AMENDMENT TO RULES COMMITTEE PRINT
117–54
OFFERED BY MS. WATERS OF CALIFORNIA

Strike section 5401 and insert the following:

SEC. 5401. SERVICES THAT OPEN PORTALS TO DIRTY MONEY ACT.

(a) SHORT TITLE.—This section may be cited as the “Establishing New Authorities for Businesses Laundering and Enabling Risks to Security Act” and the “ENABLERS Act”.

(b) FINDINGS.—Congress finds the following:

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

(2) In 2003, the Financial Action Task Force, an intergovernmental body formed by the United States and other major industrial nations, determined that designated non-financial businesses and professions should be subject to the same anti-money laundering and counter-terrorist financing rules and
regulations as financial institutions, including the requirement to know your customer or client and to perform due diligence, as well as to file suspicious transaction reports, referred to as suspicious activity reports or “SARs” in the United States.

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

(4) The Pandora Papers described how an adviser to the former Prime Minister of Malaysia reportedly used affiliates of a United States law firm to assemble and consult a network of companies, despite the adviser fitting the “textbook definition” of a high-risk client. The adviser went on to use his companies to help steal $4.5 billion from Malaysia’s public investment fund in one of “the world’s biggest-ever financial frauds”, known as 1MDB.

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

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

(7) In 2016, an investigator with the non-profit organization Global Witness posed as an adviser to a corrupt African official and set up meetings with 13 New York City law firms to discuss how to move suspect funds into the United States. Lawyers from all but one of the firms provided advice to the faux adviser, including advice on how to utilize anonymous companies to obscure the true owner of the assets. Other suggestions included naming the lawyer as a trustee of an offshore trust in order to open a bank account, and using the law firm’s escrow account to receive payments.
(8) The autocratic Prime Minister of Iraqi Kurdistan, reportedly known for torturing and killing journalists and critics, allegedly purchased a retail store valued at over $18 million in Miami, Florida, with the assistance of a Pennsylvania-based law firm.

(9) Teodoro Obiang, the vice president of Equatorial Guinea and son of the country’s authoritarian president, embezzled millions of dollars from his home country, which was then used to purchase luxury assets in the United States. Obiang relied on the assistance of two American lawyers to move millions of dollars of suspect funds through U.S. banks. The lawyers incorporated five shell companies in California and opened bank accounts associated with the companies for Obiang’s personal use. The suspect funds were first wired to the lawyers’ attorney-client and firm accounts, then transferred to the accounts of the shell companies.

(10) An American consulting company reportedly made millions of dollars working for companies owned or partly owned by Isabel dos Santos, the eldest child of a former President of Angola. This included working with Angola’s state oil company when it was run by Isabel dos Santos and helping
to “run a failing jewelry business acquired with Angolan money”. In 2021, a Dutch tribunal found that Isabel dos Santos and her husband obtained a $500 million stake in the oil company through “grand corruption”.

(11) In December 2021, the United States Government issued a first-ever “United States Strategy on Countering Corruption”, that includes “Curbing Illicit Finance” as a strategic pillar. An express line of effort to advance this strategic pillar states that: “Deficiencies in the U.S. regulatory framework mean various professionals and service providers—including lawyers, accountants, trust and company service providers, incorporators, and others willing to be hired as registered agents or who act as nominees to open and move funds through bank accounts—are not required to understand the nature or source of income of their clients or prospective clients. . .While U.S. law enforcement has increased its focus on such facilitators, it is both difficult to prove ‘intent and knowledge’ that a facilitator was dealing with illicit funds or bad actors, or that they should have known the same. Cognizant of such constraints, the Administration will consider additional authorities to
cover key gatekeepers, working with the Congress as necessary to secure additional authorities”.

(12) This section provides the authorities needed to require that professional service providers who serve as key gatekeepers to the U.S. financial system adopt anti-money laundering procedures that can help detect and prevent the laundering of corrupt and other criminal funds into the United States. Absent such authorities, the United States Government will be unable to adequately protect the U.S. financial system, identify funds and assets that are the proceeds of corruption, or support foreign states in their efforts to combat corruption and promote good governance.

