

**COMBATING ILLICIT FINANCING BY ANONYMOUS
SHELL COMPANIES THROUGH THE COLLECTION
OF BENEFICIAL OWNERSHIP INFORMATION**

HEARING
BEFORE THE
COMMITTEE ON
BANKING, HOUSING, AND URBAN AFFAIRS
UNITED STATES SENATE
ONE HUNDRED SIXTEENTH CONGRESS

FIRST SESSION

ON

EXAMINING HOW REQUIRING BENEFICIAL OWNERSHIP INFORMATION
COLLECTION AT THE TIME OF COMPANY FORMATION CAN PROVIDE
LAW ENFORCEMENT WITH KEY DETAILS ABOUT THE ACTUAL OWN-
ERS OF LEGAL ECONOMIC ENTITIES, AND TO EVALUATE WHAT
STEPS THE U.S. SHOULD TAKE TO MODERNIZE ITS BENEFICIAL OWN-
ERSHIP POLICY REGIME AND STRENGTHEN ITS ENFORCEMENT

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COMBATING ILLICIT FINANCING BY ANONYMOUS SHELL COMPANIES THROUGH THE COLLECTION OF BENEFICIAL OWNERSHIP INFORMATION

TUESDAY, MAY 21, 2019

U.S. SENATE,
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,
Washington, DC.

The Committee met at 10:04 a.m., in room SD-538, Dirksen Senate Office Building, Hon. Mike Crapo, Chairman of the Committee, presiding.

OPENING STATEMENT OF CHAIRMAN MIKE CRAPO

Chairman CRAPO. This hearing will come to order. Welcome back to our panel of witnesses from our last hearing in November.

The Committee will hear from today's witnesses about the need to deter money laundering and the financing of terrorism through the use of front companies, shell companies, shelf companies, opaque nominees, and other means to conceal and disguise the true beneficial owners of property and other assets.

The purpose of today's hearing is to examine the difficult issues surrounding the need for and the manner of collecting what is known as "beneficial ownership" information from such anonymous corporate utilities.

This hearing, from the perspective of law enforcement and a regulator, will be the first of two on the subject, with a second hearing focusing on various industry perspectives.

Clearly, the vast majority of anonymous corporate vehicles used today serve legitimate purposes and are formed with no criminal intent.

Therefore, we must bear in mind the amount of burden which may befall an overwhelming majority of small business owners.

Yet over the years, law enforcement, the GAO, congressional committees in both chambers, and U.S.-led international bodies, like the Financial Action Task Force, have identified not only a high potential for their abuse, but have also identified far too many open investigations involving anonymous shells connected to money laundering, terrorist financing, corruption, weapons proliferation, sanctions evasion, and a host of other threats.

High-profile leaks of serious tax abuses, such as found by investigative journalists in the Panama Papers and Paradise Papers, have further identified the use of anonymous corporate vehicles to accomplish illicit global financial activities.

I applaud the work of FinCEN in developing its customer due diligence, or CDD, rule that went into effect a year ago this month.

FinCEN engaged for years with industry and other stakeholders to issue a rule that requires certain covered financial institutions to collect information on identifiable people who actually own, control and profit from their corporations.

The rule is an achievement in terms of obtaining some transparency into corporate ownership to protect the U.S. financial system from those who seek to abuse it.

But the rule's strengths and weaknesses are a product of its design to focus collection requirements for beneficial ownership information only on certain financial institutions.

The rule mainly helps financial institutions to mitigate risk, and the information received can provide some help to assist law enforcement in identifying criminal assets, accounts, and national security threats from those who use the financial system.

The rule, however, does not reach all of the general population of millions of new corporate vehicles formed each year to operate in this country, nor especially those new corporations which are exported overseas that will never see an American financial institution, but still benefit from an American address.

Working in partnership with our Government's law enforcement and regulatory agencies, for the nearly 50 years since enactment of the Bank Secrecy Act, the U.S. financial industry is on the front lines of preserving the integrity of the U.S. and international financial system, and I see no changing that anytime soon.

The fine efforts of our financial institutions should not be in vain to the extent that they can address only part of the larger beneficial ownership problem.

We will hear today some legitimate needs of law enforcement for a wider collection of more useful beneficial ownership information and for a place to store it all.

From our regulator, we will learn about how that information should be stored, by whom, and under what conditions the privacy of that information is protected.

I am confident that there are a number of solutions to this problem if Congress can work together, in the manner of FinCEN, to identify the parameters of the problem and take into account the consequences that such a daunting collection of information would have on all stakeholders.

Senator Brown.

OPENING STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Mr. Chairman. Thanks to the panel today for your public service. Thanks for joining us again.

I appreciate Chairman Crapo calling this important hearing as a follow-up to previous hearings in the Committee on Bank Secrecy Act and anti-money-laundering reform efforts.

This weekend we got a reminder of how important these issues are, courtesy of good, aggressive journalism by the *New York Times* that money-laundering specialists working for Deutsche Bank had repeatedly recommended the filing of suspicious activity reports on transactions by, we believe, Candidate Trump, President Trump, and Jared Kushner's organizations, including transactions with ac-

tors overseas. This comes on the heels of other regulators in the Trump administration weakening regulations on foreign banks, including on Deutsche Bank.

Those experts at Deutsche apparently were overruled by senior Private Wealth Division officials. State regulators or House Financial Services Committee subpoenas, no matter how aggressive or effective, those subpoenas to Deutsche Bank, none of them can get at suspicious activity reports that are never filed, obviously, that are effectively quashed within the bank, never conveyed to the experts at FinCEN in the Treasury Department and the financial watchdogs that are supposed to assess these transactions.

Compliance officials described a pattern at Deutsche of efforts like that to reject SAR filings for lucrative clients. We need to get to the bottom of what happened here. Everyone has to follow anti-money-laundering rules and laws, even Deutsche Bank, even U.S. regulators who tend to cover for Deutsche Bank. You do not get an exemption if you have a rich and powerful client. We have to hold financial institutions accountable if they break the rules. We have written to Deutsche Bank's CEO making that clear and demanding answers.

While banks obviously have a key monitoring role, it is important that we require companies to provide basic information on their ownership when they are formed. In today's hearing, the first of two, we will focus on the transparency, anticorruption, and anti-illicit-financing benefits of requiring U.S. firms to provide this basic beneficial ownership information.

This information would help address a longstanding problem for U.S. law enforcement in investigations of cases involving drug trafficking, counterterrorism, money laundering, Medicare and Medicaid fraud, human trafficking, and other crimes.

Criminals, terrorists, and even rogue Nations use layer upon layer of shell companies to disguise and launder illicit funds that are the proceeds of these crimes. That makes it harder to hold bad actors accountable.

Under current law, by the time law enforcement is able to actually go through the grand jury and subpoena process and pierce the corporate veil to discover who is behind these shell companies, the criminals—and the proceeds of their crimes—are long gone, often overseas, often out of reach of U.S. law enforcement.

I am pleased we will hear Administration views, including from key officials from the FBI and FinCEN, on the importance of finally—after decades of criticism that the U.S. is a haven for anonymous shell companies—changing our laws to address this issue.

Chairman Crapo and I agree: We must move forward to require complete ownership information—not front men, not those forming companies on behalf of those who will pull the strings from behind the curtain—but the actual owners of companies whom law enforcement can go to if the entity becomes involved in criminal activity.

We can do this simply and efficiently and effectively, without unduly burdening small business, by requiring that ownership information be provided by all companies when they are formed, and then creating a database within FinCEN, controlled under tight privacy laws, accessible to law enforcement.

None of the crimes we will discuss today—drug trafficking, human trafficking, Medicare fraud, and money laundering—are victimless crimes.

For example, money laundering for drug cartels has a direct line to the opioid crisis in Ohio. Eleven people in my State die every day from addiction and overdose. Sinaloa cartel actors have been destroying thousands of families around this country.

Human traffickers who exploit the misery of runaways in truck stops at the intersections of major interstate highways, especially in Toledo, Ohio, and across the country use the financial system to launder their profits.

Medicare fraudsters cost the U.S. Government and private parties over \$2.6 billion in 2017, according to the HHS Inspector General.

That is why anti-money-laundering and beneficial ownership laws are so critical: They protect the integrity of our financial system; they provide critical intelligence to law enforcement to combat crime.

Updating and strengthening our AML and beneficial ownership laws will give us a 21st century system to combat these crimes. I guarantee you criminals have long been revising, adjusting, and amending their tactics to circumvent them, staying one step ahead of the sheriff. We need to do our job.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Senator Brown.

Director Blanco, we will begin with your testimony as head of FinCEN and administrator of the Bank Secrecy Act.

Next we will turn to Special Agent D'Antuono for his statement on behalf of the FBI's Financial Crimes Section and conclude with Senior Deputy Comptroller of the Currency Gardineer for her statement on behalf of the OCC.

I want to thank you all again for your written testimony. It is very helpful to us and will be made a part of the record.

The Committee has also received several written statements in support of today's proceeding, and I would like to make them a part of today's record as well. The five statements submitted are from the American Bankers Association, the Consumer Bankers Association, the Independent Community Bankers of America, the Credit Union National Association, and the Fraternal Order of Police. Is there any objection to making these a part of the record?

[No response.]

Chairman CRAPO. Seeing none, so ordered.

Finally, I ask our witnesses to remember to honor the 5-minute rule for your oral testimony so that each Senator has an opportunity to ask you questions, and I remind our Senators that we, too, have a 5-minute rule that we intend to stick to.

With that, Director Blanco, please begin your statement.

STATEMENT OF KENNETH A. BLANCO, DIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN), DEPARTMENT OF TREASURY

Mr. BLANCO. Thank you, Chairman Crapo, Ranking Member Brown, Members of the Committee. Thank you for having me here today to discuss collecting beneficial ownership information at the

corporate formation stage in order to preserve our national security and protect our people from harm.

Stories of ordinary people, taxpayers victimized by criminals exploiting and hiding behind the secrecy of shell companies are all too common. Opaque corporate structures such as shell corporations facilitate anonymous access to the financial system for every type of criminal and bad actor, including terrorists.

A Russian arms dealer named the “The Merchant of Death”, who sold weapons to terrorist organizations intent on killing Americans. Executives from a supposed investment group that defrauded more than 8,000 investors, most of them elderly, of over \$1 billion. A New York company used to conceal Iranian Government ownership of a skyscraper in the heart of Manhattan, providing millions of dollars for Iranian proliferation and terror. A corrupt Venezuelan treasurer who received over \$1 billion in bribes.

These crimes are very different, as are the dangers they pose and the damage they cause. The defendants and bad actors come from every walk of life and every corner of the globe. The victims, both direct and indirect, include Americans exposed to terrorist acts; elderly people losing their life savings; an entire country like Venezuela driven into devastation and hunger by despots through corruption.

All these crimes have one thing in common: shell corporations were used to hide, support, prolong, and foster the crimes and bad acts they committed. These criminal conspiracies thrived at least in part because these wrongdoers could hide their identities and their illicit assets behind the secrecy of shell companies. Had beneficial ownership information been available and more quickly accessible to law enforcement and others, it would have been harder and more costly for them to hide what they were doing. Law enforcement could have been more effective in preventing these crimes from occurring in the first place or could have intercepted these crimes sooner and prevented the harm from spreading.

One of the most effective ways to deter criminals and to stem the harms that flow from their actions—including harm to American citizens and our financial system—is to follow the money, expose illicit activity, and prevent networks from operating undetected or secretly benefiting from the enormous power of our economy and our financial system.

To determine the true owner of a shell company or front company in the United States today requires law enforcement to undertake a time-consuming and resource-intensive process. It often requires human source information, grand jury subpoenas, surveillance operations, witness interviews, search warrants, and foreign legal assistance requests to get behind the outward-facing structure of these shell companies. The time and resources currently devoted to this could instead be used to further other important and necessary aspects of the investigation.

As cross-border crime continues to proliferate, our efforts to combat the most sophisticated white-collar and cybercriminals require law enforcement to work with our partners all over the world to seek the evidence and witnesses necessary to build their cases. This, of course, is particularly important in cases where the overseas actors are targeting victims in the United States or targeting

our financial system and industry. We need our foreign partners to have important information in a timely way in order to stop crime and arrest criminals overseas to prevent harm caused to us here at home.

But because identifying beneficial ownership information in the United States can only be achieved today through a long, drawn-out process with many hoops, twists, and turns, our partners overseas are sometimes dissuaded from working with us to our peril.

As more and more of our allies begin to collect beneficial ownership information at the corporate stage in their countries and make it accessible to law enforcement, the U.S. risks becoming a safe haven for bad actors looking to hide their assets. As Americans, we have always led in the areas of rule of law, security, and law enforcement. Our failure to lead here is perplexing to the global community that has come to rely on our leadership and our experience.

Treasury is committed to working with Congress on developing a bipartisan solution to collecting the information and critical information to protect our national security and our Nation.

In conclusion, the time has come to address this important issue. It is critical for the security of our Nation and the citizens that Congress act to eliminate one of the most useful tools used for criminals to commit their crimes, hide their proceeds, and subvert law enforcement.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you, Mr. Blanco.

Mr. D'Antuono.

STATEMENT OF STEVEN M. D'ANTUONO, ACTING DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

Mr. D'ANTUONO. Thank you, Chairman Crapo, Ranking Member Brown, and Members of the Committee. I appreciate the opportunity to appear before you to discuss the use of shell companies in illicit finance.

You will hear from my colleagues about the lack of transparency they see in their respective departments regarding corporate formation, shells, trusts, and real estate. I am here to highlight the impact on law enforcement and how the lack of transparency hampers our investigations.

The Financial Action Task Force, known as "FATF", recently identified the lack of beneficial ownership law as a major vulnerability in the United States' fight against illicit finance. Our foreign partners have taken steps to address this issue in their jurisdictions; whereas, the lack of transparency in the U.S. continues to attract criminals looking to take advantage of our financial system. This gap in the U.S. law continues to be a point of frustration for domestic and foreign law enforcement as well as our financial institution partners.

The FBI has countless investigations where criminals use shell and front companies to conceal their nefarious activities and true identities. Corporate ownership transparency is crucial to the FBI's ability to identify and disrupt illegal activities across a variety of

threats, such as money laundering, fraud, human trafficking, narcotics trafficking, terrorist financing, and counterproliferation.

Just last Wednesday, a Federal grand jury returned a 34-count indictment regarding a Texas man's alleged use of 116 shell companies, committing a \$98 million fraud scheme. The defendant used those shell companies to open bank accounts, concealing his connection to the widespread fraud. A beneficial ownership repository would have helped the case agents and analysts peel back the layers of the shell companies and quite possibly could have reduced victim losses.

The lack of transparency often causes dead ends or long delays in investigations. Case agents can spend months or even years uncovering the beneficial owners of corporate entities. Currently banks are required to obtain beneficial ownership of qualifying companies opening bank accounts under the CDD rule. However, the burden is on the banks to verify the information provided.

Also, some financial institutions conveyed to me there is nothing to stop the company from going to another bank and providing them with different ownership information.

Furthermore, if the company is foreign based, a case agent must work with the Department of Justice on a Mutual Legal Assistance Treaty, or MLAT, request to get the records. That process takes months to even years for a recipient country to provide the records, and ultimately, if the recipient country does not reply to the request, a case can be dead in the water. If the response reveals an additional shell company is the owner, the whole request process starts anew. And if the investigation is being done by one of our local, State, or tribal partners, they may not even have access to the MLAT process to request the foreign records.

I often speak to colleagues in Western Europe and the Five Eyes about this very topic and the impressions of our legal structures. While working with our foreign partners, one of the most common questions we get is: Can you get me information on this Delaware company? Unfortunately, the answer is usually no because the ownership information is obscured.

Our foreign partners are starting to act in their territories. The EU Parliament enacted legislation requiring member countries to implement beneficial ownership laws by 2021. Several members have already implemented these laws. The U.K. passed a law in 2016 requiring beneficial ownership of corporations, property, and land be listed in a public registry.

The U.K. has additional measures addressing trusts in a non-public registry and by 2021 is planning to add a new registry for overseas companies owning property and land in the U.K. This corporate registry has been successfully used by regulators and law enforcement as well as financial institutions conducting due diligence of customers. And when I ask our U.K. law enforcement partners if the new register is helpful to them, the answer is a resounding yes.

The protection of the U.S. financial system has been one of the FBI's top priorities since our inception over a century ago. Increased transparency of beneficial ownership will assist law enforcement in every category of case we investigate, from national security to criminal matters. In order to remain effective at home

and abroad, law enforcement needs an efficient method to identify corporate owners, property owners, and trust beneficiaries. Legislation closing these gaps will be welcomed by law enforcement and a step in the right direction providing us yet another tool in our toolbox to use to protect the American people.

I thank you for this opportunity to speak today, and I look forward to answering the Committee's questions. Thank you.

Chairman CRAPO. Thank you, Mr. D'Antuono.

Ms. Gardineer.

STATEMENT OF GROVETTA N. GARDINEER, SENIOR DEPUTY COMPTROLLER FOR BANK SUPERVISION POLICY AND COMMUNITY AFFAIRS, OFFICE OF THE COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

Ms. GARDINEER. Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for the opportunity to appear today to discuss the threats posed to our financial system by the use of shell companies and some methods to better identify the true beneficial owner of assets. The Office of the Comptroller of the Currency welcomes the congressional focus on protecting the financial system from misuse through effective implementation of the beneficial ownership legal regime. We support legislative action to improve the regime's effectiveness. One suggestion is for Congress to establish a consistent, nationwide requirement that legal entities provide and update accurate beneficial ownership information. Such a requirement would ensure that financial institutions have a resource against which they can verify the beneficial ownership data provided when a company opens a bank account. Alternatively, Congress could consider creating a centralized database for the maintenance of the beneficial ownership information.

Today's beneficial ownership requirements are part of the customer due diligence rule issued by FinCEN in 2016. That rule became effective in May of 2018. It requires banks to establish and maintain policies and procedures to identify the beneficial owners who own 25 percent or more of a legal entity customer, as well as the individual who controls the legal entity, when that customer opens a new account.

Banks must also verify the identity of each named owner according to risk-based procedures. Further, the rule requires banks to conduct ongoing monitoring and incorporate customer information into systems for identifying suspicious transactions and on a risk basis to maintain and update customer information.

The OCC examines national banks, Federal savings associations, and Federal branches of foreign banking organizations to ensure compliance with the requirements of the rule.

The experience our examiners have gained from their review of bank compliance with these requirements has provided the OCC with unique insights into current challenges banks face in meeting the goals of the rule. This perspective has helped us develop recommendations to strengthen the beneficial ownership regime for our financial system. Through our examination process, the OCC has found that banks have generally implemented appropriate policies and procedures for identifying beneficial ownership and

verifying their identities in compliance with the rule's requirements.

However, our examinations also have identified several challenges the industry faces in achieving the rule's objectives. My written statement discusses several challenges. However, the most significant obstacle we have observed is the absence of reliable sources against which a bank can independently verify the accuracy of the beneficial ownership information provided when a legal entity opens an account.

Unfortunately, many States do not collect this information at the time a company is formed or in subsequent filings or reports. Where this information is collected, there is no consistency in the information captured or maintained.

To address these challenges, the OCC supports congressional action to require legal entities to provide consistent information when they are formed or registered. We recommend that all legal entities be required to provide their ownership information as a condition of having a bank account in the United States. They also should be required to periodically update their information to ensure that it remains accurate. The data should be collected in a consistent format to ensure completeness, regardless of where a legal entity is formed. Finally, individuals providing beneficial ownership information should be held accountable for making false statements.

While we support a requirement for legal entities to provide consistent data, Congress alternatively could consider the creation of a centralized database to house beneficial ownership information. Providing a reliable source for banks to verify the information is critical to meeting the objectives of the beneficial ownership rule.

Regardless of how information is captured, we are keenly aware of the importance of establishing a balance between the need for this information and important data protection and privacy rights. Congress could consider reviewing best practices from other jurisdictions that use corporate registries to collect and maintain beneficial ownership information and consider how these could apply to U.S. needs. Careful consideration should be given to implementing security measures governing access to the data. Providing a better source for banks to verify the accuracy of the beneficial ownership data they will receive will allow them to better comply with the requirements and intent of the beneficial ownership rule.

Thank you again for inviting me today, and I look forward to your questions.

Chairman CRAPO. Thank you very much, Ms. Gardineer.

Mr. Blanco, I will ask my first question to you. It basically is—succinctly, if you can—what exactly should the United States do? What should Congress do in terms of creating a beneficial ownership regime?

Mr. BLANCO. Thank you for that question, Chairman. Look, I think whatever regime, it should be simple; it should be concise. For example, if you mirror what the CDD does, it is six questions, seven questions at best. It is the information. It is very basic information: date of birth, address, phone number, who are the beneficial owners. Very simple, and we can make it work. I think that is the best advice I can give you.

Chairman CRAPO. And who should collect that data?

Mr. BLANCO. I think that the consensus here is that data needs to be collected in one place, and wherever you put it, as long as you resource that place correctly, whether it is at FinCEN or some other location, I think that is going to be essential to law enforcement, that you can go one-stop shopping, that you can go to one place, and as long as it is appropriately protected, that it is guarded, that there is a mechanism for people who should be looking at it, and there is a mechanism for those people who abuse it or go into it, and there is punishment at the end of the day. Those are critical. It is important information that law enforcement needs to have, and we have an obligation to secure it.

Chairman CRAPO. Well, thank you. And this question would be to each of you, and, again, since time is brief for our questions, please be as succinct as you can. But there has been some suggestion—as an example, the Consumer Bankers Association and the material that they submitted for today’s record recommends that the responsibility for collection of the beneficial ownership information be shifted from the banks to FinCEN. What do you each think of that proposal?

Mr. BLANCO. Chairman, when you say “shifted,” what does that mean? Because the CDD rule is in place, and I think the banks are collecting that information. And, by the way, even before the CDD rule was passed, many banks were collecting that information regardless of the CDD rule because it was helping them in their risk-based approach at the end of the day.

Chairman CRAPO. So you say leave it the way it is but store it?

Mr. BLANCO. I think the banks should collect it, and I think we should be collecting it at the point of incorporation. I think you have both of those models.

