to provide, assisted in
4 providing, or was perceived as providing information
5 to the Secretary of the Treasury, the Attorney Gen-
6 eral, any Federal supervisory agency, or the Con-
7 gress regarding a possible violation of any provision
8 of this subchapter or section 1956, 1957, or 1960 of
9 title 18, or any regulation under any such provision,
10 by the financial institution or nonfinancial trade or
11 business or any director, officer, or employee of the
12 financial institution or nonfinancial trade or busi-
13 ness; or

14 “(2) objected to, or refused to participate in,
15 any activity, policy, practice, or assigned task that
16 the applicant, employee, former employee (or other
17 such person) reasonably believed to be in violation of
18 any provision of this subchapter or any other Act
19 enforced by the Secretary of the Treasury, the At-
20 torney General, a Federal supervisory agency, or any
21 order, rule, regulation, standard, or ban under this
22 subchapter of any of such Acts.

23 “(b) ENFORCEMENT.—Within the 2-year period be-
24 ginning on the date an applicant, employee, or former em-
25 ployee who believes that such applicant, employee, or

1 former employee has been discharged or discriminated
2 against in violation of subsection (a), such applicant, em-
3 ployee, or former employee may—

4 “(1) file a civil action in the appropriate United
5 States district court, in accordance with the burdens
6 of proof and remedies set forth in section 1057 of
7 the Consumer Financial Protection Act of 2010 (12
8 U.S.C. 5567); or

9 “(2) file a complaint with the Secretary of
10 Labor with regards to a violation of subsection (a)
11 to seek relief in accordance with the procedures, bur-
12 dens of proof, and remedies set forth in section 1057
13 of the Consumer Financial Protection Act of 2010
14 (12 U.S.C. 5567) for a violation of subsection (a) of
15 such section, except that for purposes of such a com-
16 plaint, the time period specified under subsection
17 (c)(1)(A) of such section shall be deemed to be a 2-
18 year period.”;

19 (2) in subsection (c), by inserting after “district
20 court” the following: “or the Secretary, as applica-
21 ble,”; and

22 (3) by amending subsection (e) to read as fol-
23 lows:

24 “(e) EDUCATION.—The Secretary of the Treasury
25 shall issue regulations requiring each financial institution

1 and nonfinancial trade or business to provide education
2 and training to its employees on the rights and remedies
3 provided under this section, including through individual
4 notice to its employees, posting information on its website
5 home page, and providing mandatory training for its em-
6 ployees. Such education and training may be incorporated
7 into existing education or training on the requirements of
8 this subtitle provided by such institution or trade or busi-
9 ness.

10 “(f) INDEPENDENT LINES OF COMMUNICATION.—

11 The Secretary of the Treasury shall issue regulations re-
12 quiring each financial institution and nonfinancial trade
13 or business—

14 “(1) to have a procedure in place for an em-
15 ployee or former employee to report directly to the
16 chief executive officer, a representative appointed by
17 and reporting directly to the chief executive officer
18 who is specifically designated to receive such a re-
19 port, or through a hotline consistent with profes-
20 sional best practices to the audit committee of the
21 board of directors, if such employee or former em-
22 ployee believes that violations of this subchapter
23 have occurred or are occurring at such institution,
24 trade, or business; and

1 “(2) to not discriminate against an employee or
2 former employee for such reports.”.

3 (b) REWARDS.—Section 5323(d) of title 31, United
4 States Code, is amended to read as follows:

5 “(d) SOURCE OF REWARDS.—For the purposes of
6 paying an award under this section, there are authorized
7 to be appropriated such sums as may be necessary, and
8 the Secretary may also use funds from the Department
9 of the Treasury Forfeiture Fund and the Department of
10 Justice Assets Forfeiture Fund.”.

11 (c) WHISTLEBLOWER INCENTIVES.—

12 Chapter 53 of title 31, United States Code, is
13 amended—

14 (1) by inserting after section 5323 the fol-
15 lowing:

16 **“§ 5323A. Whistleblower incentives**

17 “(a) DEFINITIONS.—For purposes of this section:

18 “(1) BANK SECRECY ACT.—The term ‘Bank Se-
19 crecy Act’ means this subchapter, section 21 of the
20 Federal Deposit Insurance Act (12 U.S.C. 1829b),
21 and section 123 of Public Law 91–508.

