

[DISCUSSION DRAFT]

117TH CONGRESS
2^D SESSION

H. R. _____

To amend the Bank Secrecy Act to expand the scope and authorities of anti-money laundering safeguards under such Act, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

M. _____ introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Bank Secrecy Act to expand the scope and authorities of anti-money laundering safeguards under such Act, and for other purposes.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “_____ Act of
5 2022”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

1 (1) Kleptocrats and other corrupt actors across
2 the world are increasingly relying on non-bank pro-
3 fessional service providers, including non-bank pro-
4 fessional service providers operating in the United
5 States, to move, hide, and grow their ill-gotten
6 gains.

7 (2) In 2005, the Financial Action Task Force,
8 an intergovernmental body formed by the United
9 States and other major industrial nations, deter-
10 mined that designated non-financial businesses and
11 professions should be subject to the same anti-money
12 laundering and counter-terrorist financing rules and
13 regulations as financial institutions, including the re-
14 quirement to know your customer or client and to
15 perform due diligence, as well as to file suspicious
16 transaction reports, referred to as suspicious activity
17 reports or “SARs” in the United States.

18 (3) In October 2021, the “Pandora Papers”,
19 the largest exposé of global financial data in history,
20 revealed to a global audience how the United States
21 plays host to a highly specialized group of
22 “enablers” who help the world’s elite move, hide,
23 and grow their money.

24 (4) The Pandora Papers described how an ad-
25 viser to the former Prime Minister of Malaysia, Low

1 Taek Jho, reportedly used affiliates of a United
2 States law firm to assemble and consult a network
3 of companies, despite Low fitting the “textbook defi-
4 nition” of a high-risk client. Low went on to use his
5 companies to help steal \$4.5 billion from Malaysia’s
6 public investment fund in one of “the world’s big-
7 gest-ever financial frauds”, known as 1MDB.

8 (5) Russian oligarchs have used gatekeepers to
9 move their money into the United States. For exam-
10 ple, a gatekeeper formed a company in Delaware
11 that reportedly owns a \$15 million mansion in
12 Washington, D.C., that is linked to one of Vladimir
13 Putin’s closest allies. Also, reportedly connected to
14 the oligarch is a \$14 million townhouse in New York
15 City owned by a separate Delaware company.

16 (6) The Pandora Papers uncovered over 200
17 United States-based trusts across 15 States that
18 held assets of over \$1 billion, “including nearly 30
19 trusts that held assets linked to people or companies
20 accused of fraud, bribery, or human rights abuses”.
21 In particular, South Dakota, Nevada, Delaware,
22 Florida, Wyoming, and New Hampshire have
23 emerged as global hotspots for those seeking to hide
24 their assets and minimize their tax burdens.

1 (7) In 2016, an investigator with the non-profit
2 organization Global Witness posed as an advisor to
3 a corrupt African official and set up meetings with
4 13 New York City law firms to discuss how to move
5 suspect funds into the United States. Lawyers from
6 all but one of the firms provided advice to the faux
7 advisor, including advice on how to utilize anony-
8 mous companies to obscure the true owner of the as-
9 sets. Other suggestions included naming the lawyer
10 as a trustee of an offshore trust in order to open a
11 bank account, and using the law firm's escrow ac-
12 count to receive payments.

13 (8) The autocratic Prime Minister of Iraqi
14 Kurdistan, reportedly known for torturing and kill-
15 ing journalists and critics, allegedly purchased a re-
16 tail store valued at over \$18 million in Miami, Flor-
17 ida, with the assistance of a Pennsylvania-based law
18 firm.

19 (9) Teodoro Obiang, the vice president of Equa-
20 torial Guinea and son of the country's authoritarian
21 president, embezzled millions of dollars from his
22 home country, which was then used to purchase lux-
23 ury assets in the United States. Obiang relied on the
24 assistance of two American lawyers to move millions
25 of dollars of suspect funds through U.S. banks. The

1 lawyers incorporated five shell companies in Cali-
2 fornia and opened bank accounts associated with the
3 companies for Obiang’s personal use. The suspect
4 funds were first wired to the lawyers’ attorney-client
5 and firm accounts, then transferred to the accounts
6 of the shell companies.

7 (10) An American consulting company report-
8 edly made millions of dollars working for companies
9 owned or partly owned by Isabel dos Santos, the eld-
10 est child of a former President of Angola. This in-
11 cluded working with Angola’s state oil company
12 when it was run by Isabel dos Santos and helping
13 to “run a failing jewelry business acquired with An-
14 golan money”. In 2021, a Dutch tribunal found that
15 Isabel dos Santos and her husband obtained a \$500
16 million stake in the oil company through “grand cor-
17 ruption”.