Chairman CRAPO. But I think I heard you say a centralized source—I do not know who that would be—should be created by Congress.

Mr. BLANCO. Well, yes, I mean, you have to have one location where you get the beneficial ownership information at incorporation stage where you can find it. Whether it is at FinCEN or some other place, law enforcement needs to be able to know where to go with the appropriate protections—right?—and the way to keep it safe, centralized location.

One of the problems, Senator, with the CDD rule that is collected by the banks, it is how many hundreds of thousands of banks, and law enforcement cannot go to one place to get it, right?

Chairman CRAPO. Understood.

Mr. BLANCO. So you want a central location.

Chairman CRAPO. OK. So, Mr. D’Antuono and Ms. Gardineer, you have each got about a minute to respond.

Ms. GARDINEER. Senator, the banks do, in fact, collect the customer due diligence information. It is vital to helping them establish a strong BSA platform, and it helps in their risk-based approach to understand who their customers are.

The issue and the gap that we have seen is that once they collect that information about beneficial ownership at account opening, there is no source for them to go to to verify the accuracy and the completeness and the truthfulness of that information. So what we are suggesting is that there be a centralized place where that infor-

mation is collected, either at formation by the States or in a centralized database at a national level that would allow both the banks to verify the accuracy of the information but it would allow a one-stop shop for law enforcement also to collect that information.

Chairman CRAPO. Thank you.

Mr. D'Antuono.

Mr. D'ANTUONO. Yes, sir. And from a law enforcement perspective, a central repository, some place we can go, a one-stop shop, as Ken put it, is extremely helpful. Right now there are, you know, 50 different States that we have to go through for corporation information if they even keep what they—or as robust of a system, they are all different. So for us to go to one location, it is going to be quicker and faster, less time-consuming for us than the process that we have right now. FinCEN does a very nice job with the BSA filings as the repository for them. It is a system that we know in law enforcement. We have a portal. We have access to the data. It is something that is easy. They are a very good partner with us as well. So, you know, from a law enforcement perspective, FinCEN is a good place to store a lot of this information.

Chairman CRAPO. So I am hearing consensus that we need a centralized beneficial ownership collection system. I have got 6 seconds left. Can you each give me your—and I heard Mr. D'Antuono suggest that he thinks FinCEN is a good place for that. Any disagreement with that?

Mr. BLANCO. The only caveat, as long as we are resourced appropriately to take in that new data, and the way we take it in, depending on what you are asking for, right? Because if you are asking for a lot of bells and whistles, it is going to cost more. So I just want to make sure that it is resourced.

Ms. GARDINEER. And the OCC supports FinCEN or any entity that could keep the information safe, but provide that access.

Chairman CRAPO. All right. Thank you.

Senator Brown.

Senator BROWN. Thanks, Mr. Chairman.

Mr. Blanco, I will start with you. I noted in my opening statement the New York reports Deutsche Bank's Private Wealth Division, sidestepping standard procedures, quashed suspicious activity reports that senior compliance officials had prepared on business activities of the Trump and the Kushner organizations. Were you aware of those activities at Deutsche?

Mr. BLANCO. Senator, because of the rules and the procedures at Treasury, just like I had at the Department of Justice, I cannot comment on any—whether I knew about it, whether there was an open investigation, whether we do not have an open investigation. All I can tell you is that the information is out there, and we will look at whatever information is appropriate, if there is something appropriate there.

Senator BROWN. So does that mean you are planning to look into it?

Mr. BLANCO. Senator, it is out there. Investigative agencies can look at it if that is what they want to do. I am not telling you I am going to look at it. I am not telling you I am looking at it now. I am not telling you I will not look at it.

Senator BROWN. If the information is out there, why would you not look at it?

Mr. BLANCO. I have read the information, Senator, and will take whatever appropriate action needs to be taken, if action needs to be taken at all. I am not going to say whether we are doing something or not. I think that would be inappropriate. I think that is unfair to the individuals. I think it is unfair to the institution. And, frankly, at the end of the day, I think whether we are looking at it or not—

Senator BROWN. How would you expect a complex bank like Deutsche Bank, which has been found in violation of U.S. anti-money-laundering laws, which has a pretty sordid past—of all the large financial institutions in the world, this one is certainly near the top in terms of misbehavior, and our own regulators have found them that, and our own regulators are now sort of it is OK, I guess. But how do you handle these politically exposed persons? I mean, what should you be doing? What should they be doing?

Mr. BLANCO. Well, I think every financial institution needs to follow the rules and the obligations of BSA and what we expect for them. It is a risk-based approach, and I think that there are certain—it depends on who their client is and how well they know their client, and all those things come into play. But, you know, we have in the past talked about politically exposed individuals, PEPs, and we have an advisory out on PEPs, and we expect that there should be some scrutiny or heightened scrutiny with respect to individuals—

Senator BROWN. So that—sorry to interrupt. That means that if a senior—if a bank is serving a major client politically exposed and the bank officials reject SAR filings recommended by senior compliance staff, you would consider that wrong?

Mr. BLANCO. No, Senator. It depends on the institution. It depends on whether—

Senator BROWN. It depends on if he is running for President or not?

Mr. BLANCO. Well, I got to tell you, it really depends on whether or not they know their customer and whether or not they know what the information—the information that they are receiving—

Senator BROWN. So if they know their customer—OK. I will—

Mr. BLANCO. Senator, it would be—everything is fact-specific, right? At the end of the day, it could be quite appropriate, depending, and I do not know the facts in this case. I have no idea. But it depends on the facts of the case. It could very well be that the bank felt comfortable that the information that they were receiving, that they knew their customer, they knew why they were doing it, and they felt comfortable taking that risk. Each bank is different, and each case is different. That is why—

Senator BROWN. I will just leave it at this: I would assume that because this bank has had a history of violations, that you would look a little bit more aggressively and critically at what—at least the advice from many on this Committee would be for you to do that when banks have the reputation that Deutsche Bank has. This is not a community bank in Sycamore, Ohio.

Mr. BLANCO. Deutsche Bank aside, because I do not want to comment on Deutsche Bank or any particular bank, I can tell you we

take all factors into consumer when we decide that we are going to look at them, whether civilly or look at them in any other way. You know, we take a look at all the factors.

Senator BROWN. Understand many other regulators in this new Trump administration are seeming to help Deutsche Bank on other issues. Understand that as you make these decisions. OK.

I have questions real quick for Mr. D'Antuono. You have been working for years to secure beneficial ownership information from companies at their formation. Thank you for that. Describe the urgency of the threat to the U.S. financial system. And as you do that, would you work in a concrete sense of the ways you have seen bad actors use shell companies?

Mr. D'ANTUONO. Yes, sir. I have got 30 seconds to do this, so—

Senator BROWN. Well, take as long as you want, actually. I mean, within limits, Mr. Chairman, of course.

Mr. D'ANTUONO. So money laundering just in general is a huge issue, as I testified before this Committee, you know, \$2 trillion globally, \$300 billion at least in the United States, and that is just a small estimate, I think. So beneficial ownership goes hand in hand with money laundering and the ability for criminals to abscond with the proceeds of the crime.

As you stated in your statement before, money laundering is not a victimless crime. It is definitely something that people do not see when they are doing money laundering that there is not a victim at the end of the rainbow. There is. It could be an elderly person. It could be anyone. So it is extremely important for us to dive into the money-laundering issues, and beneficial ownership is extremely time-consuming for us to unravel the shells, peel back that onion, if you will. I will be using that a lot as a reference. In an onion, there are a lot of layers. As we peel back each one, we see more and more layers, and that takes time.

So it is extremely important. We have cases that we put in the statement and I put in my statement that it takes us 6 months to a year or longer to do because we do not have the information that is readily available for us. We can get it done, but sometimes we hit the hurdle that we cannot jump over.

Senator BROWN. Thank you.

Chairman CRAPO. Thank you.

Senator TOOMEY.

Senator TOOMEY. Thanks very much, Mr. Chairman, and thanks for doing this hearing. I have no doubt that there are many very bad people who use shell companies to commit some very bad crimes.

I am concerned. I think one of the things I would like to understand better is whether the burden that we are currently contemplating imposing on perfectly innocent parties—and I think everybody acknowledges that the vast, overwhelming majority of shell companies in America are completely legal and appropriate and proper and there is no criminal activity there. And so we need a balance between the burden we impose on people to provide this information relative to whatever benefit law enforcement is able to obtain from it.

So in this latter category, one of the questions that comes to mind, you know, if we require beneficial ownership information at

the time of formation and maybe we have got a somewhat complex joint venture with multiple parties, for instance, I worry would the owner be guilty of a crime or subject to a civil penalty for having an inaccurate—portraying an inaccurate picture to the best of his ability. I also wonder if criminals would simply lie on the form. So if El Chapo decided he wanted to launder some money and use a shell company to do it, I doubt that he is going to put on the beneficial ownership “El Chapo, Narco Kingpin”.

So I guess one question would be, to start with Director Blanco, how does FinCEN know when the information it has is accurate? What percentage of the information you have do you think is inaccurate? And why couldn't bad guys simply use an alias or otherwise disguise their true identity? And how would you know if they did?

Mr. BLANCO. Thank you, Senator, for that question. So you have got a lot there.

First of all, that is fine. Let them come in and lie. To me, as a former prosecutor, that is consciousness of guilt, and that is another factor that I use and it is another red flag that I have that shows their intent. And, by the way, it would not just be El Chapo. It is his nominee who is coming in to incorporate on his behalf, which now all of a sudden I know who he is. I have got his driver's license. I have got his date of birth. I have got his address. Steve and his team can track him down. And then he has got a list of at least four other people who might have equity ownership and then a controlling person. Right there I have got six pieces of information I did not have before.

So, fine, let them lie. We will track them down. And if you compare that—

Senator TOOMEY. But on day one, there is no indication that there is a criminal—eventually, if you have other information, then you use this, I guess.

Mr. BLANCO. Yes, or that information comes in, and we see—to your point, there is a source of information that tells us that the person is either lying or there is criminal activity afoot. So this information helps us. It tells us where to go. And if you compare it with their CDD information at a financial institution and that information is incorrect, that is another red flag, and the bank will then file a SAR, then alerting other—it is a little bit more complex than you give.

Senator TOOMEY. Let me ask—I am going to run out of time here. Mr. D'Antuono, can you give us an example of a specific crime that you think you would have been able—that you know of, that is public information, that you could have prevented had you had the beneficial ownership about a shell company? And how would that information have allowed you to prevent the crime?

Mr. D'ANTUONO. Well, the specific crime, this beneficial ownership transcend every case that we have. So, specifically, I will give you a health care fraud example which we just had, a health care fraud case that was taken down I think a couple months ago. It was one of the largest takedowns we ever had. It was on medical braces, telemedicine, all that stuff. There were 130 shell companies within that. It was a \$1 billion industry. So Medicare got bilked out of billions of dollars, I think estimated at maybe about \$1 to \$2

million per month that they were running through. So, you know, if we are able to unpeel that onion, that is 130 companies that it is going to take a long time for us to figure out.

You know, as Ken pointed out——

Senator TOOMEY. Can I just——

Mr. D'ANTUONO. Yes.

Senator TOOMEY. I just want to really understand it specifically. So are you suggesting that had you had the beneficial ownership information—and I assume it would have had to have been accurate to matter, which is a question. But had you had it and had it been accurate, then maybe you would have been able to shut them down sooner and diminish the crimes they were committing?

Mr. D'ANTUONO. Correct, or prevent less victims. So the one I talked about in my statement, the \$98 million fraud, it was 116 shell companies there, too. In that case, the banks did a very good job of identifying that, and I believe we got that through BSA filings. So that is something that we can then use to then unravel that. But that took a while for us to do, too. So we can stop victims possibly. But you never can define the negative.

Senator TOOMEY. Thanks very much, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Reed.

Senator REED. Well, thank you to the panel for your testimony and welcome back to all of you.

Mr. Blanco, if an executive in a banking institution receives information from the analysis indicating that a report should be filed, is there any requirement for him or her to justify why the filing is not taking place? You alluded to the fact where they know the client, et cetera, but wouldn't it be appropriate to have some type of written documentation that can be reviewed by regulators?

Mr. BLANCO. I think that would probably be the best practice, Senator, to have that happen. Whether it is a requirement or not depends on the relationship that the bank executive has with the individual. There are a whole bunch of factors there. They could very easily say this is something that we have done in the past with this individual, and it has always proved to be perfectly fine; there is nothing nefarious going on here, and we feel comfortable taking the risk on this.

Senator REED. But at this point, frankly, totally within the discretion, you would not hear of it at all unless after the fact someone, as in the case of Deutsche Bank, came forward and said, "We have filed these repeated requests," I think SAR filings, "and they were ignored." So you would not know as our chief regulator or one of our chief regulators that this behavior is going on. Is that correct?

Mr. BLANCO. I probably would not know. That is true, Senator.

Senator REED. And I think one of the other issues here, too—and it has been alluded to consistently in your previous testimony, Mr. D'Antuono—this is a national security issue. This goes to the heart of our not just commercial activity but our national security. Is that correct?

Mr. D'ANTUONO. Yes, sir, we see it in counterproliferation cases, and we see it in terrorist financing cases. We see it across the board on national security.

Senator REED. And, in fact, I think both of you made the point that this, you know, rather than being kind of an annoyance for all these upstanding citizens that are just forming these shell companies, this is really an investment in national security that would protect everyone. Is that fair, Mr. Blanco.

Mr. BLANCO. Absolutely.

Senator REED. Mr. D'Antuono.

Mr. D'ANTUONO. Yes, sir.

Senator REED. Ms. Gardineer.

Ms. GARDINEER. Yes.

Senator REED. Let me ask you, Ms. Gardineer, and then I will also ask Mr. Blanco, too, how many enforcement actions have you taken against banking institutions that have improperly failed to file the SARs or indicate money laundering?

Ms. GARDINEER. Senator Reed, we do take enforcement actions. The exact number I do not have, but I am happy to get that information back to you.

Senator REED. Would you please do that?

Ms. GARDINEER. Yes, I will.

Senator REED. And, Mr. Blanco, how many enforcement actions?

Mr. BLANCO. At FinCEN it would depend because what you are talking about is—look, we just want them to get it right many times. It is not a “gotcha” game for us. And I think that is true, too, with what we are asking here. So it really depends on what you want. Are you talking about an engagement? Are you talking about an actual penalty? All those things are different. But we can get back to you on that, Senator.

Senator REED. I wish you would because, frankly, we can have an elaborate set of rules, but if they are—you know, if someone is admonished by “Do a better job next time,” rather than essentially punished, those rules are ignored or, you know, this is not important, they will never find out. I think enforcement is absolutely critical.

Mr. D'Antuono, was that your position, too?

Mr. D'ANTUONO. Yes, sir. Without the punishment at the end of it, if there is nothing there to make people do it, it is going to be more difficult for law enforcement.

Senator REED. It is a paper drill. And the perpetrators know that, too. That is why you find occasions that Danske Bank, which was a notorious money launderer, when they looked into some of these companies that they were daily passing millions and millions of dollars through on behalf of Russian oligarchs, they were all located in the same small building in London, and all of them listed on their official sort of charter that their activities were “dormant.” That should be a clue to anybody at a banking institution that something is wrong here. And if we do not start enforcing rather than just admonishing, that will go on and on and on.

Again, my final comments. This goes to national security. It also goes to election security. The Eastern District of Virginia indicted a whole series of activities involving the Internet Research Agency, which the Mueller report indicated was designed for information warfare against the United States of America. And this Kremlin-linked troll organization held approximately 14 bank accounts in the name of 10 LLC affiliates, and they described their activities

as “all in furtherance of a series of vague contracts that obscured or falsely stated the true intended use of the funds.” So, one, I think that is something important. Two, a final question. Are you particularly sensitive to this activity in the context of the 2020 election?

Mr. BLANCO. Senator, we look at it all. We are interested in everything that affects national security, so in that sense, we will be keeping an eye——

Senator REED. But is it a priority? Because, frankly, this is not a theoretical question. There is real concern that the 2020 election could be seriously compromised by activity just like this.

Mr. BLANCO. I share your concern, Senator.

Senator REED. Is it a priority?

Mr. BLANCO. It is going to be.

Senator REED. Thank you.

Thank you very much, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator Menendez.

Senator MENENDEZ. Thank you, Mr. Chair.

Mr. Blanco, do you agree that it is critical for FinCEN to receive timely, accurate, and complete reporting of suspicious financial activities so that you can effectively police against money laundering?

Mr. BLANCO. Yes, Senator.

Senator MENENDEZ. Do you still hold that view if the suspicious activity involves individuals in our Government?

Mr. BLANCO. It does not matter who it is.

Senator MENENDEZ. So 2 days ago, the *New York Times* reported that in 2016 and 2017, Deutsche Bank, which has been found to have laundered billions of Russian money and which has lent billions of dollars to the President’s companies, failed to report to FinCEN multiple suspicious transactions involving entities controlled by President Trump. And, Mr. Chairman, I ask that the article be entered into the record.

Chairman CRAPO. Without objection.

Senator MENENDEZ. Are you aware of any suspicious activity reports that involve the President, his family, or any of his business entities?

Mr. BLANCO. Senator, as I mentioned to Senator Brown earlier, I am not going to comment on any particular case or any particular bank. I can tell you—or confirm——

Senator MENENDEZ. I did not ask you to comment on cases or banks. I asked you, are you aware of any suspicious activities?

Mr. BLANCO. Senator, I am not going to comment on any particular suspicious activity——

Senator MENENDEZ. Are you aware of the article in the *New York Times*?

Mr. BLANCO. I heard about it over the weekend, yes.

Senator MENENDEZ. You have not read it?

Mr. BLANCO. I have not read it, no. I have been briefed on it.

Senator MENENDEZ. I think you are a very smart man. It would not take very long to read it, but it might be very informative to you.

Now, let me ask you something, and I also want to ask Ms. Gardineer. Do you believe banks are more or less likely to file sus-

picious activity reports on a transaction involving a President, especially given this President's propensity to single out companies on social media?

Ms. GARDINEER. Senator, banks are required to file suspicious activity reports following the rules that FinCEN has set forth. That is our supervisory expectation.

Senator MENENDEZ. But do you think that they may be a little loath to do so when they are going to be singled out by the President of the United States?

Ms. GARDINEER. Senator, the OCC's expectation is that the banks will follow the rules that have been set forth, that they file the suspicious activity reports based on the policies and procedures that they have in place, utilizing the systems that they have, and to report all suspicious activity accordingly.

Senator MENENDEZ. Mr. Blanco.

Mr. BLANCO. Senator, I am sorry?

Senator MENENDEZ. I am asking you the same question.

Mr. BLANCO. I missed the question.

Senator MENENDEZ. Do you believe that banks are more or less likely to file suspicious activity reports when they involve someone like the President of the United States who will single them out?

Mr. BLANCO. Senator, it depends on what their risk space is. It depends on what their factors are. It depends on who their client is. It depends on how well they know their customers. It really depends. And I could not put myself in their position. I do not know the facts of that case.

Senator MENENDEZ. Well, even to the extent that when you say it depends upon their risk space, that creates problems for me, the risk space. The law is the law. You are supposed to comply with it.

Mr. Blanco, what other avenues does FinCEN have to discover suspicious activity if banks fail to self-report?

Mr. BLANCO. Well, it depends on whether they are being examined and we find ways to do that. It depends on whether there is somebody inside who makes a comment or decides to reach out to law enforcement. It also depends on what we are seeing as a pattern of filings or nonfilings in our database. So there are a number of ways that we could ultimately find out or come into possession of information.

Senator MENENDEZ. So if you read in a major article in a major newspaper information that suggests that, would that be something that might lead you to look at it?

Mr. BLANCO. Hypothetically, yes. But, Senator, one thing I have to say—and I think we all agree. Look, we are all adults here. Just because it is in the newspaper does not mean it is true. At the end of the day, it is out there—

Senator MENENDEZ. Oh, I am fully aware of that, but it does not mean that it is false, either.

Mr. BLANCO. I am not saying it is false either.

Senator MENENDEZ. So, therefore, it should be reviewed.

Ms. Gardineer, let me ask you, what type of activity described in the *New York Times* article would lead the OCC to conduct a special Bank Secrecy Act compliance examination, especially if the bank has a history of skirting anti-money-laundering laws?

Ms. GARDINEER. Senator, the bank that is implicated in that article is not supervised by the OCC.

Senator MENENDEZ. OK. And if it were, would that type of activity be such that would lead to conduct a special Bank Secrecy Act examination?

Ms. GARDINEER. I think that additional information that comes into the hands of our examiners, when looking at the four pillars of an effective BSA/AML program, would help us in formatting the type of exam we would go in and where we would see weaknesses that we would want to follow up on.

Senator MENENDEZ. Finally, what penalties are assessed if banks fail to self-report a transaction that is later discovered by law enforcement?

Ms. GARDINEER. There are a lot of tools that we have disposable to us, Senator Menendez. We are able to do anything from citing matters requiring attention all the way to formal enforcement actions. The circumstances and the case facts are generally specific that result in the appropriate type of enforcement given the allegations and what we have as far as the facts.

Senator MENENDEZ. Well, let me just say as a concluding remark, I have a real concern that we act in ways in which it seems that it is the cost of doing business, and the cost of doing business does not let us know about money laundering in a way that is effective, especially at a time that we have foreign influences both in our elections, as Senator Reed has discussed, and other entities. As the author of a whole host of sanctions, I get concerned that both the money-laundering side—last time you were here we talked about the purchases of real estate properties in blind—in ways that do not let us see money laundering take place. We need to ratchet up the cost—it is no longer the cost of doing business. It is breaking the law. And I look forward to the regulators actually pursuing vigorously when someone is actually breaking the law.

Chairman CRAPO. Senator Van Hollen.

Senator VAN HOLLEN. Thank you, Mr. Chairman. I thank all of you for your testimony.

As Senator Brown pointed out, Deutsche Bank has an abysmal compliance record when it comes to anti-money-laundering statutes. They have paid billions of dollars of fines for their failure to abide by sanctions, anti-money-laundering statutes, and tax laws, including a major settlement in 2017 with the Federal Reserve for “failing to maintain an effective program to comply with anti-money-laundering laws.”

