

AMENDMENT NO. 6377 Calendar No. \_\_\_\_\_

Purpose: To expand the scope and authorities of anti-money laundering safeguards under title 31, United States Code.

IN THE SENATE OF THE UNITED STATES—117th Cong., 2d Sess.

**H. R. 7900**

To authorize appropriations for fiscal year 2023 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe military personnel strengths for such fiscal year, and for other purposes.

Referred to the Committee on \_\_\_\_\_ and  
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT intended to be proposed by Mr. WHITEHOUSE  
(for himself and Mr. WICKER) to the amendment (No.  
5499) proposed by Mr. REED

Viz:

- 1 At the appropriate place, insert the following:
- 2 **SEC. \_\_\_\_\_, ANTI-MONEY LAUNDERING SAFEGUARDS RE-**
- 3 **GARDING GATEKEEPERS.**
- 4 (a) **SHORT TITLE.**—This section may be cited as the
- 5 “Establishing New Authorities for Business Laundering
- 6 and Enabling Risks to Security Act of 2022” or the
- 7 “ENABLERS Act of 2022”.
- 8 (b) **FINDINGS.**—Congress finds the following:

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

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

18          (3) In 2016, an FATF evaluation of the United  
19          States rated the United States as noncompliant with  
20          4 of the 40 recommendations of the FATF regard-  
21          ing combating money laundering and the financing  
22          of terrorism and proliferation. Of the 4 noncompli-  
23          ant ratings described in the preceding sentence, 3 of  
24          those ratings pertained to designated non-financial  
25          businesses and professions, including lawyers, ac-

1       countants, and trust and company service providers,  
2       and the fourth such rating pertained to transparency  
3       and the beneficial ownership of legal entities. The  
4       United States also received the lowest mark from  
5       the FATF for the effectiveness of the United States  
6       in combating the misuse of legal entities. The FATF  
7       evaluation listed, as a priority action, applying ap-  
8       propriate anti-money laundering and countering the  
9       financing of terrorism obligations “to lawyers, ac-  
10      countants, trust and company service providers  
11      (other than trust companies which are already cov-  
12      ered)” to improve the anti-money laundering and  
13      counter-terrorist financing regime in the United  
14      States.

15           (4) In line with the procedures of the FATF,  
16      members of the FATF are expected to address defi-  
17      ciencies in the regimes of those members not later  
18      than 3 years after adopting their mutual evaluation.  
19      In March 2020, the FATF published the “3rd En-  
20      hanced Follow-up Report & Technical Compliance  
21      Re-Rating” with respect to the United States, which  
22      continued to score the United States noncompliant  
23      with respect to the 4 recommendations described in  
24      paragraph (3).

1           (5) On January 1, 2021, the United States  
2 took steps to address the non-compliant rating of  
3 the United States with respect to the beneficial own-  
4 ership of legal entities through the enactment of the  
5 Corporate Transparency Act (title LXIV of Public  
6 Law 116-283), but, as of the date of enactment of  
7 this Act, Congress has yet to address the non-com-  
8 pliant rating of the United States with respect to  
9 designated non-financial businesses and professions.

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

16           (7) The Pandora Papers described how an ad-  
17 viser to the former Prime Minister of Malaysia re-  
18 portedly used affiliates of a United States law firm  
19 to assemble and consult a network of companies, de-  
20 spite the adviser fitting the “textbook definition” of  
21 a high-risk client. The adviser went on to use his  
22 companies to help steal \$4,500,000,000 from Malay-  
23 sia’s public investment fund in one of “the world’s  
24 biggest-ever financial frauds”, known as 1MDB.

1           (8) Russian oligarchs have used gatekeepers to  
2 move their money into the United States. For exam-  
3 ple, a gatekeeper formed a company in Delaware  
4 that reportedly owns a \$15,000,000 mansion in  
5 Washington, D.C., that is linked to one of Vladimir  
6 Putin's closest allies. Also reportedly connected to  
7 the oligarch is a \$14,000,000 townhouse in New  
8 York City owned by a separate Delaware company.

9           (9) On May 8, 2022, the Office of Foreign As-  
10 sets Control of the Department of the Treasury (re-  
11 ferred to in this subsection as "OFAC"), pursuant  
12 to Executive Order 14071 (87 Fed. Reg. 20999; re-  
13 lating to prohibiting new investment in and certain  
14 services to the Russian Federation in response to  
15 continued Russian Federation aggression), prohib-  
16 ited "the exportation, reexportation, sale, or supply,  
17 directly or indirectly, from the United States, or by  
18 a United States person, wherever located, of ac-  
19 counting, trust and corporate formation, or manage-  
20 ment consulting services to any person located in the  
21 Russian Federation."