(c) REQUIREMENTS FOR GATEKEEPERS.—

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

(A) by redesignating subparagraphs (Z) and (AA) as subparagraphs (AA) and (BB), respectively; and

(B) by inserting after subparagraph (Y) the following:
“(Z) any person, excluding any governmental entity, employee, or agent, who engages in any activity which the Secretary determines, by regulation pursuant to section 5337(a), to be the provision, with or without compensation, of—

“(i) corporate or other legal entity arrangement, association, or formation services;

“(ii) trust services;

“(iii) third party payment services; or

“(iv) legal or accounting services that—

“(I) involve financial activities that facilitate—

“(aa) corporate or other legal entity arrangement, association, or formation services;

“(bb) trust services; or

“(cc) third party payment services; and

“(II) are not direct payments or compensation for civil or criminal defense matters.”.
(2) REQUIREMENTS FOR GATEKEEPERS.—Subtitle chapter II of chapter 53 of subtitle IV of title 31, United States Code, is amended by adding at the end the following:

§ 5337. Requirements for gatekeepers.

“(a) IN GENERAL.—

“(1) IN GENERAL.—The Secretary shall, not later than 1 year after the date of the enactment this section, issue a rule to—

“(A) determine what persons fall within the class of persons described in section 5312(a)(2)(Z); and

“(B) prescribe appropriate requirements for such persons.

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

“(A) to minimizes burden of such rule and maximizes the intended outcome of such rule, as determined by the Secretary; and

“(B) avoid applying additional requirements for persons that may fall within the class of persons described in section 5312(a)(2)(Z)
but whom are already, as determined by the Secretary, appropriately regulated under section 5312.

“(3) IDENTIFICATION OF PERSONS.—When determining what persons fall within the class of persons described in section 5312(a)(2)(Z) the Secretary of the Treasury shall include—

“(A) any person involved in—

“(i) the formation or registration of a corporation, limited liability company, trust, foundation, limited liability partnership, partnership, or other similar entity;

“(ii) the acquisition or disposition of an interest in a corporation, limited liability company, trust, foundation, limited liability partnership, partnership, or other similar entity;

“(iii) providing a registered office, address or accommodation, correspondence or administrative address for a corporation, limited liability company, trust, foundation, limited liability partnership, partnership, or other similar entity;
“(iv) acting as, or arranging for another person to act as, a nominee shareholder for another person;

“(v) the managing, advising, or consulting with respect to money or other assets;

“(vi) the processing of payments;

“(vii) the provision of cash vault services;

“(viii) the wiring of money;

“(ix) the exchange of foreign currency, digital currency, or digital assets; or

“(x) the sourcing, pooling, organization, or management of capital in association with the formation, operation, or management of, or investment in, a corporation, limited liability company, trust, foundation, limited liability partnership, partnership, or other similar entity;

“(B) any person who, in connection with filing any return, directly or indirectly, on behalf of a foreign individual, trust or fiduciary with respect to direct or indirect, United States investment, transaction, trade or business, or similar activities—
“(i) obtains or uses a preparer tax identification number; or

“(ii) would be required to use or obtain a preparer tax identification number, if such person were compensated for services rendered;

“(C) any person acting as, or arranging for another person to act as, a registered agent, trustee, director, secretary, partner of a company, a partner of a partnership, or similar position in relation to a corporation, limited liability company, trust, foundation, limited liability partnership, partnership, or other similar entity; and

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

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

“(ii) acts as an agent of a person described in subparagraphs (A), (B), or (C); or

“(iii) is an instrumentality of a person described in subparagraphs (A), (B), or (C).
“(b) REQUIREMENTS.—The Secretary shall require persons described in section 5312(a)(3) to do 1 or more of the following—

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

“(2) maintain appropriate procedures, including the collection and reporting of such information as the Secretary may prescribe by regulation, to ensure compliance with this subchapter and regulations prescribed thereunder or to guard against corruption, money laundering, the financing of terrorism, or other forms of illicit finance;

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

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

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

“(c) LIMITATION ON EXEMPTIONS.—The Secretary may not delay the application of any requirement de-
scribed in this subchapter for any person described in section 5312(a)(2)(Z) or section 5337(a)(3)

“(d) EXTRATERRITORIAL JURISDICTION.—Any person described in section 5312(a)(2)(Z) shall be subject to extraterritorial Federal jurisdiction with respect to the requirements of this subtitle.

“(e) ENFORCEMENT.—

“(1) RANDOM AUDITS.—Beginning on the date that is 1 year after the date that the Secretary issues a rule to determine what persons fall within the class of persons described in section 5312(a)(2)(Z), and on an ongoing basis thereafter, the Secretary shall conduct random audits of persons that fall within the class of persons described in section 5312(a)(2)(Z), in a manner that the Secretary determines appropriate, to assess compliance with this section.