Mr. Blanco, if a company has a track record of noncompliance, would you agree that they should receive heightened scrutiny from FinCEN?

Mr. BLANCO. Without addressing that specific bank or institution, Senator, I think that you always use past practices or past incidences either to give closer scrutiny or to hold them accountable. But I do not know if that—

Senator VAN HOLLEN. I understand. I understand. Just taking the concept to the facts here, I would hope that means that FinCEN is hot on the tail of Deutsche Bank right now.

I was worried about this issue, both Deutsche Bank’s noncompliance as well as how they would deal with conflict-of-interest provi-

sions regarding the President and members of the President's family back in April 2017, and I wrote to Deutsche Bank asking what procedures they may have in place to deal with this issue. Here is the letter I received back dated May 10, 2017:

"Dear Senator Van Hollen: We write in response to your letter dated April 12, 2017, to our client, Deutsche Bank, regarding its reported banking relationship with the President of the United States, his family, and certain related entities. You express concern about the potential for conflicts of interest and seek certain information and assurances from Deutsche Bank with respect to such matters."

They go on to write: "The bank has in place policies, processes, and other controls to address issues such as those referenced in your letter. The bank recognizes the heightened sensitivity of managing relationships with clients who hold public office or perform a public function in the United States and has accordingly taken steps to ensure that its policies, processes, and controls address the potential for conflicts of interest and safeguarding the integrity of the decision-making process with regard to such clients."

Now we get the New York—and, Mr. Chairman, I would ask that both my original letter and the response be placed in the record.

Chairman CRAPO. Without objection.

Senator VAN HOLLEN. Now we get the *New York Times* story, which makes clear that one of the people whose job it was to review suspicious activity reports that had been triggered, first of all, by their computer system, that the person who is an expert in reviewing them recommended they be reported. And yet somebody on the business side of the bank overruled that, even though, according to reports, the normal process would be not to have somebody outside of the sort of immediate review of SARs report look into it. And now I hear you say that you have not read the *New York Times* piece, and I understand that you are not making a public statement about investigation. But you do follow the facts, do you not, when it comes to these cases?

Mr. BLANCO. Of course I do, Senator. I do not have to specifically read the article. I mean, I got briefed on it. I have heard about it. We have seen it on the news.

Senator VAN HOLLEN. I understand, but you can—we do not know the full accuracy of this report, but we have allegations from a whistleblower who is now on the record. And I would just point out if FinCEN has not already been in touch with that whistleblower, in my view, that is gross negligence, because the facts are in plain sight—or the alleged facts are in plain sight. And it is essential, it seems to me, that the public trust and the integrity of FinCEN that these be actively pursued.

Now, I referenced earlier a case with respect to the Russian money laundering. My understanding is that Deutsche Bank has still not provided information—at least to my knowledge, it has not been shared with Congress—about the Russians who were behind the anonymous shell companies that were caught up in the 2017 action.

Has Deutsche Bank been forthcoming in providing information about the Russians behind those anonymous shell corporations?

Mr. BLANCO. Senator, I am assuming the question is to me?

Senator VAN HOLLEN. Yes.

Mr. BLANCO. Senator, I am not going to address what may be an ongoing investigation, whether they have, whether they have not, whether there is an ongoing investigation or not. We are going to hold all those individuals who—whether they have complied or not, we are going to hold them accountable—

Senator VAN HOLLEN. Mr. Blanco, I think this—and I know Senator Warner is here, obviously the Ranking Member on the Intelligence Committee, but I would suggest, Mr. Chairman and Ranking Member, this Committee has a direct interest in protecting the—making sure the anti-money-laundering laws are obeyed. I mean, that is why this is a timely hearing. And I would hope we would make arrangements, on a confidential basis if necessary, to get information regarding the enforcement of those money-laundering laws. As I said, I am very disturbed that, after seeking assurances that Deutsche Bank had in place these provisions, that they seem to have short-circuited their own procedures in this case. And so I hope we would work to get to the bottom of it.

I thank you.

Chairman CRAPO. Thank you.

Senator Jones.

Senator JONES. Thank you, Mr. Chairman and Ranking Member, for this hearing today, and thank you to the witnesses. This is very, very important. As a former prosecutor, I can tell you we are long overdue, long overdue to enact legislation to counteract the use of anonymous shell corporations in illicit activity. Long, long overdue.

Requiring the reporting of beneficial owners is reasonable. It is a simple requirement that can help save American lives. If we want to help our law enforcement across this country fight human trafficking, to fight the spread of illegal drugs, to crack down on terrorist financing, help convict white-collar criminals, which is difficult sometimes, beneficial ownership legislation is an absolutely required step.

I appreciate Senator Toomey raising a couple of questions, but the fact is that we have statutes on the book now where people lie—they lie to get bank loans. They lie to any number of things, and we use that information. That is a tool for the prosecutors to use. We cannot understand and know the specific crimes that legislation like this may prevent, and that is OK because we do not know how many terrorist plots that we have prevented and stopped. We do not know how many white-collar, we do not know how many drug traffickers who stop short of that. So we will never be able to know what we stopped. But the idea is we have got to do something because it is a huge, huge problem.

I want to try to get to a couple of questions now that I have given a speech. I want to follow up real quick, Mr. Blanco, just very quick, kind of yes or no, on the—I do not want to talk about the Deutsche Bank and the *New York Times*. Let us talk about the Deutsche Bank concept. OK? And there is a whistleblower. But would a strong whistleblower provision in anti-money-laundering legislation assist you, assist the Department and others?

Mr. BLANCO. Senator, I believe it would. The devil is in the details.

Senator JONES. All right. I got you. That is all I need.

All right. Let us go to the FinCEN's customer due diligence rule that has been in effect over a year now that requires companies provide banks with information on their owners. I think that was a nice step forward. But it also maybe shows a few limits of FinCEN's ability to have access to information.

I have got a number of issues that I could go through, but rather than just trying to talk about that, can you and Ms. Gardineer address a little bit how a Federal beneficial ownership reporting requirement could help complement and supplement the CDD rule? Mr. Blanco.

Mr. BLANCO. It supplements the CDD rule because it looks for a different kind of information from different places. It also supplements the CDD rule by acting as a verification. You can bounce it off each other. If the information is not correct, it gives you sort of the red flag that something may be afoot. So those are the kinds of things, by not having this, what you are losing is you are losing a central repository because there is no central repository for the CDD rule either. There is no one-stop shopping. You lose standardization because right now you have 54, you know, different—whether they are States or Commonwealths that have a different standard looking for different things. So you are losing that, too. You are losing duality, which is verification process of each other. And you lose accountability because, you know, you can lie on your bank account, as you well know, prosecuting those kind of cases, and there is very little penalty, if any, at all. We are insisting that there is a penalty in the sense that if it is abused, if the information is abused. We are also insisting on some kind of common-sense approach to address whether or not it is a mistake or whether it is intentional.

Senator JONES. Thank you. Briefly.

Ms. GARDINEER. Senator Jones, I agree with my colleague, Director Blanco. I would say that the banks are engaged in collecting this information when an account is opened, but as Director Blanco said, there is no way to verify the identity of those individuals who are opening the account. There is no independent verification.

Also, the collection allows the banks to collect identity information, but it does not require that they verify the information that is being provided about ownership interest. So there would be the additional ability to validate the ownership information that is being gathered by the banks as well.

And to both of my colleagues, I think it is vital that law enforcement would then have a one-stop shop that would allow them to get to that information much more quickly than accessing subpoenaed information from the banks or across a variety of States and jurisdictions.

Senator JONES. All right. Real quick, Director Blanco, one of the concerns has always been that this information might be leaked, that it would get out in the public. But from what I can tell, FinCEN has done a heck of a job—I mean, you get—I cannot remember, I cannot begin to think of how many SARs you get each day, and there are some pretty strict penalties for that, and it has been very successful. Is that correct?

Mr. BLANCO. That is correct, Senator, and we have a rigorous process.

Senator JONES. Awesome. And we would expect to keep that rigorous process with any new legislation on beneficial ownership.

Mr. BLANCO. Agreed.

Senator JONES. All right. Thank you.

Thank you, Mr. Chairman.

Chairman CRAPO. Thank you.

Senator WARNER.

Senator WARNER. Thank you, Mr. Chairman.

First of all, let me add very briefly my voice to Senator Brown and Senator Van Hollen in terms of some of the recent press reports. I do think it is very, very worthy of further investigation and answers that both my colleagues have requested.

Let me also compliment Senator Jones for his leadership on the efforts that I have been involved with as well to try to bring a little modernization to both AML and the beneficial ownership component, and I appreciate the support on both sides of the aisle.

I think we all know, I think Mr. D'Antuono in his written testimony cited the fact that the Financial Action Task Force on money laundering put out a report in 2006 that said America was way behind. And then we put out another report in 2016 that said, while most of the EU has actually made progress, we are still way behind. And it would be my hope that this would be an area that the Committee could take up, because I think as Senator Jones already mentioned, the fact is the U.S. has fallen so far behind and we have so many shell companies, that so much illicit activity is taking place, and I think there are ways that we can sort through this. I think there are ways we can do this in a bipartisan way.

I think not the question of beneficial ownership, which Senator Jones already raised, I think there is a lot of agreement that FinCEN should manage that Federal database that would be that one-stop shop, that would not provide an undue burden.

One of the ideas that we have been thinking about is having beneficial ownership only reported upon incorporation and that you would only need an update when there was a change in that beneficial ownership. We have seen in the U.K. on average an ownership is about 1.1 persons per company. I do not think there would be any major difference between the U.S. and the U.K.

So, Mr. Blanco, let me start with you. If we had this approach—and I know there are a variety of approaches—report beneficial ownership upon incorporation and then only when there are significant changes in ownership, that would be a fairly straightforward approach, and do you think that approach would be workable and would actually help minimize the burden on small businesses?

Mr. BLANCO. I think it is workable, simple, and I think it could be effective.

Senator WARNER. And do you think you have—given enough flexibility, do you think FinCEN could utilize existing processes and procedures such as updating State business licenses or quarterly tax filings to further make sure that there is not some major new burden placed upon small businesses?

Mr. BLANCO. Senator, that gets a little bit more complicated. If what you are asking us to do is verify the information, I would just

be candid with you; that would be a big mistake. There would be no way that FinCEN could be able to verify that information. I mean, there are other ways that it could be verified, short of self-verification itself. But having FinCEN do that work—

Senator WARNER. I am not looking so much here about verification. I recognize the number of businesses and your limited resources. But at least in terms of a collection point, we could do this with an already existing collecting point so that it is not some new requirement.

Mr. BLANCO. Oh, yes, I mean, we can intake this new information with relative ease depending on whether it is resourced, and it depends, Senator, on what you are asking us to do and how you are asking us to store it. But we can store it, secure it, and effectively disseminate it appropriately.

Senator WARNER. And, again, echoing Senator Jones has already asked, this notion that if we collected beneficial ownership, it would somehow be leaked out, I do think with the volume of materials you already handle with both SARs and other reporting, you have got a pretty good record of not having leakages. Do you think you could bring that same type of protections to a beneficial ownership regime?

Mr. BLANCO. Absolutely.

Senator WARNER. And, Mr. D'Antuono, do you want to, again—I know you have testified on this already—speak to the real need here to make sure within law enforcement that, without this tool around beneficial ownership, you know, we are not really going to be able to give you the tools you need to make sure that these shell companies are not misused at the level that both this international organization pointed out both in 2006 and then rereported in 2016? Can you speak to that?

Mr. D'ANTUONO. Yes, absolutely, sir. It is time consuming. Doing any investigations, be it witness interviews, surveillance, legal process, the MLAT process, they all take time, and peeling back that onion is going to take us time. And when it is obscured again and again into different layers, it takes more and more time for us to get to it. You add on the top of it where there could be hundreds of shell companies in one investigation, that is a lot of time that it takes for an investigator or an analyst to look at.

So one central repository with all the information, the identifiers, someone that we can go talk to, someone that might be a weak link, somebody that maybe set up the company, but knows who the true beneficial owner really is, and if they falsify it, there is no—there is no way we can stop somebody from falsifying information on those documents. But if we have enforcement and we can enforce the law, then that is going to help us in our investigations, and people that we talk to, to put that hook on them, to say what is truly behind this.

Senator WARNER. I know my time has expired, but we could do that in a way that would not unduly penalize someone who made a mistake in terms of initial filing.

Mr. D'ANTUONO. We do not investigate or we do not prosecute people that make mistakes.

Senator WARNER. And I would just say, Mr. Chairman, I think in this space there has been a lot of good work done by Senator

Jones and others on AML. I think there is a path forward that we have seen from the U.K. and the vast majority of the EU on beneficial ownership. And it would be my hope, Mr. Chairman, that you and the Ranking Member could take some of the good work that is being put together, and this could be an area where we could put much-needed reform in place.

Chairman CRAPO. Thank you.

Senator SINEMA.

Senator SINEMA. Thank you, Mr. Chairman. And thank you to our witnesses for being here today.

In 2018, nearly 86 percent of the hard narcotics that flowed into Arizona came through our ports of entry. Over the years the Sinaloa cartel and other criminal groups have moved millions of pounds of methamphetamine and heroin from Mexico through Arizona. Arizonans so clearly bear the brunt of Washington's failure to address our southern border crisis.

But drugs are not the only thing trafficked across our southern border. People, including women and children, are often smuggled across the southern border, sometimes against their will. On their journeys and when they arrive, they face exploitative conditions, including forced labor and physical and sexual abuse.

Earlier this year, the leader of the Sinaloa cartel, Joaquin Guzman, also known as "El Chapo," was convicted of laundering billions of dollars through the U.S. banking system. Federal agents now believe that his brother has picked up the cartel's operations in Arizona. Think about that for a second. The most dangerous drug cartel operating in Arizona is fueling its operations to the tune of billions of dollars through the same U.S. banks that we all use. That is pretty outrageous.

So I also serve on the Homeland Security Committee, and as Arizona's senior Senator, I am working to secure the border with a smart, comprehensive, and bipartisan approach. But to defeat these drug cartels and keep Arizona families safe, we need more than just physical border security. We need to cutoff the finances that fuel their operations and shut them out of the U.S. banking system. So we are working to strengthen U.S. anti-money-laundering laws to stop drug cartels, fight terrorism, and end the scourge of human and sex trafficking.

After this drug money makes its way through the U.S. financial system, cartels like Sinaloa park these dollars in shell companies or in real estate. Mr. Guzman's trial illustrated all of these methods. So one way to prevent criminals from hiding behind companies and operating in plain sight is through the collection of beneficial ownership information, so I would like to start there.

Mr. Blanco, thanks for being here. How would collecting beneficial ownership information at the time of incorporation enhance FinCEN's ability to cutoff drug cartel financing?

Mr. BLANCO. It would be tremendous. As you know, Senator, whether it is a front company, whether it is a shell company, or whether they are using nominees, Chapo Guzman is not going to put the company in his name. That is not going to happen.

Senator SINEMA. Right.

Mr. BLANCO. And I guess maybe now he can, but, you know, no, it is not going to happen. So at the end of the day, what you want

is you want to put people on the line when they come and they open their company and they look at you eye to eye, who are you, where do you live, what is your company, who are the beneficial owners, that is different, and also them knowing that you are holding them accountable, which is incredibly important, whatever legislation you are going to draft, you need to make sure that the penalty is appropriate.

Senator SINEMA. Thank you.

Mr. BLANCO. I mean appropriate. For example, as the FBI was saying earlier, as Steve was saying earlier, you do not want to hold—we are not after the mom-and-pop. We are not after the farmer. We want the information. We want to go after the person who is intentionally thwarting or the criminal who is going after it.

Senator SINEMA. And as you know, each year drug traffickers launder hundreds of billions of dollars of dirty money through a practice known as “trade-based money laundering.” It is one of the hardest methods to detect because criminals use legitimate trade in some form to disguise their criminal proceeds. Sinaloa made TBML an art form.

So my question is for both you and Mr. D’Antuono. Relative to more traditional money-laundering strategies like structuring, could you both speak to some of the unique challenges that FinCEN and the FBI face in identifying and stopping TBML? And how can more centralized, up-to-date beneficial ownership information assist in focusing our limited resources to improve investigation and enforcement efforts?

Mr. D’ANTUONO. So I will take this, Ken. TBML is a huge issue in money laundering. It is a time-intensive, resource-draining-intensive investigation. They use shell companies tremendously in that. I am the Chair of the Money Laundering Working Group for the Five Eyes countries. We have discussions about TBML all the time across those lanes. We are all combating that across the globe because it is—it is difficult for us to really dive into those cases. They are so intense. There is a lot of data. The shell companies, the beneficial ownership repository would go very well for a tool for us to be used to combat trade-based money laundering. As we pointed out, El Chapo is not going to list El Chapo on the application. It would be great if he did. But—

Senator SINEMA. Unlikely.

Mr. D’ANTUONO. Unlikely. But it is one of those things where there might be that nominee in that account—there will be that nominee in that account that we can then go to and put the hand on them and say if there is some bite to this law or a law, we can then enforce that and say, “What is truly the story?” And that is where we come in. That is what we do in law enforcement. That is our tools.

Senator SINEMA. Thank you.

Thank you, Mr. Chairman. I yield back.

Chairman CRAPO. Thank you.

And that concludes our questioning. Again, I thank the witnesses for your repeat appearance and for all of the support and help you are giving us in getting a handle on the right way to attack this issue.

For Senators wishing to submit questions for the record, those questions are due in 1 week, on Tuesday, May 28th. And to the witnesses, again, I ask that as you receive questions from Senators, if you would promptly respond.

Thank you again for being here today. This hearing is adjourned.

[Whereupon, at 11:22 a.m., the hearing was adjourned.]

[Prepared statements, responses to written questions, and additional material supplied for the record follow:]

PREPARED STATEMENT OF CHAIRMAN MIKE CRAPO

The hearing will come to order. Welcome back to our panel of witnesses from our last hearing in November.

The Committee will hear from today's witnesses about the need to deter money laundering and the financing of terrorism through the use of front companies, shell companies, shelf companies, opaque nominees, and other means to conceal and disguise the true beneficial owners of property and other assets.

The purpose of today's hearing is to examine the difficult issues surrounding the need for and manner of collecting what is known as "beneficial ownership" information from such anonymous corporate utilities.

This hearing, from the perspective of law enforcement and a regulator, will be the first of two on the subject, with a second hearing focusing on various industry perspectives.

Clearly, the vast majority of anonymous corporate vehicles used today serve legitimate purposes and are formed with no criminal intent whatsoever.

Therefore, we must bear in mind the amount of burden which may befall an overwhelming majority of small business owners.

Yet, over the years, law enforcement, the GAO, congressional committees in both chambers, and U.S.-led international bodies, like the Financial Action Task Force, have identified not only a high potential for their abuse, but have also identified far too many open investigations involving anonymous shells connected to money laundering, terrorist financing, corruption, weapons proliferation, sanctions evasion, and a host of other threats.

High profile leaks of serious tax abuses, such as found by investigative journalists in the Panama Papers and Paradise Papers, have further identified the use of anonymous corporate vehicles to accomplish illicit global financial activities.

I applaud the work of FinCEN in developing its Customer Due Diligence, or "CDD" Rule, that went into effect a year ago this month.

FinCEN engaged for years with industry and other stakeholders to issue a rule that requires certain covered financial institutions to collect information on identifiable people who actually own, control, and profit from their corporations.

The rule is an achievement in terms of obtaining some transparency into corporate ownership to protect the U.S. financial system from those who seek to abuse it.

But, the rule's strengths and weaknesses are a product of its design to focus collection requirements for beneficial ownership information only on certain financial institutions.

The rule mainly helps financial institutions to mitigate risk, and the information received can provide some help to assist law enforcement in identifying criminal assets, accounts, and national security threats from those who use the financial system.

The rule, however, does not reach all of the general population of millions of new corporate vehicles formed each year to operate in this country, nor especially those new corporations which are exported overseas that will never see an American financial institution, but still benefit from an American address.

Working in partnership with our Government's law enforcement and regulatory agencies, for the nearly 50 years since enactment of the Bank Secrecy Act, the U.S. financial industry is on the front lines of preserving the integrity of the U.S. and international financial system, and I see no changing that anytime soon.

The fine efforts of our financial institutions should not be in vain to the extent that they can address only part of the larger beneficial ownership problem.

We will hear today some legitimate needs of law enforcement for a wider collection of more useful beneficial ownership information, and for a place to store it all.

From our regulator, we will learn about how that information should be stored, by whom and under what conditions the privacy of that information is protected.

I am confident that there are a number of solutions to this problem if Congress can work together, in the manner of FinCEN, to identify the parameters of the problem and take into account the consequences of such a daunting collection of information would have on all stakeholders.

PREPARED STATEMENT OF SENATOR SHERROD BROWN

Thank you, Mr. Chairman, for calling this important hearing as a follow-up to previous hearings in the Committee on Bank Secrecy Act and anti-money-laundering reform efforts.

This weekend we got a reminder of how important these issues are, courtesy of reporting by the *New York Times* that money laundering specialists working for

Deutsche Bank had repeatedly recommended the filing of suspicious activity reports on transactions by President Trump's and Jared Kushner's organizations, including transactions with actors overseas.

But those experts were over-ruled by senior Private Wealth Division officials. Even State regulators or House Financial Services Committee subpoenas to Deutsche Bank can't get at suspicious activity reports that are never filed—that are effectively quashed within the bank and never conveyed to the experts at FinCEN in the Treasury Department and the financial watchdogs that are supposed to assess these transactions.

And compliance officials described a pattern at Deutsche of efforts like that to reject SAR filings for lucrative clients. We need to get to the bottom of what happened here. Everyone has to follow anti-money-laundering laws and rules—you don't get an exemption if you have a rich and powerful client. And we have to hold financial institutions accountable if they break the rules. I've written to Deutsche Bank's CEO making that clear, and demanding answers.