22           (10) On June 30, 2022, OFAC blocked a trust  
23 holding more than \$1,000,000,000 linked to des-  
24 ignated Russian oligarch Suleiman Kerimov. These  
25 efforts revealed that Kerimov used a complex series

1 of legal structures and front persons to obscure his  
2 interest in Heritage Trust, the funds of which first  
3 entered the financial system of the United States  
4 through 2 foreign, Kerimov-controlled entities before  
5 the imposition of sanctions against him. The funds  
6 were subsequently invested in large public and pri-  
7 vate companies in the United States and managed  
8 by a series of investment firms and facilitators in  
9 the United States.

10 (11) The Pandora Papers uncovered more than  
11 200 United States-based trusts across 15 States  
12 that held assets of more than \$1,000,000,000, “in-  
13 cluding nearly 30 trusts that held assets linked to  
14 people or companies accused of fraud, bribery, or  
15 human rights abuses”. In particular, South Dakota,  
16 Nevada, Delaware, Florida, Wyoming, and New  
17 Hampshire have emerged as global hotspots for  
18 those seeking to hide their assets and minimize their  
19 tax burdens.

20 (12) In 2016, an investigator with the nonprofit  
21 organization Global Witness posed as an adviser to  
22 a corrupt African official and set up meetings with  
23 13 New York City law firms to discuss how to move  
24 suspect funds into the United States. Lawyers from  
25 all but 1 of the firms provided advice to the faux ad-

1 viser, including advice on how to utilize anonymous  
2 companies to obscure the true owner of the assets.  
3 Other suggestions included naming the lawyer as a  
4 trustee of an offshore trust in order to open a bank  
5 account and using the law firm's escrow account to  
6 receive payments.

7 (13) The autocratic Prime Minister of Iraqi  
8 Kurdistan, reportedly known for torturing and kill-  
9 ing journalists and critics, allegedly purchased a re-  
10 tail store valued at more than \$18,000,000 in  
11 Miami, Florida, with the assistance of a Pennsyl-  
12 vania-based law firm.

13 (14) Teodoro Obiang, the Vice President of  
14 Equatorial Guinea and son of the country's authori-  
15 tarian President, embezzled millions of dollars from  
16 his home country, which was then used to purchase  
17 luxury assets in the United States. Obiang relied on  
18 the assistance of 2 lawyers in the United States to  
19 move millions of dollars of suspect funds through  
20 United States banks. The lawyers incorporated 5  
21 shell companies in California and opened bank ac-  
22 counts associated with the companies for Obiang's  
23 personal use. The suspect funds were first wired to  
24 the lawyers' attorney-client and firm accounts, then  
25 transferred to the accounts of the shell companies.

1           (15) A consulting company in the United States  
2           reportedly made millions of dollars working for com-  
3           panies owned or partly owned by Isabel dos Santos,  
4           the eldest child of a former President of Angola.  
5           This included working with Angola's state oil com-  
6           pany when it was run by Isabel dos Santos and help-  
7           ing to "run a failing jewelry business acquired with  
8           Angolan money". In 2021, a Dutch tribunal found  
9           that Isabel dos Santos and her husband obtained a  
10          \$500,000,000 stake in the oil company through  
11          "grand corruption".

12          (16) In December 2021, the United States Gov-  
13          ernment issued a first-ever "United States Strategy  
14          on Countering Corruption", which includes "Curbing  
15          Illicit Finance" as a strategic pillar. An express line  
16          of effort to advance this strategic pillar states that:  
17          "Deficiencies in the U.S. regulatory framework  
18          mean various professionals and service providers—  
19          including lawyers, accountants, trust and company  
20          service providers, incorporators, and others willing to  
21          be hired as registered agents or who act as nominees  
22          to open and move funds through bank accounts—are  
23          not required to understand the nature or source of  
24          income of their clients or prospective clients. . . While  
25          U.S. law enforcement has increased its focus on

1 such facilitators, it is both difficult to prove 'intent  
2 and knowledge' that a facilitator was dealing with il-  
3 licit funds or bad actors, or that they should have  
4 known the same. Cognizant of such constraints, the  
5 Administration will consider additional authorities to  
6 cover key gatekeepers, working with the Congress as  
7 necessary to secure additional authorities'.

