

115TH CONGRESS
2D SESSION

H. R. 6861

To amend title 31, United States Code, with respect to FinCEN no-action letters, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2018

Mr. ZELDIN introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend title 31, United States Code, with respect to FinCEN no-action letters, 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. FINCEN NO-ACTION LETTERS.**

4 Section 310 of title 31, United States Code, is
5 amended—

6 (1) by redesignating subsection (d) as sub-
7 section (e); and

8 (2) by inserting after subsection (c) the fol-
9 lowing:

1 “(d) NO-ACTION LETTERS WITH RESPECT TO SPE-
2 CIFIC CONDUCT.—

3 “(1) IN GENERAL.—The Director of FinCEN
4 shall issue regulations to establish a process for the
5 issuance of a no-action letter by FinCEN in re-
6 sponse to an inquiry from a person or group of per-
7 sons concerning the application of the Bank Secrecy
8 Act, the USA PATRIOT Act, or any other anti-
9 money laundering and counter terrorist financing
10 law or regulation to specific conduct, which shall in-
11 clude a statement as to whether or not FinCEN has
12 any intention of taking an enforcement or other reg-
13 ulatory action against the person or group with re-
14 spect to such conduct.

15 “(2) CONSULTATION.—In issuing the regula-
16 tions described under paragraph (1), the Secretary
17 shall consult with the Federal functional regulators
18 and such other Federal departments and agencies as
19 the Secretary determines appropriate.

20 “(3) RELIANCE ON NO-ACTION LETTER.—

21 “(A) LIABILITY.—Notwithstanding any
22 other provisions of law, except for paragraph
23 (5)(B), a person described under subparagraph
24 (B) who relies upon a no-action letter issued
25 under this subsection in accordance with the

1 provisions and findings of such letter shall not,
2 as a result, be subject to any regulatory action
3 or civil or criminal penalty under the Bank Se-
4 crecy Act, the USA PATRIOT Act, or any
5 other anti-money laundering and counter ter-
6 rorist financing law or regulation with respect
7 to the activity covered in the no-action letter.

8 “(B) PERSONS COVERED.—A person de-
9 scribed in this paragraph is—

10 “(i) any person involved in the specific
11 conduct that is the subject of the no-action
12 letter; and

13 “(ii) any person involved in conduct
14 which is indistinguishable in all its mate-
15 rial aspects from the specific conduct that
16 is the subject of the no-action letter.

17 “(4) FEES.—

18 “(A) IN GENERAL.—The Director of
19 FinCEN shall develop a system to charge a fee
20 for each request for a no-action letter made
21 under this subsection in an amount sufficient,
22 in the aggregate, to pay for the cost of carrying
23 out this subsection. Such system shall provide
24 for a lower fee for small business concerns and

1 small financial institutions compared to other
2 persons.

3 “(B) NOTICE AND COMMENT.—Not later
4 than 45 days after the date of the enactment of
5 this paragraph, the Director of FinCEN shall
6 publish a description of the fee system de-
7 scribed in subparagraph (A) in the Federal
8 Register and shall solicit comments from the
9 public for a period of 60 days after publication.

10 “(C) FINALIZATION.—The Director of
11 FinCEN shall publish a final description of the
12 fee system and implement such fee system not
13 later than 30 days after the end of the public
14 comment period described in subparagraph (B).

15 “(5) MODIFYING OR RESCINDING A NO-ACTION
16 LETTER.—

17 “(A) IN GENERAL.—The Director of
18 FinCEN may modify or rescind any no-action
19 letter issued under this subsection if—

20 “(i) in light of changes in statute, reg-
21 ulations, or policy the letter no longer sets
22 forth the interpretation of FinCEN with
23 respect to the content of the letter; or

1 “(ii) any fact or statement submitted
2 in the original inquiry is found to be mate-
3 rially inaccurate or incomplete.

4 “(B) NO RELIANCE ON RESCINDED LET-
5 TER.—Paragraph (3) shall not apply to the any
6 actions taken after the date that a no-action
7 letter is rescinded.

8 “(C) RETROACTIVE MODIFICATION OR RE-
9 SCISSION.—A no-action letter may be modified
10 or rescinded retroactively only with respect to
11 one or more parties to the original inquiry and
12 only if the Director of FinCEN determines
13 that—

14 “(i) a fact or statement in the original
15 inquiry was materially inaccurate or in-
16 complete;

17 “(ii) the requestor failed to notify in
18 writing FinCEN of a material change to
19 any fact or statement in the original re-
20 quest; or

21 “(iii) a party to the original inquiry
22 acted in bad faith when relying upon the
23 no-action letter.

24 “(D) NOTICE OF MODIFICATION AND RE-
25 SCISSION.—In the case that the Director of

1 FinCEN modifies or rescinds a no-action letter
2 under this subsection, the Director of FinCEN
3 shall—

4 “(i) provide notice of such modifica-
5 tion or rescission;

6 “(ii) establish a reasonable time pe-
7 riod, of not less than 90 days, in which im-
8 pacted persons may update their anti-
9 money laundering programs or processes to
10 achieve compliance with the Bank Secrecy
11 Act, the USA PATRIOT Act, or any other
12 anti-money laundering and counter ter-
13 rorist financing law or regulation.

14 “(6) DEFINITIONS.—For purposes of this sub-
15 section:

16 “(A) BANK SECRECY ACT.—The term
17 ‘Bank Secrecy Act’ means—

18 “(i) section 21 of the Federal Deposit
19 Insurance Act;

20 “(ii) chapter 2 of title I of Public Law
21 91–508; and

22 “(iii) subchapter II of chapter 53 of
23 this title.

24 “(B) FEDERAL FUNCTIONAL REGU-
25 LATOR.—The term ‘Federal functional regu-

1 lator’ has the meaning given that term under
2 section 5312 of title 31, United States Code.

3 “(C) SMALL BUSINESS CONCERN.—The
4 term ‘small business concern’ has the meaning
5 given under section 3 of the Small Business
6 Act.”.

○