While banks obviously have a key monitoring role, it's also important that we require companies to provide basic information on their ownership when they're formed. In today's hearing, the first of two, we'll focus on the transparency, anticorruption and anti-illicit-financing benefits of requiring U.S. firms to provide this basic beneficial ownership information.

This information would help address a longstanding problem for U.S. law enforcement in investigations of cases involving counterterrorism, drug trafficking, money laundering, Medicare and Medicaid fraud, human trafficking, and other crimes.

Criminals, terrorists, and even rogue Nations use layer upon layer of shell companies to disguise and launder illicit funds that are the proceeds of crimes. That makes it harder to hold bad actors accountable.

Under current law, by the time law enforcement is able to actually go through the grand jury and subpoena process, and pierce the corporate veil to discover who is behind these shell companies, the criminals—and the proceeds of their crimes—are long gone, often overseas and out of reach of U.S. law enforcement.

I am pleased that today we will hear Administration views, including from key officials from the FBI and FinCEN, on the importance of finally—after decades of criticism that the U.S. is a haven for anonymous shell companies—changing our laws to address this issue.

Chairman Crapo and I agree—we must move forward to require complete ownership information—not front men, not those forming companies on behalf of those who will pull the strings from behind the curtain—but the actual owners of companies who law enforcement can go to if the entity becomes involved in criminal activity.

We can do this simply, efficiently, and effectively, without unduly burdening small businesses or others, by requiring that ownership information be provided by all companies when they're formed, and then creating a database within FinCEN, controlled under tight privacy laws, that would be accessible to law enforcement.

None of the crimes we'll discuss today—drug trafficking, human trafficking, Medicare fraud, money laundering—are victimless crimes.

For example, money laundering for drug cartels has a direct line to the opioid crisis in Ohio, where Sinaloa cartel actors have been destroying thousands of families.

Human traffickers who exploit the misery of runaways in truckstops at the intersections of major interstate highways in Ohio and across the country, use the financial system to launder their profits.

Medicare fraudsters cost the U.S. Government and private parties over \$2.6 billion in 2017, according to the HHS Inspector General, and have generated about \$3.3 billion in recovered funds so far this year.

That's why anti-money-laundering and beneficial ownership laws are so critical: they protect the integrity of our financial system, and provide critical intelligence to law enforcement to combat crime.

Updating and strengthening our AML and beneficial ownership laws will give us a 21st century system to combat these crimes. I guarantee you criminals have long been revising, adjusting, and amending their tactics to circumvent them.

I know today's witnesses have thought about these issues for years, and have been pressing for such reform for much of their careers. I welcome you all back to the Committee, and look forward to your perspectives.

PREPARED STATEMENT OF KENNETH A. BLANCODIRECTOR, FINANCIAL CRIMES ENFORCEMENT NETWORK (FINCEN), DEPARTMENT OF
THE TREASURY

MAY 21, 2019

Chairman Crapo, Ranking Member Brown, Members of the Committee, thank you for having me here today to discuss eliminating anonymous shell corporations by collecting beneficial ownership information in order to preserve our national security and protect our people from harm.

A Russian arms dealer nicknamed the “The Merchant of Death”, who sold weapons to a terrorist organization intent on killing Americans. Executives from a supposed investment group that perpetrated a Ponzi scheme that defrauded more than 8,000 investors, most of them elderly, of over \$1 billion. A complex nationwide criminal network that distributed oxycodone by flying young girls and other couriers carrying pills all over the United States. A New York company that was used to conceal Iranian assets, including those designated for providing financial services to entities involved in Iran’s nuclear and ballistic missile program. A former college athlete who became the head of a gambling enterprise and a violent drug kingpin who sold recreational drugs and steroids to college and professional football players. A corrupt Venezuelan treasurer who received over \$1 billion in bribes.

These crimes are very different, as are the dangers they pose and the damage caused to innocent and unsuspecting people. The defendants and bad actors come from every walk of life and every corner of the globe. The victims—both direct and indirect—include Americans exposed to terrorist acts; elderly people losing life savings; a young mother becoming addicted to opioids; a college athlete coerced to pay extraordinary debts by violent threats; and an entire country driven to devastation by corruption. But all these crimes have one thing in common: shell corporations were used to hide, support, prolong, or foster the crimes and bad acts committed against them. These criminal conspiracies thrived at least in part because the perpetrators could hide their identities and illicit assets behind shell companies. Had beneficial ownership information been available, and more quickly accessible to law enforcement and others, it would have been harder and more costly for the criminals to hide what they were doing. Law enforcement could have been more effective and efficient in preventing these crimes from occurring in the first place, or could have intercepted them sooner and prevented the scope of harm these criminals caused from spreading.

Financial sanctions could have been leveraged sooner to disrupt global threats, block assets within U.S. jurisdiction, identify sanctions evaders, and incentivize behavior change. With clearer information on the actors behind front companies, the efficacy of the Office of Foreign Assets Control’s (OFAC) sanctions and the Financial Crimes Enforcement Network’s (FinCEN) anti-money-laundering authorities would improve, enabling us to more effectively secure our Nation and achieve our foreign policy goals.

Case Examples

Viktor Bout was engaged in international arms trafficking for many years, arming some of the most violent conflicts around the globe. Known as “The Merchant of Death”, Bout was finally apprehended when he agreed to sell millions of dollars’ worth of weapons to confidential informants representing they were acting on behalf of the Fuerzas Armadas Revolucionarias de Colombia (the “FARC”), a U.S. designated terrorist organization, with the specific understanding that the weapons were to be used to attack U.S. helicopters in Colombia. Specifically, he agreed to sell 700–800 surface-to-air missiles, over 20,000 AK-47 firearms, 10 million rounds of ammunition, five tons of C-4 plastic explosives, “ultralight” airplanes outfitted with grenade launchers, and unmanned aerial vehicles. To support his vast arms dealing business, Bout incorporated at least 12 shell corporations in Texas, Florida, and Delaware.

Robert Shapiro, owner of Woodbridge Group of Companies LLC, and his former Directors of Investments were charged with orchestrating a massive Ponzi scheme from 2012 to 2017. They promoted speculative and fraudulent securities to potential investors, targeting elderly investors who had Individual Retirement Accounts (IRAs) through high-pressure sales tactics, deception, material misrepresentations, and investor manipulation. Shapiro and his group were responsible for fraudulently stealing \$1.2 billion from more than 8,000 retail investors, most of them elderly retirees. At one point, Shapiro and his coconspirators had approximately 600 employees working for them, and used roughly 100 U.S. shell corporations to hide assets and further their Ponzi scheme.

Kingsley Iyare Osemwengie and 17 other coconspirators used call girls, couriers, commercial carriers, and the U.S. mail to distribute oxycodone pills all over the United States, thereby contributing to our current opioid addiction epidemic. More than 70 couriers took nearly 800 flights to 40 different U.S. cities that the conspiracy used to move drugs and money. Osemwengie and other coconspirators netted millions of dollars of drug proceeds that allowed them to live opulent lifestyles. They maintained luxury residences in Las Vegas, Nevada, and Miami, Florida, and drove high-end automobiles, including two Mercedes-Benzes and four Bentleys. Osemwengie's complex oxycodone network hid the source of their income behind several U.S. shell companies.

Bank Melli, a bank owned and run by the Government of Iran that was designated under a counterproliferation authority and now is subject to counterterrorism sanctions, hid the fact that it owned and operated a skyscraper on Manhattan's Fifth Avenue generating millions upon millions of dollars for the Iranian Government and its malign activities, right under the nose of U.S. authorities. Bank Melli violated U.S. sanctions by, among other things, creating two shell companies in New York to generate revenue for the Iranian regime.

Owen Hanson, leader of the violent "ODOG Enterprise", operated an international drug trafficking, gambling, and money laundering enterprise in the United States, Central and South America, and Australia from 2012 to 2016. Hanson trafficked hundreds of kilograms of cocaine, heroin, methamphetamine, MDMA (ecstasy), anabolic steroids, and Human Growth Hormone (HGH), including to numerous professional athletes, earning millions of dollars in illegal proceeds. He also operated a vast illegal gambling operation focused on high-stakes wagers placed on sporting events, using threats and violence against his gambling and drug customers to force compliance. Hanson set up numerous domestic shell companies to launder the proceeds of his crimes, hide assets, and continue his criminal enterprise.

Alejandro Andrade Cedeno, a former Venezuelan national treasurer, received over \$1 billion in bribes from coconspirators in exchange for using his position as Venezuelan national treasurer to select them to conduct currency exchange transactions at favorable rates for the Venezuelan Government. He received cash as well as private jets, yachts, cars, homes, champion horses, and high-end watches from his coconspirators. As part of his plea agreement, Andrade agreed to a forfeiture money judgment of \$1 billion and forfeiture of all assets involved in the corrupt scheme, including real estate, vehicles, horses, watches, aircraft, and bank accounts. This corrupt Venezuelan public official funneled the proceeds of his bribery to U.S. shell companies.

Impact on National Security and Safety of Citizens

Stories of ordinary people and taxpayers victimized by criminals exploiting and hiding behind the secrecy of shell companies are all too common. Opaque corporate structures such as shell corporations facilitate anonymous access to the financial system for every type of criminal and terrorist activity. Narcotraffickers, corrupt leaders, rogue States, terrorists, and fraudsters of all kinds establish domestic shell companies to mask and further criminal activity, to invest and buy assets with illicit proceeds, and to prevent law enforcement and others from efficiently and effectively investigating tips or leads. We recognize that corporations, limited liability companies, partnerships, and other entity structures play a vital role in domestic and global commerce, but they are also vulnerable to abuse, and currently pose a gap—a dangerous gap—in our national security apparatus that we need to address.

FinCEN's recent Customer Due Diligence Final Rule (CDD rule), which requires the collection of beneficial ownership information when opening an account at a bank or other financial institution, is but one critical step toward closing this national security gap. The second critical step in closing this national security gap is collecting beneficial ownership information at the corporate formation stage.

One of the most effective ways to deter criminals and to stem the harms that flow from their actions—including harm to American citizens and our financial system—is to follow the money, expose illicit activity, and prevent networks from operating undetected or secretly benefiting from the enormous power of our economy and financial system. Identifying and disrupting illicit financial networks not only assists in the prosecution of criminal activity of all kinds, but also allows law enforcement to halt and dismantle criminal organizations and other bad actors before they harm our citizens or our financial system.

It also allows us to use economic statecraft to expose and dissuade nefarious activity that threatens our country and the integrity of the global financial system, including through OFAC's sanctions and FinCEN's authorities, such as identifying primary money laundering concerns under Section 311 of the USA PATRIOT Act.

Money laundering and its associated crimes and bad acts undermines the rule of law and our democracy because it supports and rewards corruption and other crimes, allowing it to grow and fester. As such, our efforts to combat money laundering directly affect the safety and security of the American public, the stability of our Nation, and its national security.

As a former State and Federal prosecutor, I know firsthand how difficult it is to trace assets hidden through a variety of legal entities. To determine the true owner of a shell company or front company in the United States today requires law enforcement to undertake a time-consuming and resource-intensive process. It often requires human source information, grand jury subpoenas, surveillance operations, witness interviews, search warrants, and foreign legal assistance requests to get behind the outward facing structure of these shell companies. This takes an enormous amount of time—time that could be used to further other important and necessary aspects of an investigation—and wastes resources, or prevents investigators from getting to other equally important investigations. The collection of beneficial ownership information at the time of company formation would significantly reduce the amount of time currently required to research who is behind anonymous shell companies, and at the same time, prevent the flight of assets and the destruction of evidence.

Global Impact

As cross-border crime continues to proliferate—and it is most certainly proliferating—our efforts to combat the most sophisticated white-collar and cybercriminals require law enforcement to work with our partners all over the world to seek the evidence and witnesses necessary to build their cases. We need to collaborate with our foreign counterparts, not only to investigate crimes that have been committed and to cooperate on sanctions, but also to intercept ongoing crimes and to prevent crimes from occurring in the first place. We must be nimble in order to coordinate quickly, effectively, and fluently with our counterparts abroad. Criminals and other bad actors do not have borders and do not comport with the rule of law. To combat them, we need to work seamlessly with our foreign counterparts in a way that is efficient and effective.

Just as we receive significant assistance from our foreign partners in our investigations and prosecutions, we too must provide significant assistance to them in researching the beneficial owners of U.S. shell companies. This coordination is especially important when crimes are being planned by overseas actors targeting victims in the United States, or when bad actors use our financial system or opaque corporate structures to victimize people globally, including in the United States. The bottom line is that we need our foreign partners to have important information in a timely way, in order to stop and arrest criminals overseas to prevent harm caused to us here at home. This balanced model of reciprocity in information sharing is a vital tool in modern prosecution—whether the prosecutor is sitting in the United States, Europe, South America, or elsewhere.

However, identifying beneficial ownership information in the United States can only be achieved today through a long, drawn-out process with many hoops, twists, and turns. This often dissuades some of our partners overseas from working with us. Indeed, the Financial Action Task Force (FATF)—a global intergovernmental body responsible for developing and promoting policies to protect the global financial system against money laundering and other threats, composed of 38 members, including all the G7 countries and our most reliable partners—recognized and highlighted in the 2016 Mutual Evaluation this issue as one of the most critical gaps in the United States' compliance with its standards. FATF noted that the lack of beneficial ownership information significantly slows investigations because determining the true ownership of bank accounts and other assets often requires that law enforcement undertake a time-consuming and resource-intensive process. While we have since implemented customer due diligence requirements, more must be done. Collecting beneficial ownership information at company formation would assist us and our foreign partners as we collaborate to stop criminals, seize and forfeit illicit assets, and protect the public.

As more and more of our allies begin to collect beneficial ownership information at the incorporation stage in their countries and make it accessible to law enforcement, the U.S. risks becoming a safe haven for bad actors looking to hide their assets. As Americans, we have always led in the areas of rule of law, security, and law enforcement. Our failure to lead here is perplexing to the global community that has come to rely on and expect our leadership.

Conclusion

In conclusion, the time to address this important issue is now. As Treasury Secretary Mnuchin has stated several times in Congressional testimony, beneficial ownership information at corporate formation is an important issue to the Department of the Treasury. It is critical for the security of our Nation and its citizens that Congress act to eliminate one of the most useful tools used by criminals to perpetrate their crimes, hide their proceeds, and subvert law enforcement. That is why we appreciate this Committee's work on this issue, and we hope to work with Congress on developing a bipartisan solution to collecting this important information to protect our national security and the people of our Nation. I am happy to take any questions you may have.

PREPARED STATEMENT OF STEVEN M. D'ANTUONO

ACTING DEPUTY ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, DEPARTMENT OF JUSTICE

MAY 21, 2019

Chairman Crapo, Ranking Member Brown, and Members of the Committee, I am pleased to appear before you today to discuss the usefulness of beneficial ownership information to our Nation's law enforcement. This hearing is an important step forward towards developing the laws needed to effectively combat illicit financing through the use of anonymous vehicles, such as shell companies, and the Federal Bureau of Investigation (FBI) appreciates being consulted on these incredibly important matters.

Overview

The U.N. Office on Drugs and Crimes estimates that global illicit proceeds total more than \$2 trillion annually, and proceeds of crime generated in the United States were estimated to total approximately \$300 billion in 2010. For an illegal enterprise to succeed, criminals must be able to hide, move, and access these illicit proceeds—often resorting to money laundering and increasingly utilizing the anonymity of shell and front companies to obscure the true beneficial ownership of an entity.

The pervasive use of shell companies, front companies, nominees, or other means to conceal the true beneficial owners of assets is a significant loophole in this country's Anti-Money Laundering (AML) regime. Under our existing regime, corporate structures are formed pursuant to State-level registration requirements, and while States require varying levels of information on the officers, directors, and managers, none require information regarding the identity of individuals who ultimately own or control legal entities upon formation of these entities.

Not only does the State-level regime lack beneficial ownership information, no Federal-level system exists to consolidate or supplement the information that is collected under the various State regimes. Moreover, except in very narrow circumstances, current Federal laws do not require identification of beneficial owners at account opening with financial institutions.

The FBI has countless investigations, spanning criminal and national security threats, in which illicit actors, operating both domestically and internationally, use shell and front companies to conceal their nefarious activities and true identities. The strategic use of these entities makes investigations exponentially more difficult and laborious. The burden of uncovering true beneficial owners can often handicap or delay investigations, frequently requiring duplicative, slow-moving legal process in several jurisdictions to gain the necessary information. This practice is both time consuming and costly. The ability to easily identify the beneficial owners of these shell companies would allow the FBI and other law enforcement agencies to quickly and efficiently mitigate the threats posed by the illicit movement of the succeeding funds.

In addition to diminishing regulators', law enforcement agencies', and financial institutions' ability to identify and mitigate illicit finance, the lack of a law requiring production of beneficial ownership information attracts unlawful actors, domestic and abroad, to abuse our State-based registration system and the U.S. financial industry. Many of the United States' closest partners require beneficial information in order to detect illicit finance and protect their financial systems. The Nations with the most effective AML and counterterrorist financing (CFT) regimes require documentation of beneficial owners for "legal persons," generally referring to corporations, trusts, and property, held in a centralized database easily accessible by Government agencies. If corporation, trust, and real property owners in the United

States were required to disclose beneficial ownership, and this information was made available to regulators and law enforcement through a central repository, the United States would more vigorously be able to identify and mitigate illicit actors and protect the U.S. financial system.

Nature of the Problem

In recent years there have been multiple assessments, undertaken by the Financial Action Task Force (FATF), as well as the Department of the Treasury, which highlight the vulnerabilities faced by the United States as a result of a near complete lack of transparency into beneficial ownership.

Financial Action Task Force (FATF). The FBI is part of the Treasury-led U.S. delegation to FATF. The FATF is an independent intergovernmental body that develops and promotes policies to protect the global financial system against money laundering, terrorist financing, and the financing of proliferation of weapons of mass destruction. The FATF Recommendations are recognized as the global AML and CFT standards.

FATF's Guidance on Transparency and Beneficial Ownership, found in FATF Recommendations 24 and 25, States that countries should take measures to prevent the misuse of legal persons [such as shell companies, corporate structures, and other entity structures] for money laundering and terrorist financing by ensuring that legal persons are sufficiently transparent. The fundamental principle is that countries should ensure that there is adequate, accurate, and timely information on the beneficial owner or owners that can be obtained or accessed in a judicious fashion by competent authorities without impediments.

In its 2016 Mutual Evaluation Report (MER) of the United States' Anti-Money Laundering and Counter Terrorist-Financing regime, the FATF highlighted the lack of beneficial ownership information issue as one of the most critical gaps in the United States' compliance with FATF standards. Specifically, the MER stated that "serious gaps in the legal framework prevent access to accurate beneficial ownership information in a timely manner," and that "fundamental improvements are needed in these areas."

FATF noted that this issue can significantly mitigate law enforcement's and regulators' ability to combat illicit finance in the United States. Determining the true ownership of bank accounts and other assets often requires that U.S. law enforcement undertake a time-consuming and resource-intensive process, providing ample time for movement of funds or additional layering to conceal the ownership or location of funds. For example, investigators may need grand jury subpoenas, witness interviews, or foreign legal assistance to unveil the true ownership structure of shell or front companies associated with serious criminal conduct. The lack of a current legal requirement to collect beneficial ownership information also undermines financial institutions' ability to determine which of their clients pose compliance risks, which in turn harms banks' ability to guard against money laundering.

Furthermore, in a 2018 report titled *Concealment of Beneficial Ownership*, FATF found that, "the lack of [available beneficial ownership in select] countries is a major vulnerability, and professionals operating in countries that have not implemented appropriate regulations [. . .] represent an unregulated 'back-door' into the global financial system."

2018 National Money Laundering Risk Assessment. This risk assessment, authored by the Department of Treasury, in consultation with the many agencies, bureaus, and departments of the Federal Government that also have roles in combating illicit finance including the FBI, identifies the money laundering threats, vulnerabilities, and risks that the United States currently faces. The risk assessment noted that law enforcement agencies observed that misuse of legal entities posed a significant money laundering risk and that efforts to uncover the true owners of companies can be resource-intensive, especially when those ownership trails lead overseas or involve numerous layers. The assessment further noted that the lack of obligation for certain financial institutions to identify the natural persons who control or own a corporate customer had allowed individuals to access financial services anonymously by acting through shell companies.

Specifically in the section on Vulnerabilities and Risks, the risk assessment noted that, "bad actors consistently use shell companies to disguise criminal proceeds and U.S. law enforcement agencies have no systematic way to obtain information on the beneficial owners of legal entities. The ease with which companies can be incorporated under State law, and how little information is generally required about companies' owners or activities, raises concern about a lack of transparency." Though the Assessment went on to state that the impediment merely slowed down rather than thwarted law enforcement investigations, it later noted that "complex ownership structures featuring layers of corporate entities, trusts, or nominee owners-

punctuated by the involvement of foreign natural or legal persons—also present challenges.”

Challenges for Law Enforcement

There are numerous challenges for Federal law enforcement when the true beneficiaries of illicit proceeds are concealed through the use of shell or front companies. A number of these challenges are outlined below. It is important to note that while the FBI and other Federal law enforcement agencies may have the resources required to undertake long and costly investigations and thus mitigate to a small degree some of the challenges, the same is often not true for State, local, and tribal law enforcement.

The process for the production of records can be lengthy, anywhere from a few weeks to many years, and this process can be extended drastically when it is necessary to obtain information from other countries, which may require a Mutual Legal Assistance Treaty (MLAT) requests to those countries. If the beneficial ownership information being sought pertains to an entity which is registered in a jurisdiction with which the United States has no bilateral MLAT, obtaining records may be impossible.

Finally, if an investigator obtains the ownership records, either from a domestic or foreign entity, the investigator may discover that the owner of the identified corporate entity is an additional corporate entity, necessitating the same process for the newly discovered corporate entity. Many professional launderers and others involved in illicit finance intentionally layer ownership and financial transactions in order to reduce transparency of transactions. As it stands, it is a facially effective way to delay an investigation.

Potential Solutions To Mitigate Challenges

A significant number of the challenges described above could be mitigated by requiring legal entities to disclose beneficial ownership information, and by creating a central repository of that information which would be available to law enforcement and regulators. There are numerous examples of such requirements around the world, including by some of our closest partners.

