

TITLE 31 - MONEY AND FINANCE**SUBTITLE IV - MONEY****CHAPTER 53 - MONETARY TRANSACTIONS****SUBCHAPTER II - RECORDS AND REPORTS ON MONETARY INSTRUMENTS
TRANSACTIONS****§ 5318A. Special measures for jurisdictions, financial institutions, international transactions, or types of accounts of primary money laundering concern****(a) International Counter-Money Laundering Requirements.—**

(1) In general.— The Secretary of the Treasury 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 rule promulgated 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 of the Treasury—

(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)¹ the Secretary of State, the Securities and Exchange Commission, the Commodity Futures Trading 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;

(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, class of transactions, or type of account; and

(iv) the effect of the action on United States national security and foreign policy.

(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 of the Treasury 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, class of transactions, or type of account 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, or transaction or type of 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 of the Treasury 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 entities involved in the proliferation of weapons of mass destruction or missiles 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, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles;
- (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 of the Treasury 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 and subsections (i) and (j) of section 5318, 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.

(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 of beneficial ownership.— The Secretary shall promulgate regulations defining beneficial ownership of an account for purposes of this section and subsections (i) and (j) of section 5318. Such regulations shall address issues related to an individual’s authority to fund, direct, or manage the account (including, without limitation, 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 or subsection (i) or (j) of section 5318 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), (2), and (3), and define other terms for the purposes of this section, as the Secretary deems appropriate.

(f) 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.),² such information may be submitted by the Secretary 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.

Footnotes

¹ So in original. Probably should be followed by a comma.

² So in original. A second closing parenthesis probably should precede the comma.

(Added Pub. L. 107–56, title III, § 311(a), Oct. 26, 2001, 115 Stat. 298; amended Pub. L. 108–177, title III, § 376, Dec. 13, 2003, 117 Stat. 2630; Pub. L. 108–458, title VI, § 6203(e), (f), Dec. 17, 2004, 118 Stat. 3747; Pub. L. 109–293, title V, § 501, Sept. 30, 2006, 120 Stat. 1350.)

References in Text

Section 3 of the Federal Deposit Insurance Act, referred to in subsec. (a)(4)(A), is classified to section 1813 of Title 12, Banks and Banking.

Section 19(b)(1)(C) of the Federal Reserve Act, referred to in subsec. (e)(1)(C), is classified to section 461 (b)(1)(C) of Title 12, Banks and Banking.

Section 509 of the Gramm-Leach-Bliley Act, referred to in subsec. (e)(2), is classified to section 6809 of Title 15, Commerce and Trade.

Section 1(a) of the Classified Information Procedures Act, referred to in subsec. (f), is section 1(a) of Pub. L. 96–456, which is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

Amendments

2006—Subsec. (c)(2)(A)(i). Pub. L. 109–293, § 501(1), substituted “or entities involved in the proliferation of weapons of mass destruction or missiles” for “or both.”

Subsec. (c)(2)(B)(i). Pub. L. 109–293, § 501(2), inserted “, including any money laundering activity by organized criminal groups, international terrorists, or entities involved in the proliferation of weapons of mass destruction or missiles” before semicolon at end.

2004—Pub. L. 108–458, § 6203(e), amended section catchline generally. Prior to amendment, catchline read as follows: “Special measures for jurisdictions, financial institutions, or international transactions of primary money laundering concern”.

Subsec. (a)(4)(A). Pub. L. 108–458, § 6203(f)(1), substituted “(as defined in section 3 of the Federal Deposit Insurance Act)” for “, as defined in section 3 of the Federal Deposit Insurance Act.”

NB: This unofficial compilation of the U.S. Code is current as of Jan. 5, 2009 (see <http://www.law.cornell.edu/uscode/uscprint.html>).

Subsec. (a)(4)(B)(iii). Pub. L. 108–458, § 6203(f)(2), substituted “class of transactions, or type of account” for “or class of transactions”.

Subsec. (b)(1)(A). Pub. L. 108–458, § 6203(f)(3), substituted “class of transactions, or type of account to be” for “or class of transactions to be”.

Subsec. (e)(3). Pub. L. 108–458, § 6203(f)(4), inserted “or subsection (i) or (j) of section 5318” after “identification of individuals under this section”.

2003—Subsec. (f). Pub. L. 108–177 added subsec. (f).

Effective Date of 2004 Amendment

Amendment by Pub. L. 108–458 effective as if included in Pub. L. 107–56, as of the date of enactment of such Act, and no amendment made by Pub. L. 107–56 that is inconsistent with such amendment to be deemed to have taken effect, see section 6205 of Pub. L. 108–458, set out as a note under section 1828 of Title 12, Banks and Banking.

“Federal Functional Regulator” Includes Commodity Futures Trading Commission

For purposes of Pub. L. 107–56 and any amendment by Pub. L. 107–56, the term “Federal functional regulator” includes the Commodity Futures Trading Commission, see section 321(c) of Pub. L. 107–56, set out as a note under section 5318 of this title.