

[Discussion Draft]

AMENDMENT TO RULES COMMITTEE PRINT

117-54

OFFERED BY MS. Waters

Strike section 5401 and insert the following:

1 **SEC. 5401. SERVICES THAT OPEN PORTALS TO DIRTY**
2 **MONEY ACT.**

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

7 (b) **FINDINGS.**—Congress finds the following:

8 (1) Kleptocrats and other corrupt actors across
9 the world are increasingly relying on non-bank pro-
10 fessional service providers, including non-bank pro-
11 fessional service providers operating in the United
12 States, to move, hide, and grow their ill-gotten
13 gains.

14 (2) In 2003, the Financial Action Task Force,
15 an intergovernmental body formed by the United
16 States and other major industrial nations, deter-
17 mined that designated non-financial businesses and
18 professions should be subject to the same anti-money

1 laundering and counter-terrorist financing rules and
2 regulations as financial institutions, including the re-
3 quirement to know your customer or client and to
4 perform due diligence, as well as to file suspicious
5 transaction reports, referred to as suspicious activity
6 reports or “SARs” in the United States.

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

13 (4) The Pandora Papers described how an ad-
14 viser to the former Prime Minister of Malaysia re-
15 portedly used affiliates of a United States law firm
16 to assemble and consult a network of companies, de-
17 spite the adviser fitting the “textbook definition” of
18 a high-risk client. The adviser went on to use his
19 companies to help steal \$4.5 billion from Malaysia’s
20 public investment fund in one of “the world’s big-
21 gest-ever financial frauds”, known as 1MDB.

22 (5) Russian oligarchs have used gatekeepers to
23 move their money into the United States. For exam-
24 ple, a gatekeeper formed a company in Delaware
25 that reportedly owns a \$15 million mansion in

1 Washington, D.C., that is linked to one of Vladimir
2 Putin's closest allies. Also, reportedly connected to
3 the oligarch is a \$14 million townhouse in New York
4 City owned by a separate Delaware company.

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

14 (7) In 2016, an investigator with the non-profit
15 organization Global Witness posed as an adviser to
16 a corrupt African official and set up meetings with
17 13 New York City law firms to discuss how to move
18 suspect funds into the United States. Lawyers from
19 all but one of the firms provided advice to the faux
20 adviser, including advice on how to utilize anony-
21 mous companies to obscure the true owner of the as-
22 sets. Other suggestions included naming the lawyer
23 as a trustee of an offshore trust in order to open a
24 bank account, and using the law firm's escrow ac-
25 count to receive payments.

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

7 (9) Teodoro Obiang, the vice president of Equa-
8 torial Guinea and son of the country's authoritarian
9 president, embezzled millions of dollars from his
10 home country, which was then used to purchase lux-
11 ury assets in the United States. Obiang relied on the
12 assistance of two American lawyers to move millions
13 of dollars of suspect funds through U.S. banks. The
14 lawyers incorporated five shell companies in Cali-
15 fornia and opened bank accounts associated with the
16 companies for Obiang's personal use. The suspect
17 funds were first wired to the lawyers' attorney-client
18 and firm accounts, then transferred to the accounts
19 of the shell companies.

20 (10) An American consulting company report-
21 edly made millions of dollars working for companies
22 owned or partly owned by Isabel dos Santos, the eld-
23 est child of a former President of Angola. This in-
24 cluded working with Angola's state oil company
25 when it was run by Isabel dos Santos and helping

1 to “run a failing jewelry business acquired with An-
2 golan money”. In 2021, a Dutch tribunal found that
3 Isabel dos Santos and her husband obtained a \$500
4 million stake in the oil company through “grand cor-
5 ruption”.

6 (11) In December 2021, the United States Gov-
7 ernment issued a first-ever “United States Strategy
8 on Countering Corruption”, that includes “Curbing
9 Illicit Finance” as a strategic pillar. An express line
10 of effort to advance this strategic pillar states that:
11 “Deficiencies in the U.S. regulatory framework
12 mean various professionals and service providers—
13 including lawyers, accountants, trust and company
14 service providers, incorporators, and others willing to
15 be hired as registered agents or who act as nominees
16 to open and move funds through bank accounts—are
17 not required to understand the nature or source of
18 income of their clients or prospective clients. . .While
19 U.S. law enforcement has increased its focus on
20 such facilitators, it is both difficult to prove ‘intent
21 and knowledge’ that a facilitator was dealing with il-
22 licit funds or bad actors, or that they should have
23 known the same. Cognizant of such constraints, the
24 Administration will consider additional authorities to

1 cover key gatekeepers, working with the Congress as
2 necessary to secure additional authorities”.

