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2d Session

HOUSE OF REPRESENTATIVES

REPT. 118–783
Part 1

STOP FENTANYL MONEY LAUNDERING ACT OF 2023

NOVEMBER 29, 2024.—Ordered to be printed

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

REPORT

[To accompany H.R. 3244]

The Committee on Financial Services, to whom was referred the bill (H.R. 3244) to provide authority to the Secretary of the Treasury to take special measures against certain entities outside of the United States of primary money laundering concern in connection with illicit fentanyl and narcotics financing, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

CONTENTS

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Stop Fentanyl Money Laundering Act of 2023".

59–006

SEC. 2. DETERMINATION WITH RESPECT TO PRIMARY MONEY LAUNDERING CONCERN OF ILLICIT FENTANYL AND NARCOTICS FINANCING.

(a) IN GENERAL.—If the Secretary of the Treasury determines that one or more financial institutions operating outside of the United States, or one or more classes of transactions within, or involving, a jurisdiction outside of the United States, or one or more types of accounts within, or involving, a jurisdiction outside of the United States is of primary money laundering concern in connection with illicit fentanyl and narcotics financing, the Secretary of the Treasury may, by order, regulation, or otherwise as permitted by law, require domestic financial institutions and domestic financial agencies to take one or more of the special measures described in section 5318A(b) of title 31, United States Code.

(b) CLASSIFIED INFORMATION.—In any judicial review of a finding of the existence of a primary money laundering concern, or of the requirement for 1 or more special measures with respect to a primary money laundering concern made under this section, if the designation or imposition, or both, were based on classified information (as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App.)), such information may be submitted by the Secretary of the Treasury to the reviewing court ex parte and in camera. This subsection does not confer or imply any right to judicial review of any finding made or any requirement imposed under this section.

(c) AVAILABILITY OF INFORMATION.—The exemptions from, and prohibitions on, search and disclosure referred to in section 9714(c) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 31 U.S.C. 5318A note) shall apply to any report or record of report filed pursuant to a requirement imposed under subsection (a). For purposes of section 552 of title 5, United States Code, this section shall be considered a statute described in subsection (b)(3)(B) of that section.

(d) PENALTIES.—The penalties referred to in section 9714(d) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 31 U.S.C. 5318A note) shall apply to violations of any order, regulation, special measure, or other requirement imposed under subsection (a), in the same manner and to the same extent as described in such section 9714(d).

(e) INJUNCTIONS.—The Secretary of the Treasury may bring a civil action to enjoin a violation of any order, regulation, special measure, or other requirement imposed under subsection (a) in the same manner and to the same extent as described in section 9714(e) of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 31 U.S.C. 5318A note).

(f) DEFINITIONS.—In this section, the terms “domestic financial agency”, “domestic financial institution”, “financial agency”, and “financial institution” have the meanings given those terms as used in section 9714 of the National Defense Authorization Act for Fiscal Year 2021 (Public Law 116–283; 31 U.S.C. 5318A note).

SEC. 3. TRADE-BASED MONEY LAUNDERING ADVISORY.

Not later than one year following the date of the enactment of this Act, the Financial Crimes Enforcement Network shall update and issue a new advisory to financial institutions on identifying Chinese professional money laundering facilitating the trafficking of fentanyl and other synthetic opioids. Such advisory shall incorporate the following advisories:

(1) FIN–2014–A005, entitled “Update on U.S. Currency Restrictions in Mexico: Funnel Accounts and TBML”;

(2) FIN–2010–A001, entitled “Advisory to Financial Institutions on Filing Suspicious Activity Reports regarding Trade-Based Money Laundering”; and

(3) FIN–2019–A006, entitled “Advisory to Financial Institutions on Illicit Financial Schemes and Methods Related to the Trafficking of Fentanyl and Other Synthetic Opioids”.

SEC. 4. TREATMENT OF TRANSNATIONAL CRIMINAL ORGANIZATIONS IN SUSPICIOUS TRANSACTIONS.