8 (17) This section, and the amendments made  
9 by this section, provide the authorities needed to re-  
10 quire that professional service providers that serve  
11 as key gatekeepers to the financial system of the  
12 United States adopt anti-money laundering proce-  
13 dures that can help detect and prevent the laun-  
14 dering of corrupt and other criminal funds into the  
15 United States. Absent such authorities, the United  
16 States Government will be unable to adequately pro-  
17 tect the financial system of the United States, iden-  
18 tify funds and assets that are the proceeds of cor-  
19 ruption and other crimes, support foreign states in  
20 their efforts to combat corruption and promote good  
21 governance, or maintain the role of the United  
22 States as a leader in international bodies that are  
23 committed to combating money laundering and cor-  
24 ruption.

25 (c) REQUIREMENTS FOR GATEKEEPERS.—

1           (1) IN GENERAL.—Section 5312(a)(2) of title  
2 31, United States Code, as amended by section  
3 6110(a) of the William M. (Mac) Thornberry Na-  
4 tional Defense Authorization Act for Fiscal Year  
5 2021 (Public Law 116–283), is amended—

6           (A) by redesignating subparagraphs (Z)  
7 and (AA) as subparagraphs (AA) and (BB), re-  
8 spectively; and

9           (B) by inserting after subparagraph (Y)  
10 the following:

11           “(Z) any person, excluding any govern-  
12 mental entity, employee, or agent, that provides  
13 to a third party—

14           “(i) a service described in section  
15 5337(a)(2);

16           “(ii) corporate or other legal entity ar-  
17 rangement, association, or formation serv-  
18 ices;

19           “(iii) trust services;

20           “(iv) third party payment services; or

21           “(v) legal or accounting services  
22 that—

23           “(I) involve financial activities  
24 that facilitate a service described in  
25 any of clauses (i) through (iv); and

1                   “(II) are not provided in ex-  
2                   change for direct compensation for  
3                   civil or criminal defense matters;”.

4                   (2) REQUIREMENTS FOR GATEKEEPERS.—Sub-  
5                   chapter II of chapter 53 of title 31, United States  
6                   Code, is amended by adding at the end the fol-  
7                   lowing:

8                   **“§ 5337. Requirements for gatekeepers**

9                   “(a) IN GENERAL.—

10                   “(1) IN GENERAL.—The Secretary of the  
11                   Treasury (referred to in this section as the ‘Sec-  
12                   retary’) shall, not later than 4 years after the date  
13                   of enactment of this section, issue regulations to—

14                   “(A) determine what persons fall within  
15                   the class of persons acting as described in sec-  
16                   tion 5312(a)(2)(Z); and

17                   “(B) prescribe appropriate requirements  
18                   under this subchapter for the persons described  
19                   in subparagraph (A).

20                   “(2) IDENTIFICATION OF PERSONS.—When de-  
21                   termining what persons fall within the class of per-  
22                   sons acting as described in section 5312(a)(2)(Z),  
23                   the Secretary of the Treasury shall consider, on a  
24                   risk basis—

1           “(A) any person involved in the provision  
2 of services to a third party regarding—

3           “(i) the formation or registration of a  
4 corporation, limited liability company,  
5 trust, foundation, limited liability partner-  
6 ship, partnership, or other similar entity;

7           “(ii) the acquisition or disposition of  
8 an interest in a corporation, limited liabil-  
9 ity company, trust, foundation, limited li-  
10 ability partnership, partnership, or other  
11 similar entity;

12           “(iii) the provision of a registered of-  
13 fice, an address or accommodation, cor-  
14 respondence, or an administrative address  
15 for a corporation, limited liability company,  
16 trust, foundation, limited liability partner-  
17 ship, partnership, or other similar entity;

18           “(iv) managing, advising, or con-  
19 sulting with respect to money or other as-  
20 sets;

21           “(v) the processing of payments;

22           “(vi) the provision of cash vault serv-  
23 ices;

24           “(vii) the wiring of money;

1           “(viii) the exchange of foreign cur-  
2           rency;

3           “(ix) the exchange of any digital cur-  
4           rency, digital asset, or other value that  
5           substitutes for currency; or

6           “(x) the sourcing, pooling, organiza-  
7           tion, or management of capital in associa-  
8           tion with the formation, operation, or man-  
9           agement of, or investment in, a corpora-  
10          tion, limited liability company, trust, foun-  
11          dation, limited liability partnership, part-  
12          nership, or other similar entity;