18 (11) In December 2021, the United States Gov-
19 ernment issued a first-ever “United States Strategy
20 on Countering Corruption”, that includes “Curbing
21 Illicit Finance” as a strategic pillar. An express line
22 of effort to advance this strategic pillar states that:
23 “Deficiencies in the U.S. regulatory framework
24 mean various professionals and service providers—
25 including lawyers, accountants, trust and company

1 service providers, incorporators, and others willing to
2 be hired as registered agents or who act as nominees
3 to open and move funds through bank accounts—are
4 not required to understand the nature or source of
5 income of their clients or prospective clients. . .While
6 U.S. law enforcement has increased its focus on
7 such facilitators, it is both difficult to prove ‘intent
8 and knowledge’ that a facilitator was dealing with il-
9 licit funds or bad actors, or that they should have
10 known the same. Cognizant of such constraints, the
11 Administration will consider additional authorities to
12 cover key gatekeepers, working with the Congress as
13 necessary to secure additional authorities”.

14 (12) This Act provides the authorities needed to
15 require that professional service providers who serve
16 as key gatekeepers to the U.S. financial system
17 adopt anti-money laundering procedures that can
18 help detect and prevent the laundering of corrupt
19 and other criminal funds into the United States. Ab-
20 sent such authorities, the United States Government
21 will be unable to adequately protect the U.S. finan-
22 cial system, identify funds and assets that are the
23 proceeds of corruption, or support foreign states in
24 their efforts to combat corruption and promote good
25 governance.

1 **SEC. 3. REQUIREMENTS FOR GATEKEEPERS.**

2 (a) IN GENERAL.—Section 5312(a)(2) of title 31,
3 United States Code, as amended by the William M. (Mac)
4 Thornberry National Defense Authorization Act for Fiscal
5 Year 2021, is amended—

6 (1) by redesignating subparagraphs (Z) and
7 (AA) as subparagraphs (AA) and (BB), respectively;
8 and

9 (2) by inserting after subparagraph (Y) the fol-
10 lowing:

11 “(Z) any person, excluding any govern-
12 mental entity, employee, or agent, who engages
13 in any activity which the Secretary determines,
14 by regulation pursuant to section 5337(a), to be
15 the provision, with or without compensation,
16 of—

17 “(i) corporate or other legal entity ar-
18 rangement, association, or formation serv-
19 ices;

20 “(ii) trust services; or

21 “(iii) third party payment services.”.

22 (b) REQUIREMENTS FOR GATEKEEPERS.—Sub-
23 chapter II of chapter 53 of subtitle IV of title 31, United
24 States Code, is amended by adding at the end the fol-
25 lowing:

1 **“§ 5337. Requirements for gatekeepers.**

2 “(a) IN GENERAL.—

3 “(1) IN GENERAL.—The Secretary shall, not
4 later than 1 year after the date of the enactment
5 this section, issue a rule to determine what persons
6 fall within the class of persons described in section
7 5312(a)(2)(Z).

8 “(2) SENSE OF THE CONGRESS.—It is the sense
9 of the Congress that when issuing a rule to deter-
10 mine what persons fall within the class of persons
11 described in section 5312(a)(2)(Z), the Secretary
12 shall design such rule—

13 “(A) to minimizes burden of such rule and
14 maximizes the intended outcome of such rule;
15 and

16 “(B) avoid applying additional require-
17 ments for persons that may fall within the class
18 of persons described in section 5312(a)(2)(Z)
19 but whom are already, as determined by the
20 Secretary, appropriately regulated.

21 “(3) IDENTIFICATION OF PERSONS.—When de-
22 termining what persons fall within the class of per-
23 sons described in section 5312(a)(2)(Z) the Sec-
24 retary of the Treasury shall include—

25 “(A) any person involved in—

1 “(i) the formation or registration of a
2 corporation, limited liability company,
3 trust, foundation, limited liability partner-
4 ship, partnership, or other similar entity,
5 association, or arrangement;

6 “(ii) the acquisition or disposition of a
7 corporation, limited liability company,
8 trust, foundation, limited liability partner-
9 ship, partnership, or other similar entity,
10 association, or arrangement;

11 “(iii) the managing, advising, or con-
12 sulting with respect to of money or other
13 assets;

14 “(iv) the processing of payments;