22 “(2) COVERED JUDICIAL OR ADMINISTRATIVE
23 ACTION.—The term ‘covered judicial or administra-
24 tive action’ means any judicial or administrative ac-
25 tion brought by FinCEN under the Bank Secrecy

1 Act that results in monetary sanctions exceeding
2 \$1,000,000.

3 “(3) FINCEN.—The term ‘FinCEN’ means the
4 Financial Crimes Enforcement Network.

5 “(4) MONETARY SANCTIONS.—The term ‘mone-
6 tary sanctions’, when used with respect to any judi-
7 cial or administrative action, means—

8 “(A) any monies, including penalties,
9 disgorgement, and interest, ordered to be paid;
10 and

11 “(B) any monies deposited into a
12 disgorgement fund as a result of such action or
13 any settlement of such action.

14 “(5) ORIGINAL INFORMATION.—The term
15 ‘original information’ means information that—

16 “(A) is derived from the independent
17 knowledge or analysis of a whistleblower;

18 “(B) is not known to FinCEN from any
19 other source, unless the whistleblower is the
20 original source of the information; and

21 “(C) is not exclusively derived from an al-
22 legation made in a judicial or administrative
23 hearing, in a governmental report, hearing,
24 audit, or investigation, or from the news media,

1 unless the whistleblower is a source of the infor-
2 mation.

3 “(6) RELATED ACTION.—The term ‘related ac-
4 tion’, when used with respect to any judicial or ad-
5 ministrative action brought by FinCEN, means any
6 judicial or administrative action that is based upon
7 original information provided by a whistleblower that
8 led to the successful enforcement of the action.

9 “(7) WHISTLEBLOWER.—The term ‘whistle-
10 blower’ means any individual who provides, or 2 or
11 more individuals acting jointly who provide, informa-
12 tion relating to a violation of laws enforced by
13 FinCEN, in a manner established, by rule or regula-
14 tion, by FinCEN.

15 “(b) AWARDS.—

16 “(1) IN GENERAL.—In any covered judicial or
17 administrative action, or related action, FinCEN,
18 under regulations it prescribes and subject to sub-
19 section (c), shall pay an award or awards to 1 or
20 more whistleblowers who voluntarily provided origi-
21 nal information to FinCEN that led to the success-
22 ful enforcement of the covered judicial or adminis-
23 trative action, or related action, in an aggregate
24 amount equal to—

1 “(A) not less than 10 percent, in total, of
2 what has been collected of the monetary sanc-
3 tions imposed in the action or related actions;
4 and

5 “(B) not more than 30 percent, in total, of
6 what has been collected of the monetary sanc-
7 tions imposed in the action or related actions.

8 “(2) SOURCE OF AWARDS.—For the purposes of
9 paying any award under paragraph (1) there are au-
10 thorized to be appropriated such sums as may be
11 necessary, and the Secretary may also use funds
12 from the Department of the Treasury Forfeiture
13 Fund and the Department of Justice Assets For-
14 feiture Fund.

15 “(c) DETERMINATION OF AMOUNT OF AWARD; DE-
16 TERMINATION OF AWARD.—

17 “(1) DETERMINATION OF AMOUNT OF
18 AWARD.—

19 “(A) DISCRETION.—The determination of
20 the amount of an award made under subsection
21 (b) shall be in the discretion of FinCEN.

22 “(B) CRITERIA.—In responding to a dis-
23 closure and determining the amount of an
24 award made, FinCEN shall meet with the whis-

1 whistleblower to discuss evidence disclosed and
2 rebuttals to the disclosure, and—

3 “(i) shall take into consideration—

4 “(I) the significance of the infor-
5 mation provided by the whistleblower
6 to the success of the covered judicial
7 or administrative action;

8 “(II) the degree of assistance
9 provided by the whistleblower and any
10 legal representative of the whistle-
11 blower in a covered judicial or admin-
12 istrative action;

13 “(III) the mission of FinCEN in
14 detering violations of the law by
15 making awards to whistleblowers who
16 provide information that lead to the
17 successful enforcement of such laws;
18 and

19 “(IV) such additional relevant
20 factors as FinCEN may establish by
21 rule or regulation; and

22 “(ii) shall not take into consideration
23 the balance of any fund described under
24 section 5323(d).