13          “(B) any person that, in connection with  
14          filing any return, directly or indirectly, on be-  
15          half of a foreign individual, trust, or fiduciary  
16          with respect to direct or indirect United States  
17          investment, transaction, trade or business, or  
18          similar activities—

19                 “(i) obtains or uses a preparer tax  
20                 identification number; or

21                 “(ii) would be required to use or ob-  
22                 tain a preparer tax identification number,  
23                 if that person were compensated for serv-  
24                 ices rendered;

1           “(C) any person providing a service to a  
2           third party by acting as, or arranging for an-  
3           other person to act as; a registered agent, trust-  
4           ee, director, secretary, nominee shareholder,  
5           partner of a company, partner of a partnership,  
6           or similar position with respect to a corpora-  
7           tion, limited liability company, trust, founda-  
8           tion, limited liability partnership, or other simi-  
9           lar activity; and

10           “(D) any service provider described in sub-  
11           paragraph (A), (B), or (C), wherever organized  
12           or doing business, that—

13                   “(i) is owned or controlled by a person  
14                   described in any such subparagraph;

15                   “(ii) acts as an agent of a person de-  
16                   scribed in any such subparagraph; or

17                   “(iii) is an instrumentality of a person  
18                   described in any such subparagraph.

19           “(3) SENSE OF CONGRESS.—It is the sense of  
20           Congress that, when issuing regulations under this  
21           subsection, the Secretary shall design those regula-  
22           tions to—

23                   “(A) minimize the burden of those regula-  
24                   tions and maximize the intended outcomes of

1 those regulations, as determined by the Sec-  
2 retary; and

3 “(B) avoid applying additional require-  
4 ments for persons that may fall within the class  
5 of persons described in section 5312(a)(2)(Z)  
6 but that are already, as determined by the Sec-  
7 retary, appropriately regulated under this sub-  
8 chapter.

9 “(b) ENFORCEMENT.—

10 “(1) RANDOM AUDITS.—Not later than 1 year  
11 after the date on which the Secretary issues the reg-  
12 ulations required under subsection (a), and on an  
13 ongoing basis thereafter, the Secretary shall conduct  
14 random audits of persons that fall within the class  
15 of persons described in section 5312(a)(2)(Z), in-  
16 cluding persons described in subsection (a)(2), in a  
17 manner that the Secretary determines appropriate,  
18 to assess compliance with the requirements of this  
19 section.

20 “(2) REPORTS.—The Secretary shall, not later  
21 than 180 days after the conclusion of any calendar  
22 year that begins after the date that is 1 year after  
23 the date on which the Secretary issues regulations  
24 pursuant to subsection (a), submit to the Committee  
25 on Banking, Housing, and Urban Affairs of the Sen-

1       ate and the Committee on Financial Services of the  
2       House of Representatives a report that—

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

6               “(B) includes recommendations for improv-  
7       ing the effectiveness of the requirements im-  
8       posed under this section on persons described in  
9       section 5312(a)(2)(Z), including persons de-  
10      scribed in subsection (a)(2).”.

11       (3) CONFORMING AMENDMENT.—The table of  
12      sections for subchapter II of chapter 53 of title 31,  
13      United States Code, is amended by inserting after  
14      the item relating to section 5336 the following:

“5337. Requirements for gatekeepers.”.

15       (4) USE OF TECHNOLOGY TO INCREASE EFFI-  
16      CIENCY AND ACCURACY OF INFORMATION.—The  
17      Secretary of the Treasury shall promote—

18               (A) the integrity of information collected  
19      under this section and the amendments made  
20      by this section; and

21               (B) if applicable, the timely and efficient  
22      collection of information by persons described in  
23      section 5312(a)(2)(Z) of title 31, United States  
24      Code, as so redesignated by this subsection, in-  
25      cluding persons described in subsection (a)(2)

1 of section 5337 of that title, as added by this  
2 subsection, by exploring the use of technologies  
3 to—

4 (i) effectuate the collection, standard-  
5 ization, transmission, and sharing of infor-  
6 mation that the Secretary may require  
7 under such section 5337; and

8 (ii) minimize the burdens associated  
9 with the collection, standardization, trans-  
10 mission, and sharing of information that  
11 the Secretary may require under such sec-  
12 tion 5337.

13 (5) EFFECTIVE DATE.—This subsection, and  
14 the amendments made by this subsection, shall take  
15 effect on the effective date of the regulations issued  
16 by the Secretary of the Treasury pursuant to section  
17 5337(a) of title 31, United States Code, as added by  
18 this subsection.

