COMBATING MONEY LAUNDERING, TERRORIST FINANCING, AND COUNTERFEITING ACT OF 2019

Senators Chuck Grassley and Dianne Feinstein

Section-by-Section Summary

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This section designates the Act as the *Combating Money Laundering, Terrorist Financing, and Counterfeiting Act of 2019.*

SECTION 2 – TRANSPORTATION OR TRANSHIPMENT OF BLANK CHECKS IN BEARER FORM

Current law requires an individual transporting monetary instruments with an aggregate value exceeding $10,000 into or out of the United States to file a report with Customs and Border Protection. However, the law does not specify how to value a check for reporting purposes when the dollar amount is left blank. Section 2 would make clear that monetary instruments with the dollar amount left blank are to be valued in excess of $10,000 for reporting purposes, if the instrument is drawn on an account containing more than $10,000.

SECTION 3 – INCREASING PENALTIES FOR BULK CASH SMUGGLING

Bulk cash smuggling is the knowing concealment of more than $10,000 in currency or monetary instruments from a place within the United States to a place outside the United States (or vice versa) for the purpose of evading the cross-border currency and monetary instrument reporting requirements. It is a widely used method for transporting illegal proceeds between the United States and Mexico. Under the bulk cash smuggling statute, 31 U.S.C. § 5332(b)(1), the maximum penalty for a violation of the statute is a term of imprisonment of five years. Section 3 is designed to further deter these crimes by increasing the maximum term of imprisonment to ten years.

In addition, Section 3 would add a criminal fine provision to the bulk cash smuggling statute that would bring it into conformity with other statutes supporting criminal enforcement of the currency reporting requirements. *See* 31 U.S.C. §§ 5322(a)-(b) & 5324(d). As such, Section 3 would provide for an enhanced fine in cases where the defendant violates another federal law in addition to the bulk cash smuggling statute, or engages in a pattern of unlawful activity.

SECTION 4 – SECTION 1957 VIOLATIONS INVOLVING COMMINGLED FUNDS AND AGGREGATED TRANSACTIONS

18 U.S.C. § 1957 is an important tool in combating money laundering because it applies to the transfer of criminal proceeds, or "dirty money," without the need to demonstrate an intent on the part of the defendant to conceal the money, promote criminal activity, or evade a reporting

requirement. However, ambiguity in two scenarios has enabled human and drug traffickers to evade prosecution. First, courts have disagreed over whether the statute applies to the withdrawal of money from an account in which both dirty and clean money are commingled. Second, it is also unclear under the statute whether the government may aggregate a series of closely related sub-$10,000 transactions to meet the $10,000 threshold when defendants structure their transactions to evade it.

Section 4 closes the first loophole by clarifying that the withdrawal of funds in excess of $10,000 from an account containing more than $10,000 in criminal proceeds commingled with other funds is a transaction involving more than $10,000 in criminally derived property. It closes the second loophole by allowing for the aggregation of individual transactions that are closely related in time, the identity of the parties, the nature of the transactions, or the manner in which they are conducted, to meet the $10,000 threshold.

The issue of commingled funds is especially problematic along the Southwest border, where human and drug traffickers are able to circumvent these money laundering laws by commingling illegal proceeds with the proceeds of legitimate businesses. The provisions in Section 4 ensure that international drug and human traffickers cannot evade the strictures of section 1957 in these ways.

SECTION 5 – CHARGING MONEY LAUNDERING AS A COURSE OF CONDUCT

Currently, in most federal judicial circuits, the government is not permitted to charge a defendant who engages in a series of related money laundering offenses with a single violation of the statute that encompasses the entire course of conduct; instead, each transaction must be charged as a separate count in the indictment. Section 5 would provide the government with the simpler and more practical option of charging a defendant with a single count, thereby allowing money laundering to be charged in the same manner as mail fraud under 18 U.S.C. § 1341. The section also would include conspiracies to violate 18 U.S.C. § 1960 (prohibition of unlicensed money transmitting businesses) as money laundering conspiracies under 18 U.S.C. § 1956(h).

SECTION 6 – ILLEGAL MONEY SERVICES BUSINESSES

Illegal money services businesses are entities used to send criminal proceeds abroad, as well as to send "clean" funds abroad to promote ongoing or future criminal activity there. Section 6 would make a conforming change to 18 U.S.C. § 1960(b)(1)(B) to clarify that the same general intent requirement found in 1960(b)(1)(A) applies to both of these provisions of the statute. Under both provisions, specific knowledge of the requirement to register is unnecessary.