The Fourth Anti-Money Laundering Directive required European Union (EU) member States to ensure that legal entities incorporated in their territory obtain and hold accurate and current information on beneficial ownership. This beneficial ownership information was held in a central register in that member State, but the registers were not required to be public until the European Parliament adopted the Fifth Anti-Money Laundering Directive in 2018. Section 25 of the directive deals directly and unequivocally with the requirement that member States acquire and retain corporate beneficial ownership:

(25) member States are currently required to ensure that corporate and other legal entities incorporated within their territory obtain and hold adequate, accurate, and current information on their beneficial ownership. The need for accurate and up-to-date information on the beneficial owner is a key factor in tracing criminals who might otherwise be able to hide their identity behind a corporate structure. The globally interconnected financial system makes it possible to hide and move funds around the world, and money launderers and terrorist financiers as well as other criminals have increasingly made use of that possibility.

The Fifth Directive requires public access to data on the beneficial owners of most legal entities, with the exception of trusts, through the use of a central register. The access to data on the beneficial owners of trusts will be accessible without any restrictions to authorities, Financial Intelligence Units, banks and other professional sectors subject to anti-money-laundering rules, as well as other persons who can demonstrate a legitimate interest in the trust data. The directive also addresses the necessity to share the information between member States, in order to ensure the effective monitoring and registration of information on beneficial ownership. EU member States have a January 2020 deadline to implement the direction into national law.

The United Kingdom (U.K.) has enacted perhaps the most robust beneficial ownership legislation to date. The U.K. has registers of beneficial ownership for three different types of assets: companies, real property, and trusts. Information on the beneficial ownership of companies is publicly available. For property owned by overseas companies and legal entities, the public beneficial ownership database is set to launch by 2021. The register for trusts is not public, but is available to law enforcement.

In July 2017, bilateral agreements between the U.K. and the Crown Dependencies and Overseas Territories related to the sharing of beneficial ownership information went into effect. These Crown Dependencies and Overseas Territories include the Isle of Man, the British Virgin Islands, the Cayman Islands, and many others. Under the terms of these agreements, U.K. law enforcement has access to company beneficial ownership information in support of investigations. This information must be made available within 24 hours of a request. Our colleagues at the U.K.'s National Crime Agency have continually noted the immense value of such information in their investigations.

These frameworks can provide valuable insight into the critical aspects of a successful system for maintaining, accessing, and sharing accurate beneficial ownership information.

Examples of Cases Hindered by Obscured Beneficial Ownership Information

As referenced above, the FBI continues to have a plethora of investigations, spanning criminal and national security investigations that have been impacted by the use of shell or front companies by bad actors. Examples of several such instances can be found below, categorized by crime problem:

Kleptocracy. Recently, in a joint FBI and Internal Revenue Service—Criminal Investigations (IRS-CI) investigation, the Department of Justice filed civil forfeiture complaints aggregating to \$1.7 billion brought under the Kleptocracy Asset Recovery Initiative related to the 1Malaysia Development Berhad (1MDB) investigation. From 2009 through 2015, more than \$4.5 billion in funds belonging to 1MDB was allegedly misappropriated by high-level officials of 1MDB and their associates. 1MDB was created by the Government of Malaysia to promote economic development in Malaysia through global partnerships and foreign direct investment. The associated funds were intended to be used for improving the well-being of the Malaysian people. However, using fraudulent documents and representations, the coconspirators allegedly laundered the funds through a series of complex transactions and shell companies with bank accounts located in the United States and abroad. These transactions allegedly served to conceal the origin, source and ownership of the funds, and ultimately passed through U.S. financial institutions to then be used to acquire and invest in assets located in the United States and overseas.

Included in the forfeiture were multiple luxury properties in New York City, Los Angeles, Beverly Hills, and London, mostly titled in the name of shell companies, as well as paintings by Van Gogh, Monet, Picasso, a yacht, several items of extravagant jewelry, and numerous other items of personal property. The investigation into the location and holders of the assets associated with the alleged 1MDB scheme was made much more difficult by the shell companies with connections in foreign destinations.

Drug Traffickers, Political Corruption, and Tax Evasion. Perhaps the most public revelation into alleged illicit actors' use of shell companies to conceal ownership was the former Panamanian law firm Mossack Fonseca. Documents from the firm were leaked by an anonymous source to the International Consortium of Investigative Journalists (ICIJ). These documents, referred to as "the Panama Papers", purport to show how Mossack Fonseca engaged or facilitated international financial crimes, including alleged money laundering and tax evasion, using shell companies and nominees. Several prominent foreign politicians were identified as clients of Mossack Fonseca, leading to multiple heads of State resigning. Mossack Fonseca opened thousands of shell companies for their customers, for whom they could many times not even identify. These customers, at times, allegedly included known international narcotics traffickers.

Mossack Fonseca was not just for international clients. A significant number of their clients were allegedly Americans or individuals involved in U.S.-based commerce. When a regulator or law enforcement official looked up the names of the shell entities in State-held registries, they would find the registered Agent as the law firm or one of its subsidiaries, not a true owner or anyone actually associated with the entity. In many instances, a U.S. regulator or law enforcement entity was precluded from identifying the beneficial owner even via legal process as Mossack Fonseca could not or would not provide the information. These anonymous shell companies allegedly used the U.S. financial system for their anonymous owners' benefits.

Mossack Fonseca also had U.S.-based subsidiaries that established thousands of U.S.-based shells in Nevada, Florida, Wyoming, and likely other States. When officials scrutinized a shell company created by one of the Mossack Fonseca subsidiaries, all that the investigator could learn was that the Agent was "MF Nevada" or the like. Thereafter, the subsidiary Mossack Fonseca entities made it difficult to

obtain any additional information. This, of course, made investigating the shell entities extremely time-consuming, inefficient, and difficult.

Sanctions Evasion. Another example of note is the Karl Lee investigation. Li Fangwei, a/k/a Karl Lee, and several of his Chinese shell and front companies were designated by the Department of the Treasury's Office of Foreign Assets Control (OFAC) as the principal supplier to the Government of Iran's ballistic missile program. He owned a graphite and metallurgical production factory in Dalian, China, and was supplying Iran with various military and metallurgical items. Lee used his Chinese shell and front companies to surreptitiously exploit the U.S. financial system to supply weapons of mass destruction to Iran. Lee was indicted on seven counts of International Emergency Economic Powers Act (IEEPA) violations, money laundering, and related schemes. Approximately \$7 million was seized from U.S.-based correspondent bank accounts associated with Lee's foreign-based accounts. Some of Lee's attempted sales involved U.S. businesses, who were unaware of the Lee's role as beneficial owner of the concealed Chinese shells.

During the Karl Lee investigation the FBI faced numerous hurdles due to the litany of overseas shell corporations. Attempting to unravel Lee's shell network that had penetrated the U.S. financial system delayed the investigation many months and nearly proved insurmountable. One major challenge was that most of the U.S.-based correspondent banks did not collect basic know your customer information for the shell corporation accounts and permitted transactions to be blindly conducted. Thankfully, one bank did collect this information, which enabled the FBI to start to unravel Lee's illegal proliferation and use of the U.S. financial system. This fundamental information proved crucial to the investigation but only existed by chance, not by legal requirement.

Crimes Against Children/Human Trafficking. In April 2018, the Department of Justice announced the seizure of Backpage.com, the Internet's leading forum for prostitution ads, including ads depicting the prostitution of children. In 2018, seven defendants were charged with 93 counts of prostitution related charges, money laundering, and transactional money laundering. Eventually, the Government seized over \$140 million worth of USD and bitcoin.

Approximately 97 percent of Backpage's revenue came from selling ads related to prostitution, which included children and victims of human trafficking. In approximately 2015, major credit card providers stopped allowing transactions with the site and almost no banks would provide banking services for Backpage. The owners and operators of the website turned to opening shell companies in the United States, Europe, Asia, and South America in order to continue to operate as a company. Eventually, Backpage's entire revenue stream was predicated on concealing the receipt of money from people purchasing advertisements. The owners opened shell companies in order to obtain bank and merchant accounts. Backpage also accepted prepaid gift cards and digital currency, which it then sold and exchanged for cash, then moved into bank accounts of the shell companies in order to fund its operation.

Unwinding these shell companies and their bank accounts took many months due to the lack of readily available beneficial ownership information. Additionally, had the banks known who the beneficial owners of the shell companies were, they likely would not have provided banking services and the revenue platform would have been eliminated. Thus, the criminal activity could have been starved of income and the abuse of children and human trafficking victims could have been halted years earlier than it was.

Health Care Fraud. On April 9, 2019, FBI and Department of Justice officials announced the disruption of one of the largest Medicare fraud schemes in U.S. history. An international fraud ring allegedly bilked Medicare out of more than \$1 billion by billing it for unnecessary medical equipment—mainly back, shoulder, wrist, and knee braces, as part of Durable Medical Equipment (DME) orders. The alleged illegal activity in this scheme included medical equipment companies that paid a firm in the Philippines to recruit individuals, who were Medicare patients and may or may not have had a medical need for the braces. The companies then allegedly paid doctors kickbacks to telemedicine companies that arranged for doctors to prescribe unnecessary braces “without any patient interaction or with only a brief telephonic conversation with patients they had never met or seen.” Some of the telemedicine companies concealed these kickbacks by using fraudulent invoices and having the payments made to shell companies, which were located in foreign countries and established in the name of nominee owners. Some of the 130 DME companies associated with the investigation also were valueless shell companies used to conceal the true owner-operators of the businesses. The DME companies at times hired legal counsel and some of the owners used straw individuals to establish new DME companies when Medicare would perform audits of their illegitimate DME business practices. The DME owners would merely move its existing business into the new

DME company and establish new bank accounts under the new DME name. During its operation, DME representatives provided banks with the names of the straw individuals, purporting to be the owners of the business. By doing this, the financial institutions were unable to easily flag the routine fraudsters as such.

The proceeds of this fraudulent scheme were allegedly laundered through international shell corporations and used to purchase exotic automobiles, yachts, and luxury real estate in the United States and abroad. The massive, months-long investigation known as “Operation Brace Yourself” spanned 20 FBI field offices and involved several partner agencies, including the IRS Office of the Inspector General, the Department of Health and Human Services’ Office of the Inspector General, Center for Medicare and Medicaid Services, U.S. Secret Service, and the Department of Veterans’ Affairs.

Investment Fraud. In a joint FBI, IRS–CI, and U.S. Postal Inspection Service case, six individuals were ultimately charged in 2009 for their part in running a \$168,000,000 hard-money lending Ponzi scheme. The scheme involved the use of opaque corporate structures and shell entities to conceal fraud and self-dealing. Duane Slade, Guy Williams, and Brent Williams were the primary executives that created complicated investment structures and used shell companies to divert investors’ assets. Money was siphoned from the primary investment fund into related shell companies, which were actually owned by the executives of the primary investment firm, unbeknownst to the investors. These executives were then able to convince multiple investors to purchase equity into what amounted to valueless shell entities. The executives even contrived a loan of investors’ money from the primary investment to one of the shells. Though no money actually changed hands, the executives paid themselves a \$400,000 fee for arranging the loan.

Due to the convoluted nature of these interrelated shell companies and investment products, dozens of citizens were defrauded out of their life savings. Had either the citizens or the banks which provided banking services had a clearer picture of who owned which entities, the fraud may have been prevented. Finally, the multiyear, multiagency investigation took countless days and hours of investigation, during which the subjects continued to dissipate assets unknown to law enforcement.

Drug Trafficking and Money Laundering. The Trevino-Morales brothers, alleged to be the head of the Los Zetas Mexican drug cartel, were indicted in Texas for their roles in using the race horse industry and shell companies to launder millions of dollars in drug proceeds. Miguel Trevino-Morales, the alleged head of Los Zetas, claims to have killed 385 U.S. citizens during his association with the cartel. The brothers structured drug proceeds into anonymous or straw shell company bank accounts within the U.S. financial system. The Trevino-Morales brothers would then purchase vast numbers of race horses from auctions on behalf of the shells, then sell the horses between the shells in order to make the deposits of vast sums of drug proceeds into their bank accounts look legitimate. Finally, if one of the race horses started winning money, they would back-date a sale of the horse into the known entity of the brother not outwardly associated with the Los Zetas, who would then deposit the winnings in furtherance of the drug enterprise.

The wide use of shell companies, in both the United States and Mexico, made it nearly impossible for banks and investigators to associate the drug cartel with horses and bank accounts. If not for solid witness testimony and extremely diligent forensic accounting, it would have been difficult to prove the case. In total, 10 defendants were found guilty of money laundering related charges, a money judgement of \$60 million was rendered, 522 race horses were seized (and sold for \$12 million), two U.S.-based horse ranches were seized as well as two airplanes used by the cartel.

Conclusion

I want to thank the Committee for holding this hearing and for calling attention to the threat posed by obscured beneficial ownership. The United States needs effective legal tools to directly target these types of fraudulent schemes and protect the integrity of the U.S. financial system from similar schemes. Together with our domestic and international law enforcement partners, the FBI is committed to continuing this conversation with Congress and looks forward to developing and strengthening beneficial ownership laws.

PREPARED STATEMENT OF GROVETTA N. GARDINEER

SENIOR DEPUTY COMPTROLLER FOR BANK SUPERVISION POLICY AND COMMUNITY AFFAIRS, OFFICE OF THE COMPTROLLER OF THE CURRENCY, DEPARTMENT OF THE TREASURY

MAY 21, 2019

Introduction

Chairman Crapo, Ranking Member Brown, and Members of the Committee, thank you for the invitation to appear before you today to discuss the threats posed to our financial system by the use of shell companies and other methods to conceal the true beneficial owners of assets. The Office of the Comptroller of the Currency (OCC) welcomes the Congressional focus on protecting the financial system from misuse by bad actors through effective implementation of the beneficial ownership legal regime, and we support legislative action to improve the regime's framework by creating a requirement for legal entities to provide consistent information regarding the identification of their beneficial owners.

The OCC charters, supervises, and regulates more than 1,200 national banks, Federal savings associations, and Federal branches of foreign banks (collectively, "banks") that cover virtually the entire range of bank asset sizes and business models. Our supervised banks range in size from very small community banks to the largest most globally active U.S. banks. The vast majority of them, about 968, have less than \$1 billion in assets, while more than 60 have greater than \$10 billion in assets. Together, they hold \$12.7 trillion in assets—almost 70 percent of all the assets of the commercial U.S. banks. These institutions touch the lives of most American families in some way.

Fundamental to our mission as a banking supervisor, is the requirement that banks soundly manage their risks, meet the needs of their communities, comply with applicable laws and regulations, and provide fair access to financial services and fair treatment of their customers. To this end, the OCC is committed to ensuring that the banks we supervise have established the appropriate policies, processes, and procedures to implement these requirements as part of strong and effective BSA/AML compliance programs.

In his testimony last week, Comptroller Otting noted that one of his top priorities is improving the efficiency and effectiveness of the BSA/AML framework, while continuing to support law enforcement and protect the financial system from those who seek to exploit it for illicit purposes. Additionally, the Comptroller expressed his concerns about the increased burden of BSA/AML compliance on banks. These are the OCC priorities that bring me here today. Our examiners' frontline insight, knowledge, and experience can inform the Committee of how BSA compliance programs are designed and implemented in the banks we supervise. This perspective also provides unique insights into where there are gaps and what can be done to strengthen the beneficial ownership regime used by our financial system.

My testimony describes the challenges that are emerging as our banks work to implement the provisions of the Customer Due Diligence Requirements for Financial Institutions or CDD Rule,¹ and highlights the OCC's support for the establishment of a consistent, nationwide requirement for legal entities to provide accurate beneficial ownership information. Alternatively, Congress could consider creating a centralized database for the maintenance of beneficial ownership information. In either case, a standardized approach to allow for the verification of beneficial ownership data would benefit law enforcement, regulators, and the banks supervised by the OCC.

The Importance of Collecting Beneficial Ownership Information

The beneficial ownership requirements of the CDD Rule were established by FinCEN in May 2016, with a mandatory compliance date of May 2018. These provisions of the CDD Rule established a comprehensive regulatory requirement to identify, and verify, on a risk basis, the identities of, beneficial owners of legal entities. These requirements support the important goal of the BSA to protect the Nation's financial system from use by criminals for illegal purposes. It also supports the effective implementation of the economic sanctions programs administered and enforced by the U.S. Treasury Department's Office of Foreign Assets Control (OFAC). A critical objective of the CDD Rule is to help prevent criminals, or prohibited indi-

¹The CDD Rule issued by FinCEN on May 11, 2016, covers both beneficial ownership requirements codified at 31 CFR 1010.230, and the customer due diligence requirements codified at 31 CFR 1020.210 (banks, savings associations, and credit unions).

viduals and entities, from maintaining anonymity by using legal entities to shield their illegal activities from detection by law enforcement.

Prior to the issuance of the CDD Rule's beneficial ownership requirements in 2016, banks generally utilized the 2010 *Interagency Guidance on Obtaining and Retaining Beneficial Ownership*. The guidance explained that, with respect to certain accounts posing heightened risk, banks could take certain steps to identify and verify beneficial owners, in order to reasonably understand both the sources and uses of funds in the account and the relationship between the legal entity customer and the beneficial owners. As a result, prior to the CDD Rule, many OCC-supervised banks had policies and procedures in place to identify beneficial owners as a part of their general prudent risk management practices; however, the absence of a comprehensive regulatory requirement created opportunities for bad actors to misuse legal entity accounts.

In some cases individuals could disguise their ownership in legal entities through the use of false representatives and multiple ownership layers using special purpose vehicles, private investment companies, and trust arrangements. Disguised, these parties could effectively send and receive funds anonymously or engage in tax avoidance. In addition, front companies could commingle the proceeds of legitimate and illegitimate business activities, and legitimate companies could conduct illegitimate business in trade-based money-laundering schemes. These examples expose vulnerabilities in the national BSA/AML regime, where the lack of comprehensive beneficial ownership information has not only hampered law enforcement investigations, but has also negatively impacted international cooperation and limited banks' ability to effectively identify and report suspicious activity.

The U.S. National Money Laundering Risk Assessment published by the Department of the Treasury in 2018 noted that the misuse of legal entities poses a significant money laundering risk. The risk assessment also noted that law enforcement efforts to uncover the true owners of companies can be resource intensive, especially when those ownership trails lead overseas or involve numerous layers of ownership through multiple legal entities. It is widely recognized that the abuse and misuse of legal entities to hide illicit sources of funds or a criminal beneficial owner is a common feature of money laundering and corruption schemes.

Bank BSA Compliance Programs and the CDD Rule

The OCC views the implementation of the CDD Rule as an integral part of a bank's BSA/AML compliance program to detect the abuse of legal entities for criminal purposes. Under the long-standing BSA regulatory regime, each bank's BSA/AML compliance program must be designed to (1) identify and verify on a risk-basis the identity of each of its customers; (2) conduct appropriate risk-focused due diligence on those customers; and (3) identify, monitor and report suspicious activity. The beneficial ownership requirements of the CDD Rule are designed to improve the information on which banks conduct their risk-based customer due diligence, as noted above. Overall, the BSA/AML compliance program requirements establish a solid foundation to safeguard against banks being used as vehicles either to launder money for drug traffickers and other criminal organizations, to facilitate the financing of terrorist acts, or to permit prohibited parties unauthorized access to the U.S. financial system.

The CDD Rule specifically requires banks to establish and maintain written policies and procedures reasonably designed to (1) identify the beneficial owners of each legal entity customer at the time a new account is opened; (2) verify the identity of each beneficial owner according to risk-based procedures; (3) understand the nature and purpose of customer relationships in order to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information. The beneficial ownership provisions of the CDD Rule require banks to identify, and verify the identity of, as many as five individuals for each legal entity customer. Banks must identify each individual (up to four) who owns 25 percent or more of the equity interests in a legal entity, and, for each legal entity, one individual who exercises management control of that legal entity. Banks may choose to implement stricter written internal policies and procedures for the collection and verification of beneficial ownership information than the requirements prescribed by the Rule.

Although the beneficial ownership requirements were issued in the 2016 CDD final rule, compliance was not required until May 2018. Prior to the May 2018 compliance date, the OCC regularly reviewed the extent to which banks had designed and implemented appropriate risk-based policies and procedures for identifying beneficial ownership. OCC examiners determined that banks made good use of the transition period after the issuance of the rule to make changes in their policies and procedures for account opening, as well as to implement operational changes for sus-

picious activity monitoring and other systems, in order to meet their obligations under the CDD Rule.

Subsequent to the mandatory May 2018 compliance date of the CDD Rule, the OCC conducted a number of reviews where we found that, overall, most banks examined had taken the necessary steps to come into compliance with the rule. These preliminary examination results indicated that banks have generally been diligent and compliant in designing and implementing appropriate policies and procedures for identifying beneficial owners and verifying their identities. More recently, the OCC has begun to conduct more in-depth examinations, and examiners have identified a relatively small number of violations of the requirements related to beneficial ownership identification, as those banks continue to work to adjust systems, implement policies and procedures, and test for compliance.

Challenges in Implementing the CDD Rule

The beneficial ownership requirements of the CDD Rule have moved toward creating a more comprehensive process for collecting and verifying beneficial ownership information. However, the rule also imposes significant challenges and costs on banks, and it cannot fill certain gaps in the beneficial ownership regime, as described below. These concerns may be best addressed through legislation establishing a consistent, nationwide requirement for legal entities to provide and update accurate beneficial ownership information, or by the creation of a centralized database for legal entities to provide and update this information. Some of the challenges with the CDD Rule relate to verification of ownership and control information, periodic updating requirements, ownership thresholds and recordkeeping requirements. For many banks, the new policies and procedures required by the CDD Rule result in costly new training obligations for all employees that are: (1) responsible for opening accounts and establishing customer relationships; (2) involved in bank operations and information systems and security; and (3) involved in compliance functions. There are also new costs associated with adjusting, testing and validating account opening and monitoring systems to ensure that they are capturing the required information and account level activity appropriately. These requirements have the potential for increasing bank compliance costs, particularly for smaller community banks.