(a) FILING INSTRUCTIONS.—Not later than 180 days after the date of the enactment of this Act, the Director of the Financial Crimes Enforcement Network shall issue guidance or instructions to United States financial institutions for filing reports on suspicious transactions required by section 5318(g) of title 31, United States Code, related to suspected narcotics trafficking by transnational criminal organizations.

(b) PRIORITIZATION OF REPORTS RELATING TO NARCOTICS TRAFFICKING OR TRANSNATIONAL CRIMINAL ORGANIZATIONS.—The Director shall prioritize research into reports described in subsection (a) that indicate a connection to trafficking of narcotics.

(c) BRIEFING TO CONGRESS.—Not later than one year after the date of enactment of this Act, the Director shall brief the Committees on Financial Services and Foreign Affairs of the House of Representatives and the Committees on Banking, Housing, and Urban Affairs and Foreign Relations of the Senate on the usefulness of the guidance or instructions issued under subsection (a).

PURPOSE AND SUMMARY

Introduced on May 11, 2023, by Representative Blaine Luetkemeyer, H.R. 3244, the *Stop Fentanyl Money Laundering Act of 2023*, authorizes the Department of the Treasury (Treasury) to utilize its existing special measure authorities to target and thwart money laundering activities that are used to facilitate fentanyl trafficking in foreign jurisdictions. It also provides law enforcement with streamlined and updated Suspicious Activity Reports (SARs) that will allow them to follow the money of narcotics trafficking. Additionally, the bill requires the Financial Crimes Enforcement Network (FinCEN) to provide critical information on the usefulness of the SAR updates.

BACKGROUND AND NEED FOR LEGISLATION

There is broad bipartisan agreement that the ongoing opioid epidemic is one of the most serious and consequential threats facing our nation and people, and that it is increasingly systemic. The current epidemic is pervasive throughout our society. The business of fentanyl, or of any drug, is not possible without financial support and accompanying illicit financial activities. While many of the techniques involved in traditional cartel money laundering have been prevalent for decades, fentanyl and its global supply chain have generated a number of novel techniques. For example, Chinese money laundering organizations facilitate the movement of cartel cash from America back to China. This is where the funds are used to procure and export precursor chemicals to Mexico, thus continuing an infinite loop cycle.

Special measures are used by Treasury to learn more about or disrupt a foreign money laundering threat to the U.S. financial system. Sanctions in contrast are designed to prohibit U.S. persons from engaging in transactions with individuals or entities engaged in sanctionable activity. Treasury's special measure authority, provided by Section 311 of the U.S. Patriot Act, can have serious impacts on international financial institutions that are found to be assisting money laundering. Special measures, once sufficient evidence of money laundering is found, are issued through regulation and are authorized for a period of 120 days.

Narcotics trafficking is a national money laundering priority, yet narcotics trafficking does not have a suspicious activity checkbox on the suspicious activity report (SAR) form. This results in inconsistent reporting by financial institutions, data capture shortfalls, cumbersome SAR queries, and government agencies relying on incomplete data when assessing narcotics traffickers' money laundering methodologies. Adding a narcotics trafficking checkbox on FinCEN's SARs will streamline law enforcement investigations in fentanyl trafficking and the money laundering that facilitates it.

RELATED HEARINGS

Pursuant to clause 3(c)(6) of rule XIII, the following hearing was used to develop H.R. 3244: The Subcommittee on National Security, Illicit Finance, and International Financial Institutions of the Committee on Financial Services held a hearing on March 23, 2023, titled “Follow the Money: The CCP’s Business Model Fueling the Fentanyl Crisis.”

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on July 26, 2023, and ordered H.R. 3244 to be reported favorably to the House as amended by a recorded vote of 49 ayes to 0 nays (Record vote no. FC–81), a quorum being present. Before the question was called to order the bill favorably reported, the Committee adopted an amendment in the nature of a substitute offered by Mr. Luetkemeyer by voice vote.