SECTION 8 – PROHIBITING MONEY LAUNDERING THROUGH HAWALAS, OTHER INFORMAL VALUE TRANSFER SYSTEMS, AND CLOSELY RELATED TRANSACTIONS

Under §§ 1956(a)(1) and 1957, a financial transaction or a monetary transaction constitutes a money laundering offense only if the funds involved in the transaction represent the proceeds of a criminal offense. There is some uncertainty, however, as to whether the proceeds

element is satisfied as to all aspects of a money laundering scheme when two or more transactions are committed in parallel. For example, if A sends drug proceeds to B, who deposits the proceeds in Bank Account 1, and simultaneously, B takes an equal amount of money from Bank Account 2 and sends it to A or a person designated by A, there is some question about whether the second transaction meets the proceeds element. This question has become increasingly important, because parallel transactions are used to launder funds through hawalas and other informal systems often used by terrorists and international drug traffickers.

In 2006, Congress addressed this concern by clarifying that for purposes of § 1956, a financial transaction includes proceeds of specified unlawful activity if it is part of "a set of parallel or dependent transactions, any one of which involves the proceeds of specified unlawful activity, and all of which are part of a single plan or arrangement" that involves such proceeds. Section 9 would extend this clarification to monetary transactions under § 1957.

SECTION 9 – RESTORINGWIRETAP AUTHORITY FOR CERTAIN MONEY LAUNDERING AND COUNTERFEITING OFFENSES

Section 10 would eliminate a current gap in the Wiretap Act, 18 U.S.C. §§ 2510-2522, that was created by a legislative oversight. It would restore the government's ability to obtain wiretap authority for currency reporting, bulk cash smuggling, illegal money services businesses, and counterfeiting offenses.

SECTION 10 – APPLYING THE INTERNATIONAL MONEY LAUNDERING STATUTE TO TAX EVASION

The problem of individuals using foreign bank accounts to avoid paying U.S. taxes is well established. Section 11 would enable the government to target those individuals, including international drug dealers who seek to move funds to offshore banking centers, by making it a money laundering violation to transfer funds into or out of the United States with the intent to violate U.S. income tax laws.

SECTION 11 – CONDUCT IN AID OF COUNTERFEITING

Current law prohibits the possession of cover plates, stones, and other devices that may be used to counterfeit U.S. currency and securities. However, new technology has produced new security features, such as holograms, used to protect against counterfeiting. Section 12 would update the current counterfeiting laws by including any materials, tools, or machinery that may be used to counterfeit U.S. or foreign money. It would also strengthen security features by making illegal the possession of material or other things similar to security features.

This section also addresses another common counterfeiting tactic known as bleaching. Bleaching involves removing images from lower denominations of currency allowing for the printing of higher denominations on genuine paper. This particular scheme is becoming international in scope, with the Secret Service identifying bleached operations in Columbia, Nigeria, Italy and North Korea. This section would prohibit the possession of any paper or

security features, including bleached paper, often used to produce counterfeit U.S. money by criminals abroad.

SECTION 12 – DANGER PAY ALLOWANCE

Current law provides for danger pay allowance for agents of the Drug Enforcement Administration, Federal Bureau of Investigation, U.S. Marshals, and the Bureau of Alcohol, Tobacco, and Firearms who serve in designated dangerous posts abroad. Section 15 would expand the availability of danger pay allowance to agents employed by Immigration and Customs Enforcement, Customs and Border Protection, and the Secret Service, recognizing that agents of these law enforcement services within the Department of Homeland Security should be treated equally with law enforcement agents within the Department of Justice.

SECTION 13 – CLARIFICATION OF SECRET SERVICE AUTHORITY TO INVESTIGATE MONEY LAUNDERING

The Secret Service is authorized by 18 U.S.C. § 3056 to investigate a broad range of financial crimes. The Department of Justice has interpreted this statutory language as extending to money laundering investigations. Likewise, the Secretary of the Department of Homeland Security has specifically delegated the responsibility for investigating money laundering to the Secret Service. Section 16 would expressly clarify that the Secret Service has the jurisdiction to pursue money laundering investigations.

Additionally, Section 16 would permit the Secret Service to investigate unlawful activity against any financial institution as defined in the law, removing the previous qualifier that the institution be federally insured. This last change reflects the growing trend by criminals to facilitate money laundering through transactions by non-traditional financial institutions, such as check-cashing businesses.

SECTION 14 – REMITTANCES AND MONEY LAUNDERING THREAT ANALYSIS

This section requires a report on remittances and money laundering threats. Remittances can support illegal activity and are important to the conversation on international money laundering. The Secretary of the Treasury would be responsible, in consultation with the Attorney General, for analyzing the use of remittances by drug cartels and must submit a remittances strategy and implementation plan to Congress.

Furthermore, the Secretary of Treasury will be required under this section to submit a remittances strategy and implementation plan 18 months after enactment and update it 5-yrs and 10-yrs later.

SECTION 15 – RULE OF CONSTRUCTION

Section 19 would clarify that nothing in the legislation shall be construed to apply to the authorized law enforcement, protective, or intelligence activities of the U.S. or of a U.S. intelligence agency.