Ownership Information Verification and Updates—The biggest challenge that we have observed in achieving a fully effective beneficial ownership regime is the absence of any reliable sources against which a bank can independently verify the accuracy of beneficial ownership information it obtains from a legal entity customer at account opening. Currently, beneficial ownership information is generally not collected by State or tribal governments at the time of company formation or in subsequent filings or reports. Moreover, to the extent such information is collected, there is no consistent system banks can access and rely upon to verify that the ownership and control information obtained from their customers are accurate. Beneficial ownership requirements under the CDD Rule require banks to establish and maintain written procedures that are reasonably designed to identify, and verify the identity of, beneficial owners of legal entity customers. Banks may identify the beneficial owners by obtaining either a certification form, or the information prescribed in that form, from the individual opening the account on behalf of the legal entity. The required standard of accuracy of the information is to “the best of the individual’s knowledge.” There is no regulatory requirement for banks to verify the ownership or the control information that has been provided. Banks can rely on that information unless they have knowledge of facts that “would reasonably call into question the reliability” of the information.

Moreover, as noted above, the CDD Rule provides for banks to rely on the accuracy of information obtained from an individual “to the best” of that individual’s knowledge, and also requires no further action in the absence of knowledge by a bank of facts that “would reasonably call into question the reliability” of the information. In cases of higher-risk customer relationships, this reliance may pose substantial risk, not just to the bank but also to the broader financial sector.

Ownership Thresholds—Under the CDD Rule, banks are required to identify owners at or above the 25 percent threshold established; however, this type of inflexible threshold permits bad actors to structure legal entities using multiple entities, trust arrangements, and other legal forms to create numerous ownership layers so that ownership percentages are below the threshold. Where ownership interests exist below the 25 percent threshold, some true owners may not be identified by the bank opening the account.

In the case of legal entities that may be engaging, or planning to engage, in illicit activity, by the time that entity approaches a bank to open an account, it is likely that beneficial owners who wish to remain anonymous have already structured the

ownership of the legal entity to lower the percentage of their interests below the threshold. Consideration should be given to establishing a consistent, nationwide requirement that cannot be easily circumvented and would require legal entities to provide, update, and verify information regarding the identity and holdings of legal entity owners, or alternatively, to the creation of a Federal database for the maintenance of beneficial ownership information.

The consistent collection and maintenance of this information would reduce the potential risk that owners who are bad actors will remain hidden and, if this information were made available for banks to access on an as-needed basis, banks could more efficiently and accurately identify and verify owners at, and below, the current threshold.

Recordkeeping—The CDD Rule requires that banks reconfirm the required beneficial ownership information for every new account opened by a legal entity customer. While there is evidence that some legal entities are misused by criminals, in the vast majority of cases, these entities serve legitimate business purposes and have sound business reasons for establishing several accounts. The current rule increases the compliance burden on banks to meet these requirements, because these requirements now apply across all legal entity customers, regardless of the associated risk. Prior to the 2016 beneficial ownership requirements, banks were required by regulation to identify beneficial owners only in limited categories of cases, and did so based on bank risk management policies in others. The burden of compliance with the CDD Rule is further increased by the requirements related to changes in beneficial ownership information and the need to maintain multiple sets of beneficial ownership information and supporting documentation, depending on the number of new accounts established by a legal entity.

Establishing a Nationwide Requirement

To assist in addressing these challenges, the OCC supports legislation to create a consistent, nationwide requirement for legal entities to provide, update, and verify accurate beneficial ownership information, or alternatively, the creation of a centralized database to maintain this information. The requirement to provide this information should apply to all domestic legal entities and to legal entities incorporated in foreign jurisdictions as a condition to having a bank account in the United States. To best address the critical risks we have discussed, the information should be provided in a consistent format to the appropriate State or tribal government at the time of corporate formation, and should be updated along with the filing of the regular reporting required of legal entities. For entities already in existence at the time such legislation is adopted, the same level of beneficial ownership information could be provided with the next-scheduled corporate report.

We note that collecting information on foreign legal entities and ownership is more challenging than for domestic entities, due to their incorporation in other jurisdictions. However, cross-border transaction activity presents a higher money laundering and terrorist financing risk, and, therefore, the collection and verification of beneficial ownership information for these legal entity customers is critical. As a result, we would recommend that these foreign entities be required to report ownership information either at the time of State registration or upon establishing an account relationship with a U.S. financial institution.

Under this information collection process, consideration should be given to applying the exemptions for certain legal entities (e.g., financial institutions, publicly listed companies), that are currently available under the CDD Rule. Appropriate degrees of access to the collected information should be made available to law enforcement, regulators, banks, and others engaged in the fight against financial crime. The OCC would effectively use this information as a part of the examination and supervisory processes as well as in any enforcement and investigation activities.

In addition to basic company information, legal entities should be required to disclose beneficial owners. A uniform format should be established for this information to ensure consistency and completeness regardless of the State or tribal government in which a legal entity is formed. Individuals providing beneficial ownership information on behalf of the legal entity should be required to attest to the truthfulness of the identity and ownership provided and be held accountable for making false statements.

While we support legislation to create a consistent, nationwide requirement or centralized database for beneficial ownership information, we are keenly aware of the importance of establishing a balance between the need for law enforcement, regulators, and banks to access this information and important data protection and privacy rights. Recent examples of data breaches and misuse of personal information that have put individuals at risk reminds us of the vital need to protect the security of the information that will be collected and maintained in this database. Careful

consideration should be given to implementing required security measures such as setting a range of access levels to data or information sets based on criteria for demonstrating legitimate need. Congress should consider reviewing best practices in place in the European Union and other jurisdictions that have established and maintain corporate registries to collect and maintain beneficial ownership information.

Benefits of a Nationwide Requirement for Beneficial Ownership Data

There are important benefits that could be derived from the creation of a consistent, nationwide requirement for legal entities to provide and update accurate and complete beneficial ownership information, or from a centralized database for this information. For example, law enforcement could be more focused on substantive investigative steps, by reducing the amount of effort and time required to identify, request and obtain beneficial ownership information collected by numerous banks about a variety of legal entities and then maintained by those banks in a wide variety of formats. With a consistent approach for providing or maintaining this data, banks and law enforcement could both be more confident of the reliability of accessible beneficial ownership information.

A nationwide requirement for legal entities to provide this information, or the creation of a centralized Federal database, in a consistent format also could reduce regulatory burden by providing banks with a transparent way to check the accuracy of the information they obtain from legal entity customers and streamline record-keeping requirements. In addition, it could alleviate the requirement to obtain and verify identity information for beneficial owners. As well, because the ownership information would be already available, there could be a process for banks to update information on ownership changes, as appropriate. A requirement for the person providing beneficial ownership to attest to its accuracy would further strengthen the system.

By addressing the challenges arising from the implementation of the rule and reducing regulatory burden, a nationwide requirement, or a centralized database would allow banks to spend less time on training, reporting, and processing paperwork, so banks could focus resources on analyzing available information to make more informed judgements and determine whether the information provided by its legal entity customer is reasonable and reliable. Extending the consistent requirement to report ownership information to include foreign legal entities doing business in the U.S. would also support bank efforts to establish the accuracy of information they receive from these entities and would otherwise be unable to validate, since these entities are incorporated outside of the United States. Banks could also receive fewer information requests and subpoenas from law enforcement pertaining to this information since law enforcement likely would be able to access the information directly from the State and tribal governments responsible for incorporating the legal entities.

Finally, a nationwide requirement for legal entities to provide beneficial ownership information could enhance overall customer experiences with their banks by relieving some of the burdensome and duplicative information requirements on legal entity customers. Banks would be able to rely on the information contained in the database for both identification and verification purposes and the information would be updated accordingly. As a result, banks would no longer have to continually contact the customer and the information would be verified.

Conclusion

The spirit and underlying purpose of the CDD Rule are focused on identifying hidden beneficial owners who could be potential bad actors, to support successful investigations and assist law enforcement in preserving the overall integrity of the Nation's financial system. The risks associated with failing to identify beneficial owners of legal entities and the impact of such failures have been well documented. However, implementation of the CDD Rule by itself is only a partial step toward achieving those objectives and our law enforcement goals cannot be met by banks alone. Full realization requires a partnership between the private and public sectors working together to provide law enforcement agencies with meaningful, accurate, and timely information. It requires that there be other sources of information and data to support the current efforts by the banks. For these reasons, we support the development of a consistent, nationwide system for legal entities to provide and update accurate and complete beneficial ownership information of domestic legal entities and foreign legal entities doing business in the United States—or, in the alternative, the creation of a centralized database to maintain that information—to complete and complement the efforts already undertaken by banks supervised by the OCC. The collection of such information serves a critical purpose for law enforce-

ment. The preservation of the integrity of our financial system and our national security cannot rest solely with the banks. We stand ready to work with the Committee and its Members to develop a solution on this important issue.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR COTTON
FROM KENNETH A. BLANCO**

Q.1. *“De-Risking”—Lawful Businesses Losing Access to Banking Services:* Preamble: I’ve heard concerns from constituents that are losing access to banking services because the bank says “you present a regulatory risk” but the regulators deny they are the issue, saying “this isn’t on us, we never said you can’t bank that industry.” Both regulators and the bankers point fingers at one another, and the businesses are caught in the middle. One example is the nonbank ATM business, the kind of ATM that you might see at a gas station or rest stop.

How do we address this regulatory gray area that hurts lawful American businesses?

A.1. At FinCEN, we share your concerns about unwarranted de-risking. When FinCEN uses the term “de-risking”, we are talking about instances in which a financial institution seeks to avoid perceived regulatory risk by terminating, restricting, or denying services to broad classes of clients, without case-by-case analysis of risk or consideration of mitigation options. This is often discussed in the cross-border and correspondent banking context, but the term may be applied in the context of some domestic financial relationships as well.

Over the past few years, the Treasury Department, in coordination with our regulatory partners, has issued a number of statements, such as a “Joint Fact Sheet on Foreign Correspondent Banking” that highlights the efforts of U.S. authorities to implement a fair and effective regulatory regime and clarifies further the U.S. Government’s approach to supervision and enforcement. The Fact Sheet describes the expectations of U.S. regulators, the supervisory examination process, and the use of enforcement actions. In addition, when issuing advisories to highlight areas of potential financial crime risk, FinCEN has stressed that such advisories should not put into question a financial institution’s ability to maintain or otherwise continue appropriate relationships with customers or other financial institutions, and should not be used as the basis to engage in wholesale or indiscriminate de-risking of any class of customers or financial institutions.

Treasury has engaged with financial institutions directly to explain these supervisory expectations and the importance of the risk-based approach. Through bilateral engagement and multilateral fora including the Financial Action Task Force and its nine regional bodies, Treasury has worked with countries to improve their anti-money laundering and countering the financing of terrorism (AML/CFT) regimes.

To continue to address de-risking, we first need to remain vigilant to take steps to engage with the private sector and other key stakeholders to stay up-to-date on the scope and scale of the issue, as new developments arise. In addition, we should continue to take a close look at the Bank Secrecy Act (BSA) and our broader AML/CFT regime. We want to upgrade and modernize our system where needed in order to make sure that we build and maintain the right framework—one that appropriately leverages innovative approaches undertaken by financial institutions and others—to have the highest quality information available to combat money laun-

dering, the associated crimes that go with it, including terrorist financing, and illicit finance risks. We are actively working on important efforts to improve the BSA/AML regime, including, among other things:

- Reviewing ways in which financial institutions can take innovative and proactive approaches to identify, detect, and report financial crime and meet BSA/AML regulatory obligations;
- Reviewing the risk-based approach to the examination process;
- Reviewing the agencies' approach to BSA/AML supervision and enforcement.

Q.2. What is the process for businesses or industries, provided they operate lawfully, to seek the type of safe harbor that a bank compliance officer would need in order to offer them services? If nothing exists at the moment, what can regulators do to ease concerns about banking the lawful businesses currently being “de-risked” such as pawnbrokers, non-ATMs, etc.?

A.2. FinCEN has noted in several contexts that better understanding of business practices and risk mitigation practices across different categories of actors within the financial sector is an important component to help address concerns of de-risking. We have promoted cross-industry communications in this regard. As for what the banking agencies can do in particular to address this concern, we respectfully refer you to the Federal Banking Agencies.

Q.3. We all operate according to the incentives we face. Law Enforcement is incentivized to reduce crime and terrorism, as it should be. In light of that, what should Congress write in legislation that ensures the collection and use of beneficial ownership information will occur in a manner that limits the burden on the folks that pay our salaries, i.e., the private sector?

A.3. To be effective, it is necessary that there be consequences for failing to provide or providing false beneficial ownership information, and as such, we support appropriate civil and criminal penalties. To be clear, however, our intent is not to go after accidental errors or oversights, but rather, to penalize efforts to purposefully subvert the requirement.

Q.4. I’m aware that your interest is not in going after small businesses. What concrete incentives and protections should we write into legislation to make sure that 100 percent of beneficial ownership information will be used to go after anonymous shell companies engaged in illicit activity?

A.4. FinCEN is committed to working with our partners in Congress to develop appropriate mechanisms to mitigate effects on small business, including penalty structures that avoid subjecting such businesses to liability for inadvertent mistakes.

Q.5. I’m aware that there must be penalties for not submitting beneficial ownership information, or else the database won’t be very useful. But am I going to hear from a Little Rock nail salon owner that FinCEN is hassling them about whether her sister, who owns 15 percent of the LLC and occasionally pitches in at the nail salon, has “substantial control” over the business? Should there be any protocols to prevent FinCEN from contacting business in cases

where there's no substantiated evidence that the business is an anonymous shell company engaged in illicit finance?

A.5. See previous answer.

Q.6. Do you agree that getting an envelope in the mail from the "Financial Crimes Enforcement Network" (FinCEN) would be intimidating for the owner of a nail salon in Jonesboro, AR?

A.6. See previous answer.

Q.7. Your testimony talks about "anonymous shell companies" used to aid terrorists, cartels, and human traffickers. All are worthy targets. So how can you ensure that this collection of data will never be used to hassle or intimidate a nail salon or dry cleaner, provided they made a good-faith attempt at answering the questions on beneficial ownership and are not suspected of a crime?

A.7. See previous answer.

Q.8. What about if we include a provision that says that all communication from FinCEN to small business includes an option to contact an Ombudsman?

A.8. We look forward to continue working with Congress on developing appropriate solutions to mitigate impacts on small business.

Q.9. And how about an option, in cases where there is no criminal investigation yet open, for the comment or complaint to the Ombudsman to be also be forwarded to the businesses' members of Congress?

A.9. See previous answer.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY FROM KENNETH A. BLANCO

Q.1. *Banks De-risking*—I continue to hear that BSA/AML compliance burdens are causing some banks to de-risk. This concerns me, as it should all, that various Main Street businesses in operation for years are apparently having, without explanation, their accounts and banking services terminated because of banks in fear of not meeting supervisory expectations which may result in enforcement actions. Additionally, we are receiving word of consumer customers' debit cards being declined by their bank at point of sale in some of these same Main Street businesses.

Can you comment on what steps we need to take in order to craft proper policy solutions to address unwarranted de-risking?

A.1. At FinCEN, we share your concerns about unwarranted de-risking. When FinCEN uses the term "de-risking," we are talking about instances in which a financial institution seeks to avoid perceived regulatory risk by terminating, restricting, or denying services to broad classes of clients, without case-by-case analysis of risk or consideration of mitigation options. This is often discussed in the cross-border and correspondent banking context, but the term may be applied in the context of some domestic financial relationships as well.

Over the past few years, the Treasury Department, in coordination with our regulatory partners, has issued a number of statements, such as a "Joint Fact Sheet on Foreign Correspondent

Banking” that highlights the efforts of U.S. authorities to implement a fair and effective regulatory regime and clarifies further the U.S. Government’s approach to supervision and enforcement. The Fact Sheet describes the expectations of U.S. regulators, the supervisory examination process, and the use of enforcement actions. In addition, when issuing advisories to highlight areas of potential financial crime risk, FinCEN has stressed that such advisories should not put into question a financial institution’s ability to maintain or otherwise continue appropriate relationships with customers or other financial institutions, and should not be used as the basis to engage in wholesale or indiscriminate de-risking of any class of customers or financial institutions.

Treasury has engaged with financial institutions directly to explain these supervisory expectations and the importance of the risk-based approach. Through bilateral engagement and multilateral fora including the Financial Action Task Force and its nine regional bodies, Treasury has worked with countries to improve their anti-money laundering and countering the financing of terrorism (AML/CFT) regimes.

To continue addressing de-risking, we first need to remain vigilant to take steps to engage with the private sector and other key stakeholders to stay up-to-date on the scope and scale of the issue, as new developments arise. In addition, we should continue to take a close look at the Bank Secrecy Act (BSA) and our broader AML/CFT regime. We want to upgrade and modernize our system where needed in order to make sure that we build and maintain the right framework—one that appropriately leverages innovative approaches undertaken by financial institutions and others—to have the highest quality information available to combat money laundering, the associated crimes that go with it, including terrorist financing, and illicit finance risks. We are actively working on important efforts to improve the BSA/AML regime, including, among other things:

- Reviewing ways in which financial institutions can take innovative and proactive approaches to identify, detect, and report financial crime and meet BSA/AML regulatory obligations;
- Reviewing the risk-based approach to the examination process;
- Reviewing the agencies’ approach to BSA/AML supervision and enforcement.

Q.2. Beneficial Ownership Disclosure on Nonprofits—Over the past decade, there have been a number of bills introduced in the House and Senate to require disclosure of beneficial ownership information. The main thrust of the effort to pass these bills has been on getting information on who owns or controls corporations and LLCs to prevent money laundering and terrorist financing. Each of these bills has exempted certain low-risk entities from its provisions, such as publicly traded companies, insurance providers, and public utilities. The “Corporate Transparency Act”—the main bill in the House right now—includes these types of exemptions. But several other types of common, low-risk entities may not be exempt, and I’m concerned about the ability of these types of entities to comply with yet another costly Government regulatory regime that has significant criminal liability for even minor paperwork violations. This

is particularly an issue of concern to a number of small, volunteer-run nonprofit organizations that could find themselves subject to beneficial ownership disclosure requirements.

I understand that the CTA bill in the House would exempt from beneficial ownership reporting requirements nonprofit entities that are covered under 501(c), 527, or 4947(a)(1) of the Tax Code. But not all nonprofits within this universe of entities are exempt because the Bill imposes two additional requirements that must be met. The nonprofit organization must: (1) not have been denied tax exempt status and (2) have “timely” filed its most “recently due annual information return with the IRS.” These two additional requirements raise a number of issues and will undoubtedly lead to many unintended and draconian results because inadvertent failure to satisfy these requirements are common—especially for small, volunteer-run nonprofits.

With respect to the requirement that a nonprofit file “annual information returns,” there are numerous annual information returns they are required to file. These include IRS Forms 990, 990-PF, 990-T, 1096, 1097, 1098, and 945. There are a number of legitimate reasons why one of these reports may not be “timely” filed, and failure to timely file an annual return is quite common among smaller nonprofits due to the nature of the nonprofits and their reliance on volunteers, who may be unsophisticated, and lack resources to understand IRS annual filing requirements.

Do you think it is necessary or fair to subject a nonprofit that fails to timely file one of these information reports to the beneficial ownership disclosure requirements of the CTA and other bills?

A.2. FinCEN has actively worked with its congressional partners to develop appropriate standards for beneficial ownership reporting that mitigate impacts on business (especially arising from inadvertent mistakes) while ensuring that FinCEN collects information that is useful for law enforcement purposes. We are committed to continuing to work collaboratively with stakeholders in this area.

Q.3. What public purpose does it serve?

A.3. See previous response.

Q.4. Is it some type of a “red flag” that law enforcement has named as a warning sign that a nonprofit is engaged in money laundering or terrorist financing?

A.4. Terrorism or money laundering financial red flags generally focus on the source, destination, and type or pattern of financial transactions associated with the actor or entity, and/or the transactional parties and financial institutions owning, initiating, receiving or facilitating related financial transactions. FinCEN is unaware of any red flags exclusively based on the tardy filing of required tax reports by a nonprofit or other business.

Q.5. Given that the IRS recently changed its rules to automatically revoke the exempt status for nonprofits that fail to file three consecutive annual information returns, would such entities find themselves permanently subject to the beneficial ownership disclosure requirements of the CTA?

A.5. This could depend on the specific legislative proposal. As FinCEN has said previously, we are committed to working with

stakeholders to craft appropriate reporting requirements that ensure the efficacy of the database while mitigating unintended consequences.

Q.6. According to the Urban Institute, 16 percent of the nonprofit sector lost its tax exempt status as a result of this rule change. Although many of these groups had their exemptions restored, wouldn't these same organization be permanently subject to the disclosure requirements even after their exemption had been reinstated because "they were denied tax exempt status" by revocation of their exempt status?

A.6. See previous answer.

Q.7. With these issues in mind, isn't there room for improvement to the exemptions afforded to certain types of nonprofit and other entities under CTA before Congress rushes to impose this massive new regulatory regime?

A.7. We look forward to continue working with Congress on developing a solution to address your concern.

Q.8. There are a variety of legitimate reasons why many donors to nonprofit organizations desire to remain anonymous and often create a corporation or LLC to house their nonprofit grant-making functions to charitable and other nonprofit organizations. Similarly, many nonprofit organizations provide membership and governance rights to these corporations and LLCs in order to help with long-term governance succession planning desired by a major contributor, where providing an individual the same right carries inherent risks because individuals unlike organizations may become incapacitated or pass with the resulting governance and membership rights ceasing to exist.

Under the Corporate Transparency Act and other recent legislation, nonprofit entities described in section 501(c), 527, or 4947(l)(1) of the Tax Code would be exempt from the beneficial ownership disclosure requirements these bills seek to impose.

If the general policy is that NPOs should be exempted from disclosing their "beneficial owners," shouldn't the same policy be applied to corporations and LLCs that have as their primary purpose providing grant funds to, or a governance role in, a nonprofit also be exempt from these requirements?

A.8. We look forward to continue working with Congress on developing a solution to address your concern.