15 “(v) the provision of cash vault serv-
16 ices;

17 “(vi) the wiring of money;

18 “(vii) the exchange of foreign cur-
19 rency, digital currency, or digital assets; or

20 “(viii) the sourcing, pooling, organiza-
21 tion, or management of capital in associa-
22 tion with the formation, operation, or man-
23 agement of, or investment in, a corpora-
24 tion, limited liability company, trust, foun-
25 dation, limited liability partnership, part-

1 nership, or other similar entity, associa-
2 tion, or arrangement;

3 “(B) any person who, in connection with
4 filing any return, directly or indirectly, on be-
5 half of a foreign individual, trust or fiduciary
6 with respect to direct or indirect, United States
7 investment, transaction, trade or business, or
8 similar activities—

9 “(i) obtains or uses a preparer tax
10 identification number; or

11 “(ii) would be required to use or ob-
12 tain a preparer tax identification number,
13 if such person were compensated for serv-
14 ices rendered;

15 “(C) any person acting as a trustee; and

16 “(D) any person, wherever organized or
17 doing business, that is—

18 “(i) owned or controlled by a person
19 described in subparagraphs (A), (B), or
20 (C);

21 “(ii) acts as an agent of a person de-
22 scribed in subparagraphs (A), (B), or (C);

23 or

1 “(iii) is an instrumentality of a person
2 described in subparagraphs (A), (B), or
3 (C).

4 “(b) REQUIREMENTS.—The Secretary may require
5 persons described in section 5312(a)(2)(Z) to do one or
6 more of the following—

7 “(1) identify and verify account holders and
8 functional equivalents as described in section
9 5318(l), including by establishing and maintaining
10 written procedures that are reasonably designed to
11 enable the person to identify and verify beneficial
12 owners (as such term is defined in section 5336(a))
13 of clients, as described in section 5336;

14 “(2) maintain appropriate procedures, including
15 the collection and reporting of such information as
16 the Secretary may prescribe by regulation, to ensure
17 compliance with this subchapter and regulations pre-
18 scribed thereunder or to guard against corruption,
19 money laundering, the financing of terrorism, or
20 other forms of illicit finance;

21 “(3) establish anti-money laundering programs
22 as described in section 5318(h);

23 “(4) report suspicious transactions as described
24 in section 5318(g)(1); and

1 “(5) establish due diligence policies, procedures,
2 and controls as described in section 5318(i).

3 “(c) LIMITATION ON EXEMPTIONS.—The Secretary
4 may not delay the application of any requirement de-
5 scribed in this subchapter for any person described in sec-
6 tion 5312(a)(2).

7 “(d) EXTRATERRITORIAL JURISDICTION.—Any per-
8 son described in section 5312(a)(2)(Z) shall be subject to
9 extraterritorial Federal jurisdiction with respect to the re-
10 quirements of this subtitle.

11 “(e) ENFORCEMENT.—

12 “(1) RANDOM AUDITS.—Beginning on the date
13 that is 1 year after the date that the Secretary
14 issues a rule to determine what persons fall within
15 the class of persons described in section
16 5312(a)(2)(Z), and on an ongoing basis thereafter,
17 the Secretary shall conduct random audits of per-
18 sons fall within the class of persons described in sec-
19 tion 5312(a)(2)(Z) to access compliance with this
20 section.

21 “(2) REPORTS.—The Secretary shall, not later
22 than 180 days after the conclusion of any calendar
23 year submit a report to the Committee on Financial
24 Services of the House of Representatives and the

1 Committee on Banking and Urban Affairs of the
2 Senate that—

3 “(A) describes the results of any random
4 audits conducted pursuant to paragraph (1)
5 during such calendar year; and

6 “(B) includes recommendations for improv-
7 ing the effectiveness of the requirements im-
8 posed under this section on persons described in
9 section 5312(a)(2)(Z).”.

10 (c) EFFECTIVE DATE.—The provisions of law added
11 by the amendments made by this section shall take effect
12 on [_____].

13 (d) CONFORMING AMENDMENT.—The table of sec-
14 tions in chapter 53 of subtitle IV of title 31, United States
15 Code, is amended by inserting after the item relating to
16 section 5336 the following:

“5337. Requirements for gatekeepers.”.