3 (12) This section provides the authorities need-
4 ed to require that professional service providers who
5 serve as key gatekeepers to the U.S. financial system
6 adopt anti-money laundering procedures that can
7 help detect and prevent the laundering of corrupt
8 and other criminal funds into the United States. Ab-
9 sent such authorities, the United States Government
10 will be unable to adequately protect the U.S. finan-
11 cial system, identify funds and assets that are the
12 proceeds of corruption, or support foreign states in
13 their efforts to combat corruption and promote good
14 governance.

15 (c) REQUIREMENTS FOR GATEKEEPERS.—

16 (1) IN GENERAL.—Section 5312(a)(2) of title
17 31, United States Code, as amended by the William
18 M. (Mac) Thornberry National Defense Authoriza-
19 tion Act for Fiscal Year 2021, is amended—

20 (A) by redesignating subparagraphs (Z)
21 and (AA) as subparagraphs (AA) and (BB), re-
22 spectively; and

23 (B) by inserting after subparagraph (Y)
24 the following:

1 “(Z) any person, excluding any govern-
2 mental entity, employee, or agent, who engages
3 in any activity which the Secretary determines,
4 by regulation pursuant to section 5337(a), to be
5 the provision, with or without compensation,
6 of—

7 “(i) corporate or other legal entity ar-
8 rangement, association, or formation serv-
9 ices;

10 “(ii) trust services;

11 “(iii) third party payment services; or

12 “(iv) legal or accounting services
13 that—

14 “(I) involve financial activities
15 that facilitate—

16 “(aa) corporate or other
17 legal entity arrangement, associa-
18 tion, or formation services;

19 “(bb) trust services; or

20 “(cc) third party payment
21 services; and

22 “(II) are not direct payments or
23 compensation for civil and criminal
24 defense matters.”.

1 (2) REQUIREMENTS FOR GATEKEEPERS.—Sub-
2 chapter II of chapter 53 of subtitle IV of title 31,
3 United States Code, is amended by adding at the
4 end the following:

5 **“§ 5337. Requirements for gatekeepers.**

6 “(a) IN GENERAL.—

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

10 “(A) determine what persons fall within
11 the class of persons described in section
12 5312(a)(2)(Z); and

13 “(B) prescribe appropriate requirements
14 for such persons.

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

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

23 “(B) avoid applying additional require-
24 ments for persons that may fall within the class
25 of persons described in section 5312(a)(2)(Z)

1 but whom are already, as determined by the
2 Secretary, appropriately regulated under section
3 5312.

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

8 “(A) any person involved in—

9 “(i) the formation or registration of a
10 corporation, limited liability company,
11 trust, foundation, limited liability partner-
12 ship, partnership, or other similar entity;

13 “(ii) the acquisition or disposition of
14 an interest in a corporation, limited liabil-
15 ity company, trust, foundation, limited li-
16 ability partnership, partnership, or other
17 similar entity;

18 “(iii) providing a registered office, ad-
19 dress or accommodation, correspondence or
20 administrative address for a corporation,
21 limited liability company, trust, foundation,
22 limited liability partnership, partnership,
23 or other similar entity;

1 “(iv) acting as, or arranging for an-
2 other person to act as, a nominee share-
3 holder for another person;

4 “(v) the managing, advising, or con-
5 sulting with respect to money or other as-
6 sets;

7 “(vi) the processing of payments;

8 “(vii) the provision of cash vault serv-
9 ices;

10 “(viii) the wiring of money;

11 “(ix) the exchange of foreign cur-
12 rency, digital currency, or digital assets; or

13 “(x) the sourcing, pooling, organiza-
14 tion, or management of capital in associa-
15 tion with the formation, operation, or man-
16 agement of, or investment in, a corpora-
17 tion, limited liability company, trust, foun-
18 dation, limited liability partnership, part-
19 nership, or other similar entity;

