

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.

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## IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 20, 2018

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

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## 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.”.

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