“(2) REPORTS.—The Secretary shall, not later than 180 days after the conclusion of any calendar year that begins after the date that is 1 year after the date that the Secretary issues a rule pursuant to section 5337(a), submit a report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—
“(A) describes the results of any random audits conducted pursuant to paragraph (1) during such calendar year; and

“(B) includes recommendations for improving the effectiveness of the requirements imposed under this section on persons described in section 5312(a)(2)(Z).”.

(3) EFFECTIVE DATE.—This section and the amendments made by this section shall take effect on the date that the Secretary of the Treasury issues a rule pursuant to section 5537 of title 31 of the United States Code, as added by this section.

(4) CONFORMING AMENDMENT.—The table of sections in chapter 53 of subtitle IV of title 31, United States Code, is amended by inserting after the item relating to section 5336 the following:

“5337. Requirements for gatekeepers.”.

(5) USE OF TECHNOLOGY TO INCREASE EFFICIENCY AND ACCURACY OF INFORMATION.—

(A) IN GENERAL.—The Secretary of the Treasury, acting through the Director of the Financial Crimes Enforcement Network, shall promote the integrity and timely, efficient collection of information by persons described in section 5312(a)(2)(Z) of title 31, United States Code by exploring the use of technologies to—
(i) effectuate the collection, standardization, transmission, and sharing of such information as required under section 5337 of title 31, United States Code; and

(ii) minimize the burdens associated with the collection, standardization, transmission, and sharing of such information as required under section 5337 of title 31, United States Code.

(B) REPORT.—Not later than 3 years after the date of the enactment of this subsection, the Director of the Financial Crimes Enforcement Network shall submit a report to Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate that—

(i) describes any findings of the Director of the Financial Crimes Enforcement with respect to technologies that may effectuate the collection, standardization, transmission, and sharing of such information as required under section 5337 of title 31, United States Code; and
(ii) makes recommendations for implementing such technologies.

(d) GATEKEEPERS STRATEGY.—Section 262 of the Countering America’s Adversaries Through Sanctions Act is amended by inserting after paragraph (10) the following:

“(11) GATEKEEPER STRATEGY.—

“(A) IN GENERAL.—A description of efforts to impose sufficient anti-money laundering safeguards on types of persons who serve as gatekeepers.

“(B) UPDATE.—If the updates to the national strategy required under section 261 have been submitted to appropriate congressional committees before the date of the enactment of this paragraph, the President shall submit to the appropriate congressional committees an additional update to the national strategy with respect to the addition of this paragraph not later than 1 year after the date of the enactment of this paragraph.”.

(e) AGENCY COORDINATION AND COLLABORATION.—

The Secretary of the Treasury shall, to the greatest extent practicable—
(1) establish relationships with State, local, territorial, and Tribal governmental agencies; and

(2) work collaboratively with such governmental agencies to implement and enforce the regulations prescribed under this section and the amendments made by this section, by—

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

(B) using the domestic liaisons established in section 310(f) of title 31, United States Code, to advise on necessary revisions to State, local, territorial, and Tribal standards with respect to relevant professional licensure;

(C) engaging with various gatekeepers as appropriate, including with respect to information sharing and data sharing; and

(D) working with State, local, territorial, and Tribal governmental agencies to levy professional sanctions on persons who facilitate corruption, money laundering, the financing of terrorist activities, and other related crimes.

(f) Authorization of Appropriations.—In addition to amounts otherwise available for such purposes,
there are authorized to be appropriated to the Secretary
of the Treasury, without fiscal year limitation,
$53,300,000 to remain available until expended, exclu-
sively for the purpose of carrying out this section and the
amendments made by the Act, including for—

(1) the hiring of personnel;

(2) the exploration and adoption of information
technology to effectively support enforcement activi-
ties or activities described in subsection (c) of this
section and the amendments made by such sub-
section;

(3) audit, investigatory, and review activities,
including those described in subsection (c) of this
section and the amendments made by such sub-
section;

(4) agency coordination and collaboration ef-
forts and activities described in subsection (e) of this
section;

(5) for voluntary compliance programs;

(6) for conducting the report in subsection
(c)(5) of this section; and

(7) for allocating amounts to the State, local,
territorial, and Tribal jurisdictions to pay reasonable
costs relating to compliance with or enforcement of
the requirements of this section.
(g) Rule of Construction.—Nothing in this section may be construed to be limited or impeded by any obligations under State, local, territorial, or Tribal laws or rules concerning privilege, ethics, confidentiality, privacy, or related matters.