20 “(B) any person who, in connection with
21 filing any return, directly or indirectly, on be-
22 half of a foreign individual, trust or fiduciary
23 with respect to direct or indirect, United States
24 investment, transaction, trade or business, or
25 similar activities—

1 “(i) obtains or uses a preparer tax
2 identification number; or

3 “(ii) would be required to use or ob-
4 tain a preparer tax identification number,
5 if such person were compensated for serv-
6 ices rendered;

7 “(C) any person acting as, or arranging
8 for another person to act as, a registered agent,
9 trustee, director, secretary, partner of a com-
10 pany, a partner of a partnership, or similar po-
11 sition in relation to a corporation, limited liabil-
12 ity company, trust, foundation, limited liability
13 partnership, partnership, or other similar enti-
14 ty; and

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

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

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

23 “(iii) is an instrumentality of a person
24 described in subparagraphs (A), (B), or
25 (C).

1 “(b) REQUIREMENTS.—The Secretary shall require
2 persons described in section 5312(a)(3) to do 1 or more
3 of the following—

4 “(1) identify and verify account holders and
5 functional equivalents as described in section
6 5318(l), including by establishing and maintaining
7 written procedures that are reasonably designed to
8 enable the person to identify and verify beneficial
9 owners (as such term is defined in section 5336(a))
10 of clients;

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

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

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

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

24 “(c) LIMITATION ON EXEMPTIONS.—The Secretary
25 may not delay the application of any requirement de-

1 scribed in this subchapter for any person described in sec-
2 tion 5312(a)(2)(Z) or section 5337(a)(3)

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

7 “(e) ENFORCEMENT.—

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

18 “(2) REPORTS.—The Secretary shall, not later
19 than 180 days after the conclusion of any calendar
20 year that begins after the date that is 1 year after
21 the date that the Secretary issues a rule pursuant
22 to section 5337(a), submit a report to the Com-
23 mittee on Financial Services of the House of Rep-
24 resentatives and the Committee on Banking and
25 Urban Affairs of the Senate that—

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

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

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

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

“5337. Requirements for gatekeepers.”.

17 (5) USE OF TECHNOLOGY TO INCREASE EFFI-
18 CIENCY AND ACCURACY OF INFORMATION.—

19 (A) IN GENERAL.—The Secretary of the
20 Treasury, acting through the Director of the
21 Financial Crimes Enforcement Network, shall
22 promote the integrity and timely, efficient col-
23 lection of information by persons described in
24 section 5312(a)(2)(Z) of title 31, United States
25 Code by exploring the use of technologies to—

1 (i) effectuate the collection, standard-
2 ization, transmission, and sharing of such
3 information as required under section 5337
4 of title 31, United States Code; and

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

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

17 (i) describes any findings of the Di-
18 rector of the Financial Crimes Enforce-
19 ment with respect to technologies that may
20 effectuate the collection, standardization,
21 transmission, and sharing of such informa-
22 tion as required under section 5337 of title
23 31, United States Code; and

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

1 (d) GATEKEEPERS STRATEGY.—Section 262 of the
2 Countering America’s Adversaries Through Sanctions Act
3 is amended by inserting after paragraph (10) the fol-
4 lowing:

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 (e) AGENCY COORDINATION AND COLLABORATION.—

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

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

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

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

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

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

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

22 (f) AUTHORIZATION OF APPROPRIATIONS.—In addi-
23 tion to amounts otherwise available for such purposes,
24 there are authorized to be appropriated to the Secretary
25 of the Treasury, without fiscal year limitation,

1 \$53,300,000 to remain available until expended, exclu-
2 sively for the purpose of carrying out this section and the
3 amendments made by the Act, including for—

4 (1) the hiring of personnel;

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

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

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

17 (5) for voluntary compliance programs;

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

20 (7) for allocating amounts to the State, local,
21 territorial, and Tribal jurisdictions to pay reasonable
22 costs relating to compliance with or enforcement of
23 the requirements of this section.

24 (g) **RULE OF CONSTRUCTION.**—Nothing in this sec-
25 tion may be construed to be limited or impeded by any

1 obligations under State, local, territorial, or Tribal laws
2 or rules concerning privilege, ethics, confidentiality, pri-
3 vacy, or related matters.