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 order to report legislation and amendments thereto. H.R. 3244 was ordered reported favorably to the House as amended by a recorded vote of 49 ayes to 0 nays (Record vote no. FC–81), a quorum being present.

Record vote no FC - 81

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr McHenry	X			Ms Waters	X		
Mr Hill	X			Mrs Velazquez			
Mr Lucas	X			Mr Sherman	X		
Mr Sessions	X			Mr Meeks			
Mr Posey	X			Mr Scott	X		
Mr Luetkemeyer	X			Mr Lynch	X		
Mr Huizenga	X			Mr Green	X		
Mrs Wagner	X			Mr Cleaver	X		
Mr Barr	X			Mr Himes	X		
Mr Williams (TX)	X			Mr Foster	X		
Mr Emmer	X			Mrs Beatty	X		
Mr Loudermilk	X			Mr Vargas	X		
Mr Mooney	X			Mr Gottheimer	X		
Mr Davidson	X			Mr Gonzalez	X		
Mr Rose	X			Mr Casten	X		
Mr Steil	X			Ms Pressley	X		
Mr Timmons	X			Mr Horsford	X		
Mr Norman	X			Ms Tlaib	X		
Mr Meuser	X			Mr Torres	X		
Mr Fitzgerald	X			Ms Garcia	X		
Mr Garbarino	X			Ms Williams (GA)	X		
Mrs Kim	X			Mr Nickel	X		
Mr Donalds	X			Ms Pettersen	X		
Mr Flood	X						
Mr Lawler	X						
Mr Nunn	X						
Ms De La Cruz	X						
Mrs Houchin	X						
Mr Ogles	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c) of rule XIII of the Rules of the House of Representatives, the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the goal of H.R. 3244 is to ensure that the Treasury Department utilizes its existing special measure authorities to target and thwart the money laundering facilitating Fentanyl trafficking in foreign jurisdictions. It will also provide law enforcement with streamlined and updated SARs to follow the money of narcotics trafficking and require FinCEN to provide critical information on the usefulness of the SAR updates.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

The Committee has requested but not received a cost estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(d)(1) of House rule XIII, the Committee will adopt as its own the cost estimate by the Director of the Congressional Budget Office once it has been prepared.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

The Committee has requested but not received an estimate from the Director of the Congressional Budget Office. However, pursuant to clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, once an estimate has been prepared by the Director of the Congressional Budget Office, as required by section 402 of the Congressional Budget Act of 1973, the Committee will adopt as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues.

FEDERAL MANDATES STATEMENT

The Committee has requested but not received from the Director of the Congressional Budget Office an estimate of the Federal mandates pursuant to section 423 of the Unfunded Mandates Reform Act. The Committee will adopt the estimate once it has been prepared by the Director.

ADVISORY COMMITTEE STATEMENT

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

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.

EARMARK IDENTIFICATION

Pursuant to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, including any program that was included in a report to Congress pursuant to section 21 of the Public Law 111–139 or the most recent Catalog of Federal Domestic Assistance.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This Act may be cited as the "Stop Fentanyl Money Laundering Act of 2023".

Section 2. Determination with respect to primary money laundering concern of illicit fentanyl and narcotics financing

Section 2 provides the Secretary of the Treasury the ability to utilize the existing special measure authorities on financial institutions in foreign jurisdictions if it is found that the financial institution is a primary money laundering concern.

Section 3. Trade based money laundering advisory

Section 3 directs FinCEN to update and issue a new advisory to financial institutions on identifying Chinese professional money laundering facilitating the trafficking of fentanyl and other synthetic opioids.

Section 4. Treatment of transnational criminal organizations in suspicious activity reports

Not later than 180 days after enactment, the Director of FinCEN shall issue guidance on an updated SAR form. The updated form shall incorporate a checkbox for suspected narcotics trafficking by transnational criminal organizations. Additionally, the Director shall brief Congress on the usefulness of the updated SAR within one year.