Q.9. Often these same corporations and LLCs might be disclosed by name on a nonprofit's publicly available annual information return. In recent years, we have seen several instances in which information on donors to nonprofit groups and causes—similar to the beneficial ownership information required to be disclosed by the Corporate Transparency Act—has been leaked to the media or another organization. This has made the personal information of these donors ripe for abuse by those seeking to punish, harass, or deter donations to causes with which they disagree.

Do you agree that the disclosure of the personal information of donors to certain causes has been used in "name and shame" campaigns in the past and could be used to harass or intimidate donors?

A.9. It is also important to make sure that any information collected by FinCEN is secure and protected against misuse. As with other information collected by FinCEN under the Bank Secrecy Act, we support robust civil and criminal penalties for any unauthorized disclosures or other misuse of any beneficial ownership information collected by FinCEN. Protecting all information collected by FinCEN is a high priority for FinCEN and the Treasury Department, and we would bring that same commitment to securing any beneficial ownership information provided to us.

Q.10. Would you agree that any legislation Congress passes should ensure protections against the public disclosure of individuals who fund constitutionally protected issue advocacy through nonprofit organizations?

A.10. Yes.

Q.11. What safeguards can ensure that this data is not abused by State attorneys general and other elected officials to target people who disagree with them?

A.11. FinCEN has a number of safeguards in place to guard against abuse by users granted access to Bank Secrecy Act (BSA) data. To begin with, FinCEN conducts an annual inspection of the data usage for each BSA data access Memorandum of Understanding (MOU) holder. Prior to the inspection, FinCEN reviews the number of agency employees with direct access, the number of queries conducted, and the Query Audit Log (QAL) of all direct BSA data users. The QAL provides information related to a user's activity within the BSA system of record to include who ran a query, the time and date of the query, as well as the name or identifier queried. It also gives FinCEN the ability to monitor how State coordinators are servicing law enforcement agencies within their jurisdiction that do not have direct access. In the FinCEN Portal/FinCEN Query system, State coordinators are required to record what agency they are running queries for if it is not their home agency. FinCEN monitors this information as part of its broader review of State coordinator activity. During the inspection, FinCEN also reviews all aspects of the MOU, the Security Plan for safeguarding the BSA data, and the BSA data Re-Dissemination Guidelines with the respective agency coordinator to ensure the agency is fully aware of its responsibilities, and that the State coordinator is conveying those responsibilities to their agency's authorized users.

FinCEN also conducts monthly reviews of all agencies' use of BSA data. These monthly reviews include reviewing the QAL to determine if users are displaying irregular behavior, such as running their own name or conducting a bulk download of BSA data. FinCEN also reviews the QAL in order to ensure users provide adequate information indicating the purpose of their BSA searches. Users provide this information in a search justification field within FinCEN Query. When reviewing the QAL, if FinCEN identifies an instance where a user provided insufficient information in the search justification field, FinCEN will contact the user to ensure that the indicated justification is consistent with the type of query they conducted, and to reiterate the user's obligation to fully justify

every search moving forward, consistent with the terms of their access agreement.

All authorized users of the data, to include the State attorneys general with whom FinCEN maintains MOUs, must also complete mandatory online training every 2 years. This training encompasses the proper use and handling of BSA data. On an annual basis, all authorized users must also accept a user acknowledgement, which sets forth data protection information to include proper use and handling of BSA data.

Finally, FinCEN is actively working with congressional stakeholders to identify and implement additional protections with respect to beneficial ownership information collected in the BSA database. We are committed to taking all appropriate steps to guard against the misuse of the information.

Q.12. Do you envision that State attorneys general would have access to beneficial ownership information if they desired it for an investigations they asserted involved a criminal matter of any kind?

A.12. This would depend on the specific legislative proposal. As indicated previously, FinCEN is committed to working with Congress to develop appropriate parameters for accessing the information.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR MENENDEZ FROM KENNETH A. BLANCO**

Q.1. As the ranking member of the Senate Foreign Relations Committee and an author of several pieces of sanctions legislation, I don't believe the current rules on cash purchases of real estate are strong enough to catch criminal foreign actors such as kleptocratic oligarchs, drug cartels, and rogue Governments or individuals, seeking to evade sanctions. Unfortunately, the U.S. is still a safe and easy place to hide money.

Have anonymous companies formed in the U.S. impeded your investigations and made it more difficult for law enforcement and national security officials to enforce sanctions and combat kleptocracy? If so, please explain how.

A.1. Kleptocrats and sanctions evaders, as well as narcotraffickers, corrupt leaders, rogue States, terrorists, and fraudsters of all kinds establish anonymous domestic shell companies to mask and further criminal activity, to invest and buy assets with illicit proceeds, and to prevent law enforcement and others from efficiently and effectively investigating tips or leads. To determine the true owner of a shell company or front company in the United States today requires law enforcement to undertake a time-consuming and resource-intensive process. It often requires grand jury subpoenas, witness interviews, and foreign legal assistance requests to get behind the outward facing structure of these shell companies. This takes an enormous amount of time and wastes resources, time that could be used to further other important and necessary aspects of an investigation, or prevents investigators from getting to other equally important investigations. If beneficial ownership information is readily available and more quickly accessible to law enforcement and others, it would be harder and more costly for criminals to hide what they are doing. Law enforcement can be more effective

and efficient in preventing these crimes from occurring in the first place, or perhaps intercept them sooner and prevent the scope of harm these criminals cause from spreading.

Although arising infrequently in sanctions enforcement matters, the existence of anonymous companies formed in the United States complicates—and in some instances can undermine—such matters. When encountered during an enforcement investigation, anonymous U.S. companies tend to employ the use of anonymous trusts as the company's equity holders—thereby effectively masking the company's true beneficial owners. This basic structure, i.e., the use of companies owned by anonymous trusts, has been used to obscure the true beneficial owner of companies, aircraft, and real property. Such circumstances make it markedly more difficult to prove the occurrence of apparent violations of economic sanctions.

Q.2. Would you agree that this has undermined the effectiveness of our sanctions regimes on Russia, Venezuela, Iran, North Korea, and others?

A.2. Yes, when such anonymous U.S. companies are encountered during sanctions enforcement investigations.

Q.3. Do you believe that FinCEN is currently collecting enough beneficial ownership information on high risk real estate transactions across the country?

A.3. FinCEN has longstanding concerns about the ability of illicit actors to hide the origins of the proceeds of potentially unlawful activity by using legal entities to purchase real estate. To partially address these concerns, FinCEN has issued regulations placing anti-money-laundering (AML) program obligations on many businesses involved in real estate transactions, including depository institutions, residential mortgage loan originators, and the housing Government sponsored enterprises (i.e., Fannie Mae, Freddie Mac, and the Federal Home Loan Banks). Together, these entities are involved in real estate transactions involving a mortgage or other similar form of external financing and report suspicious activity related to such transactions. FinCEN is additionally concerned about the potential that suspicious activity may take place through all-cash transactions because such transactions generally do not closely involve these businesses with AML program and suspicious activity report reporting obligations. To address FinCEN's concerns about such all-cash transactions, FinCEN issued the Real Estate Geographic Targeting Orders (GTO) in 2016, and has gradually changed and reissued these GTOs to obtain beneficial ownership information useful for FinCEN to understand the risks associated with certain real estate transactions. FinCEN is currently engaging with law enforcement about the results of these GTOs and analyzing the data reported to determine the extent to which additional collection is warranted in this regard.

Q.4. Would you find it helpful for Congress to authorize the ongoing collection of beneficial ownership information for all high risk real estate transactions?

A.4. FinCEN is committed to working with Congress to explore the potential for a permanent reporting authority for the real estate sector. This reporting requirement may be the most appropriate

way to obtain valuable information—such as the buyers’ source of funds and the beneficial owner of the property—to monitor and address the money laundering risks in real estate without overburdening the industry.

Q.5. Would requiring companies to disclose their true beneficial owners at the time of formation assist law enforcement in their investigations and help keep Americans safe from national security threats?

A.5. Yes. We look forward to continue working with Congress on developing a solution to collecting this important information to protect our national security and the people of our Nation.

Q.6. On July 1, the U.S. will relinquish its presidency of the Financial Action Task Force to China.

Can you briefly describe China’s expected priorities in this area?

A.6. According to Chinese officials, China will have three main presidential priorities, including undertaking a review of the strategic challenges and emerging risks facing the Financial Action Task Force; new technologies, specifically, completing guidance on digital identity; and improving supervision. They have also said that they support ongoing work related to terrorist financing, beneficial ownership, proliferation financing, and improving the standards across the global network. They said China will also work to raise awareness on wildlife trafficking.

Q.7. How is FinCEN planning to continue the U.S. focus on international counterproliferation financing given developments in North Korea and the upcoming Chinese presidency?

A.7. One of the U.S. presidential priorities of the FATF was countering proliferation financing. In conjunction with the U.S. presidency of the FATF, I led the work of the FATF Heads of FIU Forum from October 2018 until June 2019. One of the U.S.G. priorities for this year was to learn more about FIU activities in the field of countering proliferation financing (CPF) concerning weapons of mass destruction. The Heads of FIU Forum’s work, which FinCEN led, was innovative. FinCEN drafted a compendium, detailing information on CPF activities of almost two dozen FIUs in primarily FATF jurisdictions. As a result of this work, FinCEN can better target specific FIUs for information on PF and, possibly, partner on joint CPF efforts.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN FROM KENNETH A. BLANCO

Q.1. According to a recent *New York Times* report, frontline Deutsche bank employees recommended that the bank file suspicious activity reports following a series of transactions by entities linked to President Trump and by a real estate company then-owned by White House Senior Advisor Jared Kushner, but their judgment was overturned by higher-level bank managers. According to employees, the bank’s approach to entities linked with Trump and Kushner were “part of a pattern of the bank’s executives rejecting valid reports to protect relationships with lucrative clients.”

Has any political appointee in the Trump administration discussed or received any nonpublic information, held by FinCEN, including a suspicious activity report, about Deutsche Bank, or transactions associated with President Trump, Mr. Kushner, any members or their families or any organizations with which they're associated?

A.1. Federal law prohibits disclosure of Bank Secrecy Act information, including whether or not such information has been received or collected.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR CORTEZ MASTO FROM KENNETH A. BLANCO**

Q.1. A bill under consideration in the House, the Corporate Transparency Act (H.R. 2513), would require corporations and limited liability corporations to disclose their true “beneficial owners” to FinCEN. It establishes control as any person or entity owning 25 percent or more of the equity of the company or who receives substantial economic benefit from the assets to be disclosed at the time the company is formed. Is this the right definition of beneficial owner? Could a 25 percent floor encourage owners to engage in misleading ownership structures to avoid registration?

A.1. For the sake of consistency and clarity, Treasury supports using the current Customer Due Diligence regulatory definitions of beneficial ownership to determine which entities should statutorily be providing beneficial ownership information. Legal entities would be required to provide the name, address, date of birth, social security number or passport number, and possibly the driver’s license number, of any natural person with 25 percent or more interest in the company, and of one individual who has substantial managerial responsibility to control the company.

Q.2. Do you recommend we make reliable beneficial ownership information available to regulatory, tax, and other law enforcement authorities but do not create a beneficial ownership registry available to the public?

A.2. Yes, our position is that beneficial ownership information should be collected and filed with FinCEN in a nonpublic database that holds other Bank Secrecy Act (BSA) mandated reports. Currently, FinCEN authorizes access to the BSA information to law enforcement, regulatory and national security partners through existing BSA agreements and mechanisms. These agreements require our partners receive annual training on the proper use and search of the FinCEN Query system and the data contained therein. FinCEN also monitors data usage and query searches for appropriateness.

Q.3. What rules should we put in place to ensure regulatory, tax, and other law enforcement entities can track ownership if an owner sells her/his shares?

A.3. For investigative purposes, it is important that the beneficial ownership information collected is accurate and up-to-date. FinCEN looks forward to working with the Committee to provide appropriate mechanisms for updating beneficial ownership.

Q.4. There have been a number of proposals for collection of beneficial ownership information over the years including: States collecting this information; IRS making this information available since they collect that information; making banks collect it and verify it before any accounts can be opened; requiring all business entities to report to a centralized agency like FinCEN. In your opinion, what is the best mechanism or mechanisms to collect beneficial ownership information?

A.4. I understand there are different models on collecting beneficial ownership information and how FinCEN and law enforcement could obtain it. In weighing the privacy concerns with the ability of law enforcement to access the information in an efficient manner, Treasury believes that beneficial ownership information should be collected and stored with FinCEN.

Q.5. At this point, the consensus seems to require Federal—not State—collection of information. If that changes and a State collection mechanism is recommended, how would we adequately fund the development or modification of 51 systems to collect and distribute this information? How will compliance be measured? How do you ensure a national standard for the States?

A.5. The National Association of Secretaries of State and the respective Secretaries of States would be best positioned to address beneficial ownership data collection system development and compliance at the State level.

Q.6. If there is a requirement that the States notify their customers of a requirement to report beneficial ownership to a centralized agency—What should that notification look like? Will there be any funding to the States to accomplish proper notification? How will compliance be measured?

A.6. FinCEN is committed to work closely with the National Association of Secretaries of State and the respective Secretaries of State to remind companies through their annual renewal requirements of their responsibility to keep their beneficial ownership information updated and correct. We have not developed any language to date.

Q.7. If we reform our laws to require that the ownership of companies are reported to FinCEN and law enforcement, how will that affect corrupt authoritarian leaders and their associates who loot their Nation's treasury and then hide their money in democratic Nations? Are there other countries which publish which foreign leaders hide wealth outside of their country in other Nations?

A.7. The fear of having hidden assets exposed to seizure is a powerful disincentive for corrupt leaders or other bad actors to establish shell companies and financial accounts in countries requiring reporting of beneficial ownership. FinCEN's analysis of Real Estate Geographic Targeting Order (GTO) filings, which identify the beneficial owners behind the nonfinanced purchase of residential real estate, revealed that the GTOs likely deterred the use of shell companies to invest proceeds of high-risk illegal activities in residential real estate. This finding suggests that requiring the collection of beneficial ownership information at corporate formation could deter bad actors from using corporations to hide high-risk illicit proceeds.

Further, for those who commit crimes and engage in conspiracy where shell companies are used to hide identities and illicit assets, it would be harder and more costly for criminals to hide their activity when beneficial ownership information is readily available and more accessible to law enforcement. Law enforcement can be more effective and efficient in preventing these crimes from occurring, or can intercept them sooner and prevent the scope of harm corrupt authoritarian leaders and their associates caused from spreading. Additionally, cooperation with our foreign partners is paramount. This collaboration is necessary not only to investigate crimes and to prevent them from occurring, but in order to coordinate quickly, effectively, and fluently with our foreign partners. As Treasury officials have said publicly, criminals and other bad actors do not have borders and do not comport with the rule of law. To combat them, we need to work seamlessly with our foreign counterparts in a way that is efficient and effective. In order to do so, as we receive significant assistance from our foreign partners, we must be able to provide significant assistance to them, including the beneficial ownership information of U.S. shell companies. This will allow us to globally tackle the issue of corrupt authoritarian leaders and their associates who loot their countries and hide their assets around the world. As more of our allies begin to collect beneficial ownership information, the U.S. risks becoming a safe haven for these actors to hide their assets.

FinCEN is unaware of any countries that publish lists of foreign leaders known or suspected of hiding wealth in foreign jurisdictions. However, consistent with Financial Action Task Force recommendations, a number of international organizations and countries have made efforts to develop public or private lists of politically exposed persons (PEPs). For example, the European Union's (EU) Fifth Money Laundering Directive requires that all EU member States create a list of national public offices and functions that qualify as politically exposed. The Directive entered into force in July 2018 and all member States are required to implement requirements into their national law by January 2020. Similarly, the Financial Action Task Force of South America has made efforts to develop a regional list of PEPs, although these efforts have been constrained by the challenge of updating such lists. Finally, at least one State, Mexico, maintains a list of exposed Government positions, but not the names of the position-holders.

Q.8. How can law enforcement use big data to stop anonymous shell companies from allowing criminals, terrorists, and money launderers to hide their money and facilitate illegal activities?

A.8. We respectfully refer you to the law enforcement community for a response to this question. FinCEN is not in a position to offer perspectives on law enforcement's analytical tradecraft, or the specific ways in which big data factors into the investigative techniques law enforcement agencies use to disrupt criminal abuse of anonymous shell companies. As it does with all the information that it maintains, FinCEN would support law enforcement efforts with FinCEN's own tactical and strategic analysis. Analysis of large volumes of transactional data reported to FinCEN under its special collection authorities could, among other things, reveal new

nodes and networks of front companies tied to an array of concerning activities. In turn, this analysis could assist the law enforcement community further map out the connections between the illicit nodes, their nexus to the U.S., and ultimately help advance their investigative efforts.

Q.9. What role do you see State law enforcement playing in stopping anonymous shell companies? If the data is only available to FinCEN, how will State agencies and officials charged with fighting crimes like money laundering and tax evasion perform their core responsibilities?

A.9. We respectfully refer you to the State law enforcement community for a response to this question. FinCEN values its relationship with State law enforcement agencies and considers them important partners in the country's efforts to disrupt all types of financial crime. However, we are not in a position to provide insight into the numerous ways State agencies perform their core responsibilities currently, or how the lack of beneficial ownership information as an investigative tool potentially hampers their ability to carry out their respective missions.

Further, if this information is collected in the FinCEN database, depending on the legislation, some State agencies and law enforcement may be able to access this information per the terms of the legislation.

Q.10. What has been the involvement of State banking supervisors in discussions regarding updates to the Bank Secrecy Act and anti-money-laundering rules? Should State banking regulators be more involved in these discussions regarding BSA/AML?

A.10. State bank supervisors, through the Conference of State Bank Supervisors (CSBS), participate in a Bank Secrecy Act Advisory Group discussion that is focusing on strategic AML priorities and leveraging technology, information sharing, and human resources to effectively and efficiently detect and deter criminal activity in the U.S. financial system. The discussions aim to identify opportunities to reform and modernize the existing anti-money-laundering system through legislation, regulation, guidance, technology, and information sharing. CSBS also participates in the Federal Financial Institution Examination Council discussions. Both of these groups are addressing the issues you raise.

Q.11. What has been the impact of the Geographical Targeting Orders requirements in Las Vegas?

A.11. As of April 11, 2019, covered businesses had reported 1,027 covered transactions from Clark County, Nevada (Las Vegas), pursuant to the Real Estate Geographic Targeting Orders (GTOs). 268 of these transactions (or 26 percent) had a beneficial owner, purchaser's representative or purchaser who is the subject of a Suspicious Activity Report. FinCEN has analyzed this and other GTO data to identify potential investigative leads and shared this information with Federal and local law enforcement partners in Nevada. FinCEN is working with its law enforcement partners to assess how to maximize the impact of this data on law enforcement investigations. This data has already proven useful to FinCEN's

ongoing efforts to assess the money laundering risks in the real estate sector.

Q.12. Will requiring registration of beneficial owners reduce or eliminate money laundering of art? If not, what else should we consider?

A.12. The collection of beneficial ownership information will bolster financial transparency, make it more difficult for wrongdoers to conduct covert illicit activity, and will better enable law enforcement to detect and disrupt money laundering and terrorist networks. Overall, the reduction of money laundering is a goal and expected outcome of beneficial ownership collection. This applies across many industries, though it is difficult to quantify the specific impact on a particular industry relative to other industries. To the extent other measures should be considered in regards to the art industry, we look forward to continue working with Congress on developing a bipartisan solution to address your concern.

**RESPONSES TO WRITTEN QUESTIONS OF CHAIRMAN CRAPO
FROM STEVEN M. D'ANTUONO**

Q.1. *November 29, 2018, Unanswered Questions for the Record*—After testifying before the Committee on Banking, Housing, and Urban Affairs on May 21, 2019, at our hearing entitled, “Combating Illicit Financing by Anonymous Shell Companies Through the Collection of Beneficial Ownership Information”, a number of questions were submitted directly to you but never answered. In order to complete the hearing record, please answer the below questions as resubmitted for this hearing:

Overall Value of BSA Information—The Government has been collecting BSA information for about half a century, now. That information flow and the costs to provide, store, and safely manage it have steadily increased over that time, as well. The purpose of the information is to keep our financial system and the businesses it serves secure and ultimately our Nation’s people safe from various types of harm.

What relative enforcement value do the volumes of information provided the Government at unprecedented costs to financial institutions have today for the purposes of BSA?

A.1. Response not received in time for publication.

Q.2. Should Congress be looking to increase or decrease or better manage that volume of information, and in what way and why?

A.2. Response not received in time for publication.

Q.3. *“Real” 2-way Information Sharing*—A perennial complaint from the financial industry is that it receives no feedback on the SARs it files, that the information flow is one-way to the Government. The word sharing, itself, implies a two-way street. However, this year, several U.S. financial institutions have reported a substantial uptick in subpoenas to supply transactional data to Federal investigators, particularly from FBI and IRS, and have reported that Federal law enforcement has sought to enhance information sharing with the private sector beyond existing section

314(a) Patriot Act authority and the Treasury Department-led Bank Secrecy Act Advisory Group.

What actions can each of you take now to improve information sharing between your agencies and industry?

A.3. Response not received in time for publication.

Q.4. *Usefulness of BSA Reporting to the FBI*—Much is made of the fact that BSA reporting thresholds for SARs and CTRs have not changed in decades, and are not particularly useful, at least for certain types of crime.

Can you walk us through how a special agent typically uses a SAR?

A.4. Response not received in time for publication.

Q.5. What utility do SARs play, for example, in cases of employee misconduct or cyberattacks?

A.5. Response not received in time for publication.

Q.6. Do you know of any investigations where a SAR filing, as opposed to direct engagement with law enforcement, helped make a case?

A.6. Response not received in time for publication.

Q.7. Would adjusting the BSA reporting thresholds for inflation benefit or hinder the work of the FBI?

A.7. Response not received in time for publication.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR BROWN FROM STEVEN M. D'ANTUONO

Q.1. *Key Role of Financial Intelligence in Counterterrorism*—You have each spent decades working in this area, combating money laundering.