19 (d) GATEKEEPERS STRATEGY.—Section 262 of the  
20 Countering Russian Influence in Europe and Eurasia Act  
21 of 2017 (title II of Public Law 115–44) is amended by  
22 adding at the end the following:

23 “(11) GATEKEEPER STRATEGY.—

24 “(A) IN GENERAL.—A description of ef-  
25 forts to impose sufficient anti-money laundering

1           safeguards on designated non-financial busi-  
2           nesses and professions, as that term is defined  
3           by the Financial Action Task Force.

4           “(B) UPDATE.—If, as of the date of enact-  
5           ment of this paragraph, the updates to the na-  
6           tional strategy required under section 261 have  
7           been submitted to appropriate congressional  
8           committees, the President, acting through the  
9           Secretary of the Treasury, shall, not later than  
10          1 year after that date of enactment, submit to  
11          the appropriate congressional committees an  
12          additional update to the national strategy with  
13          respect to the addition of this paragraph.”

14          (e) AGENCY COORDINATION AND COLLABORATION.—  
15          The Secretary of the Treasury shall, to the greatest extent  
16          practicable—

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

19                (2) work collaboratively with the governmental  
20                agencies described in paragraph (1) to implement  
21                and enforce the regulations prescribed under this  
22                section, and the amendments made by this section,  
23                by—

24                        (A) using the Domestic Liaisons appointed  
25                        under section 310(f) of title 31, United States

1 Code, to share information regarding changes  
2 effectuated by this section and the amendments  
3 made by this section;

4 (B) using the Domestic Liaisons appointed  
5 under section 310(f) of title 31, United States  
6 Code, to advise on necessary revisions to State,  
7 local, territorial, and Tribal standards with re-  
8 spect to relevant professional licensure;

9 (C) engaging with various persons de-  
10 scribed in section 5312(a)(2)(Z) of title 31,  
11 United States Code, as so redesignated by sub-  
12 section (e) (including persons described in sec-  
13 tion 5337(a)(2) of that title, as added by sub-  
14 section (e)), as appropriate, including with re-  
15 spect to information sharing and data sharing;  
16 and

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

22 (f) REPORT.—Not later than 3 years after the date  
23 of enactment of this Act, the Secretary of the Treasury  
24 shall submit to the Committee on Banking, Housing, and  
25 Urban Affairs of the Senate and the Committee on Finan-

1 cial Services of the House of Representatives a report  
2 that—

3           (1) describes any findings of the Secretary with  
4           respect to technologies that may effectuate the col-  
5           lection, standardization, transmission, and sharing  
6           of information that the Secretary may require under  
7           section 5337 of title 31, United States Code, as  
8           added by subsection (c); and

9           (2) makes recommendations for implementing  
10          the technologies described in paragraph (1).

11          (g) AUTHORIZATION OF APPROPRIATIONS.—In addi-  
12          tion to amounts otherwise available for such purposes,  
13          there are authorized to be appropriated to the Secretary  
14          of the Treasury, without fiscal year limitation, such sums  
15          as may be necessary, to remain available until expended,  
16          exclusively for the purpose of carrying out this section and  
17          the amendments made by this section, including for—

18                 (1) the appointment of personnel;

19                 (2) the exploration and adoption of information  
20                 technology to effectively support enforcement activi-  
21                 ties or activities described in subsection (c) and the  
22                 amendments made by that subsection;

23                 (3) audit, investigatory, and review activities,  
24                 including those described in subsection (c) and the  
25                 amendments made by that subsection;

1           (4) agency coordination and collaboration ef-  
2           forts and activities described in subsection (e);

3           (5) voluntary compliance programs;

4           (6) compiling the reports required under—

5                 (A) subsection (e);

6                 (B) the amendments made by subsection  
7           (e); and

8                 (C) subsection (f); and

9           (7) allocating amounts to State, local, terri-  
10          torial, and Tribal jurisdictions to pay reasonable  
11          costs relating to compliance with, or enforcement of,  
12          the requirements of this section and the amend-  
13          ments made by this section.

14          (h) **RULE OF CONSTRUCTION.**—Nothing in this sec-  
15          tion, or the amendments made by this section, may be con-  
16          strued to be limited or impeded by any obligations under  
17          State, local, territorial, or Tribal laws or rules concerning  
18          privilege, ethics, confidentiality, privacy, or related mat-  
19          ters.