1 “(2) DENIAL OF AWARD.—No award under
2 subsection (b) shall be made—

3 “(A) to any whistleblower who is, or was at
4 the time the whistleblower acquired the original
5 information submitted to FinCEN, a member,
6 officer, or employee of—

7 “(i) an appropriate regulatory agency;

8 “(ii) the Department of Justice;

9 “(iii) a self-regulatory organization; or

10 “(iv) a law enforcement organization;

11 “(B) to any whistleblower who is convicted
12 of a criminal violation related to the judicial or
13 administrative action for which the whistle-
14 blower otherwise could receive an award under
15 this section;

16 “(C) to any whistleblower who gains the
17 information through the performance of an
18 audit of financial statements required under the
19 Bank Secrecy Act and for whom such submis-
20 sion would be contrary to its requirements; or

21 “(D) to any whistleblower who fails to sub-
22 mit information to FinCEN in such form as
23 FinCEN may, by rule, require.

24 “(3) STATEMENT OF REASONS.—For any deci-
25 sion granting or denying an award, FinCEN shall

1 provide to the whistleblower a statement of reasons
2 that includes findings of fact and conclusions of law
3 for all material issues

4 “(d) REPRESENTATION.—

5 “(1) PERMITTED REPRESENTATION.—Any
6 whistleblower who makes a claim for an award under
7 subsection (b) may be represented by counsel.

8 “(2) REQUIRED REPRESENTATION.—

9 “(A) IN GENERAL.—Any whistleblower
10 who anonymously makes a claim for an award
11 under subsection (b) shall be represented by
12 counsel if the whistleblower anonymously sub-
13 mits the information upon which the claim is
14 based.

15 “(B) DISCLOSURE OF IDENTITY.—Prior to
16 the payment of an award, a whistleblower shall
17 disclose their identity and provide such other
18 information as FinCEN may require, directly or
19 through counsel for the whistleblower.

20 “(e) APPEALS.—Any determination made under this
21 section, including whether, to whom, or in what amount
22 to make awards, shall be in the discretion of FinCEN.
23 Any such determination, except the determination of the
24 amount of an award if the award was made in accordance
25 with subsection (b), may be appealed to the appropriate

1 court of appeals of the United States not more than 30
2 days after the determination is issued by FinCEN. The
3 court shall review the determination made by FinCEN in
4 accordance with section 706 of title 5.”; and

5 (2) in the table of contents for such chapter, by
6 inserting after the item relating to section 5323 the
7 following new item:

“5323A. Whistleblower incentives”.

8 **TITLE VI—SENSE OF THE CON-**
9 **GRESS REGARDING CRIMINAL**
10 **PENALTIES**

11 **SEC. 601. SENSE OF THE CONGRESS.**

12 It is the sense of Congress that the Department of
13 Justice should vigorously pursue criminal penalties to the
14 maximum extent of the law, including prison sentences,
15 for individuals who willfully violate Bank Secrecy Act anti-
16 money laundering laws, thereby exposing the U.S. finan-
17 cial system to a wide array of money laundering, drug
18 trafficking and terrorism financing risks.

19 **TITLE VII—STRENGTHENING**
20 **GLOBAL COMMITMENTS**

21 **SEC. 701. INTERNATIONAL COORDINATION.**

22 The Secretary of the Treasury shall work with the
23 Secretary’s foreign counterparts, including through the
24 Financial Action Task Force, the International Monetary
25 Fund, the World Bank, and the United Nations, to pro-

1 mote stronger anti-money laundering frameworks and en-
2 forcement of anti-money laundering laws.

3 **SEC. 702. SENSE OF CONGRESS REGARDING LIST OF COUN-**
4 **TRIES AT HIGH RISK FOR MONEY LAUN-**
5 **DERING.**

6 It is the sense of Congress that when Treasury identi-
7 fies countries or jurisdictions as a primary money laun-
8 dering concern under section 311 of the USA Patriot Act,
9 it should consider—

10 (1) countries and jurisdictions identified by the
11 Department of State in its annual International
12 Narcotics Control Strategy Report as Jurisdictions
13 of Primary Concern or jurisdiction's subject to
14 heightened scrutiny;

15 (2) whether the Financial Action Task Force
16 has identified a country or jurisdiction as having
17 anti-money laundering or counter-terrorism financ-
18 ing deficiencies and to which countermeasures apply;
19 and

20 (3) countries and jurisdictions that have not
21 made sufficient progress in addressing the defi-
22 ciencies identified by the Financial Action Task
23 Force or have not committed to an action plan de-

- 1 developed with the Financial Action Task Force to ad-
- 2 dress the deficiencies.