17 (e) USE OF TECHNOLOGY TO INCREASE EFFICIENCY
18 AND ACCURACY OF INFORMATION.—

19 (1) IN GENERAL.—The Secretary of the Treas-
20 ury, acting through the Director of the Financial
21 Crimes Enforcement Network, shall promote the in-
22 tegrity and timely, efficient collection of information
23 by persons described in section 5312(a)(2)(Z) of title
24 31, United States Code by exploring the use of tech-
25 nologies to—

1 (A) effectuate the collection, standardiza-
2 tion, transmission, and sharing of such infor-
3 mation as required under section 5337 of title
4 31, United States Code; and

5 (B) minimize the burdens associated with
6 the collection, standardization, transmission,
7 and sharing of such information as required
8 under section 5337 of title 31, United States
9 Code.

10 (2) REPORT.—Not later than 3 years after the
11 date of the enactment of this subsection, the Direc-
12 tor of the Financial Crimes Enforcement Network
13 shall submit a report to Committee on Financial
14 Services of the House of Representatives and the
15 Committee on Banking and Urban Affairs of the
16 Senate that—

17 (A) describes any findings of the Director
18 of the Financial Crimes Enforcement with re-
19 spect to technologies that may effectuate the
20 collection, standardization, transmission, and
21 sharing of such information as required under
22 section 5337 of title 31, United States Code;
23 and

24 (B) makes recommendations for imple-
25 menting such technologies.

1 **SEC. 4. GATEKEEPERS STRATEGY.**

2 Section 262 of the Countering America's Adversaries
3 Through Sanctions Act is amended by inserting after
4 paragraph (10) the following:

5 “(11) GATEKEEPER STRATEGY.—

6 “(A) IN GENERAL.—A description of ef-
7 forts to impose sufficient anti-money laundering
8 safeguards on types of persons who serve as
9 gatekeepers.

10 “(B) UPDATE.—If the updates to the na-
11 tional strategy required under section 261 have
12 been submitted to appropriate congressional
13 committees before the date of the enactment of
14 this paragraph, the President shall submit to
15 the appropriate congressional committees an
16 additional update to the national strategy with
17 respect to the addition of this paragraph not
18 later than 1 year after the date of the enact-
19 ment of this paragraph.”.

20 **SEC. 5. AGENCY COORDINATION AND COLLABORATION.**

21 The Secretary of the Treasury shall, to the greatest
22 extent practicable—

23 (1) establish relationships with State, local, ter-
24 ritorial, and Tribal governmental agencies; and

25 (2) work collaboratively with such governmental
26 agencies to implement and enforce the regulations

1 prescribed under this Act and the amendments made
2 by this Act, by—

3 (A) using the domestic liaisons established
4 in section 310(f) of title 31, United States
5 Code, to share information regarding changes
6 effectuated by this Act;

7 (B) using the domestic liaisons established
8 in section 310(f) of title 31, United States
9 Code, to advise on necessary revisions to State,
10 local, territorial, and Tribal standards with re-
11 spect to relevant professional licensure;

12 (C) engaging with various gatekeepers as
13 appropriate, including with respect to informa-
14 tion sharing and data sharing; and

15 (D) working with State, local, territorial,
16 and Tribal governmental agencies to levy pro-
17 fessional sanctions on persons who facilitate
18 corruption, money laundering, the financing of
19 terrorist activities, and other related crimes.

20 **SEC. 6. AUTHORIZATION OF APPROPRIATIONS.**

21 In addition to amounts otherwise available for such
22 purposes, there are authorized to be appropriated to the
23 Secretary of the Treasury, without fiscal year limitation,
24 **【\$_____】** to remain available until expended, exclusively

1 for the purpose of carrying out this Act and the amend-
2 ments made by the Act, including for—

3 (1) the hiring of personnel;

4 (2) the exploration and adoption of information
5 technology to effectively support enforcement activi-
6 ties or activities described in section 3 of this Act
7 and the amendments made by such section;

8 (3) audit, investigatory, and review activities,
9 including those described in section 3 of this Act
10 and the amendments made by such section;

11 (4) agency coordination and collaboration ef-
12 forts and activities described in section 5 of this Act;

13 (5) for voluntary compliance programs;

14 (6) for conducting the report in section 3(e) of
15 this Act; and

16 (7) for allocating amounts to the State, local,
17 territorial, and Tribal jurisdictions to pay reasonable
18 costs relating to compliance with or enforcement of
19 the requirements of this Act.

20 **SEC. 7. RULE OF CONSTRUCTION.**

21 Nothing in this Act may be construed to be limited
22 or impeded by any obligations under State, local, terri-
23 torial, or Tribal laws or rules concerning privilege, ethics,
24 confidentiality, privacy, or related matters.