Can each of you describe generally for us, from your experience, the role that BSA data plays in money laundering and counterterrorism investigations—in developing leads, sharpening focus on certain criminal players and their banks, identifying patterns, or otherwise?

A.1. Response not received in time for publication.

Q.2. What specific financial intelligence tools are currently most useful to prosecutors, sanctions overseers, and others who combat money laundering—and where do you think we should strengthen, not weaken, your tool kits?

A.2. Response not received in time for publication.

Q.3. *Bank AML Violations*—Previous witnesses have pointed out that the AML regulatory burden on financial institutions has not increased recently; but that as banks have racked up huge fines in recent years for skirting sanctions and violating money-laundering regulations, the sector as a whole has finally begun to take seriously AML obligations that have been in place for many years, and many have made big investments to strengthen compliance.

Do you believe that AML laws and regulations on the books now offer a sufficient deterrent to such behavior? Are there specific

steps or new tools you would urge Congress to consider providing to strengthen the current regime?

A.3. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR COTTON
FROM STEVEN M. D'ANTUONO**

Q.1. We all operate according to the incentives we face. Law Enforcement is incentivized to reduce crime and terrorism, as it should be. In light of that, what should Congress write in legislation that ensures the collection and use of beneficial ownership information will occur in a manner that limits the burden on the folks that pay our salaries, i.e., the private sector?

A.1. Response not received in time for publication.

Q.2. I'm aware that your interest is not in going after small businesses. What concrete incentives and protections should we write into legislation to make sure that 100 percent of beneficial ownership information will be used to go after anonymous shell companies engaged in illicit activity?

A.2. Response not received in time for publication.

Q.3. I'm aware that there must be penalties for not submitting beneficial ownership information, or else the database won't be very useful. But am I going to hear from a Little Rock nail salon owner that FinCEN is hassling them about whether her sister, who owns 15 percent of the LLC and occasionally pitches in at the nail salon, has "substantial control" over the business? Should there be any protocols to prevent FinCEN from contacting business in cases where there's no substantiated evidence that the business is an anonymous shell company engaged in illicit finance?

A.3. Response not received in time for publication.

Q.4. Do you agree that getting an envelope in the mail from the "Financial Crimes Enforcement Network" (FinCEN) would be intimidating for the owner of a nail salon in Jonesboro, AR?

A.4. Response not received in time for publication.

Q.5. Your testimony talks about "anonymous shell companies" used to aid terrorists, cartels, and human traffickers. All are worthy targets. So how can you ensure that this collection of data will never be used to hassle or intimidate a nail salon or dry cleaner, provided they made a good-faith attempt at answering the questions on beneficial ownership and are not suspected of a crime?

A.5. Response not received in time for publication.

Q.6. What about if we include a provision that says that all communication from FinCEN to small business includes an option to contact an Ombudsman?

A.6. Response not received in time for publication.

Q.7. And how about an option, in cases where there is no criminal investigation yet open, for the comment or complaint to the Ombudsman to be also be forwarded to the businesses' members of Congress?

A.7. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY
FROM STEVEN M. D'ANTUONO**

Q.1. With every iteration of beneficial ownership reporting legislation, credible organizations have voiced concern about the vagueness and uncertainty about the various terms, such as “substantial control” and “substantial economic benefit” that are among the thresholds for people being direct or indirect beneficial owners that the head of a small business must report.

Given the concerns about the clarity of these definitions and the fact that most beneficial ownership bills repose it to future rule-making to really define the essential terms of this reporting regime, there is real interest in the penalties associated with failing to meet the reporting standards. There is also real concern about the abuse of the information collected given that a wide array of Federal, State, and local officials can access it if they claim it is related to a criminal investigation.

Most of the beneficial ownership bills introduced to date threaten business owners with criminal penalties for “knowingly providing or attempting to provide, false or fraudulent beneficial ownership information, including a false or fraudulent identifying photograph and for ‘knowingly’ disclosing the existence of a subpoena or request for beneficial ownership information.”

We are all aware that a knowing standard for a criminal penalty is vague and does not require proof of a bad purpose. For example, it is a much lower threshold than a “willful” violation which requires that a person must act with the knowledge that the conduct was unlawful.

Most beneficial ownership bills do not threaten Government actors with any penalty for the abuse or improper disclosure of beneficial ownership information. To the extent they do, they impose a willfulness standard for Government actors to be deemed criminally liable, such as under the proposed amendment to the Corporate Transparency Act that was posted before a mark-up on the bill was delayed in the House Financial Services Committee. This tracks with provisions in the Bank Secrecy Act punishing agency employees for willful abuse or willful unauthorized disclosure of Suspicious Activity Reports (SARs) and certain other specified filings.

Would each of you be willing to have the employees of your agency subject to Federal criminal penalties for “knowingly” making an unauthorized disclosure of or otherwise mishandling the beneficial ownership data you want to collect?

If not, please explain why that is a bad idea.

A.1. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR MORAN
FROM STEVEN M. D'ANTUONO**

Q.1. *Customer Due Diligence Rule and Beneficial Ownership*—As of May 2018, the Customer Due Diligence rule requires that financial institutions collect and verify the personal information of the beneficial owners who own, control, and profit from companies when those companies open accounts. Or in the case of title companies

in the purchase of real estate under the Geographic Targeting Orders (GTOs), beneficial ownership of the purchasing entity.

Just as determining beneficial ownership by law enforcement can be a time-consuming and resource-intensive process, it can be as cumbersome and resource-intensive of a process for the collecting institution and individuals, if not more so, often requiring back-and-forth dialogue with law-abiding customers and their lawyers who are skeptical why this information is necessary.

What could be done to incentivize the voluntary collection of beneficial ownership at the time of an entity's formation without infringing on State powers?

A.1. Response not received in time for publication.

Q.2. *Use of Cryptocurrencies for Nefarious Purposes*—This Committee has been closely monitoring the ever increasing use of cryptocurrencies to facilitate the illegal trafficking of opioids, most notably Fentanyl. Transnational criminal organizations have been using these cryptocurrencies on the dark web, taking advantage of this encrypted layer of the internet to fuel the deadly opioid crisis in our country and conceal their illegal proceeds from law enforcement. The tragic consequences of this was clearly noted by the most recent data from the Centers for Disease Control (CDC) which showed that in 2017, nearly 49,000 overdose deaths occurred in our country were from opioids and the biggest driver of that was Fentanyl, which killed more than 29,000.

Given the seriousness of our country's opioid epidemic, what new measures have your respective agencies undertaken to address the detection, interdiction, and prosecution of individuals and organizations who are using cryptocurrencies to further these criminal activities? Are there structural changes that need to be made to the current regulatory framework?

A.2. Response not received in time for publication.

Q.3. *Use of Online Platforms for Laundering*—Recent reports have highlighted how money laundering through online platforms has become an attractive option for criminals because of its simplicity, speed, and global reach. While using these platforms, there is no need to create a fake business or other identities, and no goods need to be moved in order to maintain the illusion of legitimacy. These reports forecast that online money laundering will continue to grow as worldwide retail e-commerce sales are estimated to top \$2.2 trillion annually, providing greater scope for criminals to conceal their laundering activities among high volumes of legitimate transactions. Likewise, the rise of cryptocurrencies and alternative payment platforms raises well-documented concerns about how such technology will make untraceable money laundering easier.

How have the various social media platforms been working with your agencies to assist with financial crimes such as money laundering and fraud?

A.3. Response not received in time for publication.

Q.4. How has the rise of cryptocurrencies and alternative payment platforms presented challenges to your investigative and regulatory functions?

A.4. Response not received in time for publication.

Q.5. How are your respective agencies addressing this?

A.5. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR MENENDEZ FROM STEVEN M. D'ANTUONO**

Q.1. Have anonymous companies formed in the U.S. impeded your investigations and made it more difficult for law enforcement and national security officials to enforce sanctions and combat kleptocracy? If so, please explain how.

A.1. Response not received in time for publication.

Q.2. Would you agree that this has undermined the effectiveness of our sanctions regimes on Russia, Venezuela, Iran, North Korea, and others?

A.2. Response not received in time for publication.

Q.3. Do you believe that FinCEN is currently collecting enough beneficial ownership information on high risk real estate transactions across the country?

A.3. Response not received in time for publication.

Q.4. Would you find it helpful for Congress to authorize the ongoing collection of beneficial ownership information for all high risk real estate transactions?

A.4. Response not received in time for publication.

Q.5. Would requiring companies to disclose their true beneficial owners at the time of formation assist law enforcement in their investigations and help keep Americans safe from national security threats?

A.5. Response not received in time for publication.

Q.6. On July 1, the U.S. will relinquish its presidency of the Financial Action Task Force to China.

Can you briefly describe China's expected priorities in this area?

A.6. Response not received in time for publication.

Q.7. How is the FBI planning to continue the U.S. focus on international counterproliferation financing given developments in North Korea and the upcoming Chinese presidency?

A.7. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN
FROM STEVEN M. D'ANTUONO**

Q.1. According to a recent *New York Times* report, frontline Deutsche bank employees recommended that the bank file suspicious activity reports following a series of transactions by entities linked to President Trump and by a real estate company then-owned by White House Senior Advisor Jared Kushner, but their judgment was overturned by higher-level bank managers. According to employees, the bank's approach to entities linked with Trump and Kushner were "part of a pattern of the bank's executives rejecting valid reports to protect relationships with lucrative clients."

How many politically exposed individuals have been convicted of crimes using evidence gleaned from suspicious activity reports?

A.1. Response not received in time for publication.

Q.2. Has any political appointee in the Trump administration discussed or received any nonpublic information obtained by the FBI, about Deutsche Bank, or financial transactions associated with President Trump, Mr. Kushner, any members or their families, or any organizations with which they're associated?

A.2. Response not received in time for publication.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR CORTEZ MASTO FROM STEVEN M. D'ANTUONO**

Q.1. A bill under consideration in the House, the Corporate Transparency Act (H.R. 2513), would require corporations and limited liability corporations to disclose their true "beneficial owners" to FinCEN. It establishes control as any person or entity owning 25 percent or more of the equity of the company or who receives substantial economic benefit from the assets to be disclosed at the time the company is formed. Is this the right definition of beneficial owner? Could a 25 percent floor encourage owners to engage in misleading ownership structures to avoid registration?

A.1. Response not received in time for publication.

Q.2. Do you recommend we make reliable beneficial ownership information available to regulatory, tax, and other law enforcement authorities but do not create a beneficial ownership registry available to the public?

A.2. Response not received in time for publication.

Q.3. What rules should we put in place to ensure regulatory, tax, and other law enforcement entities can track ownership if an owner sells her/his shares?

A.3. Response not received in time for publication.

Q.4. There have been a number of proposals for collection of beneficial ownership information over the years including: States collecting this information; IRS making this information available since they collect that information; making banks collect it and verify it before any accounts can be opened; requiring all business entities to report to a centralized agency like FinCEN. In your opinion, what is the best mechanism or mechanisms to collect beneficial ownership information?

A.4. Response not received in time for publication.

Q.5. At this point, the consensus seems to require Federal—not State—collection of information. If that changes and a State collection mechanism is recommended, how would we adequately fund the development or modification of 51 systems to collect and distribute this information? How will compliance be measured? How do you ensure a national standard for the States?

A.5. Response not received in time for publication.

Q.6. If there is a requirement that the States notify their customers of a requirement to report beneficial ownership to a central-

ized agency—What should that notification look like? Will there be any funding to the States to accomplish proper notification? How will compliance be measured?

A.6. Response not received in time for publication.

Q.7. If we reform our laws to require that the ownership of companies are reported to FinCEN and law enforcement, how will that affect corrupt authoritarian leaders and their associates who loot their Nation's treasury and then hide their money in democratic Nations?

A.7. Response not received in time for publication.

Q.8. How can law enforcement use big data to stop anonymous shell companies from allowing criminals, terrorists, and money launderers to hide their money and facilitate illegal activities?

A.8. Response not received in time for publication.

Q.9. What role do you see State law enforcement playing in stopping anonymous shell companies? If the data is only available to FinCEN, how will State agencies and officials charged with fighting crimes like money laundering and tax evasion perform their core responsibilities?

A.9. Response not received in time for publication.

Q.10. We know that foreign adversaries create anonymous companies and fund those companies to facilitate attacks on free and fair democratic elections in our country and other democracies. How frequently are these attacks happening in our country?

A.10. Response not received in time for publication.

Q.11. How will reporting beneficial ownership to the FBI ensure that we won't have a repeat of Russian attacks on our election by choosing and funding one candidate as we had in 2016?

A.11. Response not received in time for publication.

Q.12. What was the impact of the Geographical Targeting Orders requirements in Las Vegas?

A.12. Response not received in time for publication.

Q.13. If Congress was going to require Anti-Money-Laundering requirements for real estate transactions, who should be required to prevent and report suspicious transactions? Real estate agents? Title agents? Financial institutions like banks, credit unions, and mortgage lenders? All of the above?

A.13. Response not received in time for publication.

Q.14. Will requiring registration of beneficial owners reduce or eliminate money laundering of art? If not, what else should we consider?

A.14. Response not received in time for publication.

Q.15. *Correspondent Banking*—To what extent is the ability of money transmitters to facilitate money transfers affected by correspondent banks restricting or terminating relations with respondent banks?

A.15. Response not received in time for publication.

Q.16. *Money Laundering Through Real Estate*—Many cities around the world worry that criminals are laundering money through real estate purchases. When criminals have suspicious cash they want to avoid acknowledging or paying taxes on, it's pretty easy to buy expensive real estate. Sell it in a few months and use the cash from the transaction for a legitimate purpose.

How prevalent is money laundering through real estate?

A.16. Response not received in time for publication.

Q.17. What has been the impact of the Geographical Targeting Orders requirements for the communities where this is a problem?

A.17. Response not received in time for publication.

Q.18. Did the reporting requirements reduce money laundering in real estate or just move the money laundering through real estate to other cities?

A.18. Response not received in time for publication.

Q.19. Does money laundering in residential real estate raise prices and crowd out buyers in places like Nevada where we have a shortage of homes available for purchase?

A.19. Response not received in time for publication.

Q.20. Should Congress expand anti-money-laundering requirements for real estate transactions?

A.20. Response not received in time for publication.

Q.21. If so, should it focus on prevention or just require reporting?

A.21. Response not received in time for publication.

Q.22. If Congress was going to require Anti-Money-Laundering requirements for real estate transactions, who should be required to prevent and report suspicious transactions?

Real estate agents?

Title agents?

Financial institutions like banks, credit unions, and mortgage lenders?

A.22. Response not received in time for publication.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR COTTON FROM GROVETTA N. GARDINEER

Q.1. *De-Risking—Lawful Businesses Losing Access to Banking Services*—Preamble: I've heard concerns from constituents that are losing access to banking services because the bank says "you present a regulatory risk" but the regulators deny they are the issue, saying "this isn't on us, we never said you can't bank that industry." Both regulators and the bankers point fingers at one another, and the businesses are caught in the middle. One example is the nonbank ATM business, the kind of ATM that you might see at a gas station or rest stop.

How do we address this regulatory gray area that hurts lawful American businesses?

A.1. The mission of the OCC is to ensure that national banks and Federal savings associations (collectively "banks") operate in a safe and sound manner, provide fair access to Financial services, treat

customers fairly, and comply with applicable laws and regulations. We take all aspects of that mission seriously. Failures in providing fair access and fair treatment can cut off economic opportunity for legitimate bank customers. The OCC generally does not direct banks to open, close, or maintain accounts. These decisions are made by bank management and boards of directors. Banks are expected to identify and assess risks associated with the customers' business and transactional activity and to design and implement a sound risk management system consisting of policies, processes, personnel, and control systems to measure, monitor, and control those risks.

In furtherance of our mission, the OCC makes a concerted effort to consistently communicate our position on acceptable risk management practices and supervisory expectations to the banking industry and our examination staff, through a variety of formats including public statements and bulletins on the OCC website.

Additionally, the OCC meets with representatives from various industry groups to learn about any concerns they may have related to the provision of services by banks. These meetings provide an opportunity both to understand the interaction of banks with their customers and to communicate our position on acceptable risk management practices and supervisory expectations to those outside the banking industry.

Q.2. What is the process for businesses or industries, provided they operate lawfully, to seek the type of safe harbor that a bank compliance officer would need in order to offer them services? If nothing exists at the moment, what can regulators do to ease concerns about banking the lawful businesses currently being “de-risked” such as pawnbrokers, non-ATMs, etc.?

A.2. The OCC has clearly stated its policy, as described above that decisions to open, close, or maintain individual accounts are made by bank management and boards of directors, so long as they understand and effectively manage the risks associated with the customer. The OCC does not direct banks to open, close, or maintain individual accounts.

RESPONSES TO WRITTEN QUESTIONS OF SENATOR KENNEDY FROM GROVETTA N. GARDINEER

Q.1. *Stanford Ponzi Scheme and TD Bank*—TD Bank has grown exponentially since entering the United States retail market in 2005. As of year end 2018, TD had nearly 400 billion in assets and is the 8th largest financial holding company in the United States. While this rapid expansion in the United States is impressive, it could not have happened with the necessary regulatory approvals from, among others, the OCC.

Nor has TD Bank's record been spotless during this time of rapid growth in the United States. As the correspondent bank for the Stanford Financial Group, TD Bank was in a position to detect the second largest Ponzi scheme in United States history. Stanford turned to TD Bank when no other bank would provide correspondent services to Stanford because of the obvious signs that Allen Stanford and his organization were engaged in criminal conduct. Stanford was convicted for numerous crimes, including con-

spiracy to commit money laundering. The FBI also investigated Stanford for money laundering on behalf of a Mexican drug cartel.

Stanford Financial's money laundering would not have been possible without its correspondent relationship with TD Bank.

To your knowledge, has the OCC ever investigated TD's relationship with Stanford? Has it ever been considered as part of a regulatory approval process in connection with TD Bank's expansion in the U.S.? Do you believe, as I do, that it is a relevant consideration?

A.1. The OCC has regulatory authority over the U.S. licensed or chartered banking entities of Toronto-Dominion Bank Group (TDBG) which includes TD Bank, N.A. However, the OCC does not regulate nor have any supervisory authority over Stanford International or Toronto-Dominion Bank (Toronto, Canada). The OCC conducted a review to determine if the U.S. entities of TDBG had a relationship with Stanford International and did not find evidence of a relationship. Given that the Stanford Ponzi scheme and fraudulent activities referenced in your question did not take place in an OCC-supervised institution, it would not be appropriate to consider those activities during the regulatory approval process for the U.S. entities we supervise.

Q.2. Banks De-risking—I continue to hear that BSA/AML compliance burdens are causing some banks to de-risk. This concerns me, as it should all, that various Main Street businesses in operation for years are apparently having, without explanation, their accounts and banking services terminated because of banks in fear of not meeting supervisory expectations which may result in enforcement actions. Additionally, we are receiving word of consumer customers' debit cards being declined by their bank at point of sale in some of these same Main Street businesses.

Can you comment on what steps we need to take in order to craft proper policy solutions to address unwarranted de-risking?

A.2. In furtherance of our mission, the OCC makes a concerted effort to consistently communicate our position on acceptable risk management practices and supervisory expectations to the banking industry, through a variety of formats including public statements and bulletins on the OCC website. The OCC has clearly stated its policy, as described above, that decisions to open, close, or maintain individual accounts are made by bank management and boards of directors, so long as they understand and effectively manage the risks associated with the customer. The OCC does not direct banks to open, close, or maintain individual accounts. This message is also consistently communicated to banks during examinations and meetings that specifically address customer risk management practices.

Additionally, the OCC meets with representatives from various industry groups to learn about any concerns they may have related to the provision of services by banks. These meetings provide an opportunity both to understand the interaction of banks with their customers and to communicate our position on acceptable risk management practices and supervisory expectations to those outside the banking industry.

Regarding consumer's debit cards being declined at point of sale, this could be caused by a number of reasons that are separate from the issue of banks de-risking customers. As mentioned above, the OCC does not direct banks to close any individual accounts and does not direct banks to decline transactions. OCC staff is available to provide additional background information regarding this issue.

Q.3. *Workable Exemption for Subsidiaries of Exempt Entities*—Over the years iterations of beneficial ownership legislation have contained various exemptions to the definition of the term “corporation” and “limited liability company” that have the effect of reducing the scope of this legislation to remove from the reporting requirements various types of entities about which we generally feel there is enough disclosure and regulation to make beneficial ownership reporting unnecessary.

For instance, the Corporate Transparency Act that the House is considering is representative of how beneficial ownership bills have proposed dealing with subsidiaries of exempt entities. It uses this method to ensure that reporting of individual beneficial owners won't be required for most publicly traded companies, banks, credit unions, insurance companies, utilities, and other large entities.

Importantly, bills like the Corporate Transparency Act also have an exception for certain subsidiaries of these exempt entities, but only if the subsidiary was both “formed and owned” by the exempt entity.

The dual requirements that the subsidiary was both “formed AND owned” by the exempt entity will compel beneficial ownership reporting for many subsidiaries of exempt entities that may be wholly owned by an exempt entity but were not formed by it. This is not uncommon.

Do you feel it is important to deny an exemption from beneficial ownership reporting to the subsidiary of a public company, bank, or insurance company that is not exempt in its own right simply because it was not “formed” by the company that owns it?

A.3. The current beneficial ownership rule exempts U.S. entities when at least 51 percent of its common stock or analogous equity interest is held by a listed entity. A listed entity is an entity whose common stock or analogous equity interests are listed on the New York Stock Exchange, the American Stock Exchange (currently known as NYSE American), or NASDAQ stock exchange. Thus, the subsidiary is a U.S. entity and the listed company is listed on a U.S. exchange. See 31 CFR 1010.230(e)(2)(ii).

According to FinCEN, these U.S. entities are excluded from the Rule because they are subject to public disclosure and reporting requirements that provide information similar to what would otherwise be collected under the Rule. See, FIN-2018-G001, FinCEN Frequently Asked Questions Regarding Customer Due Diligence Requirements for Financial Institutions, April 3, 2018.

Consistent with the current framework, we feel it is important to continue to provide an exemption from beneficial ownership reporting for noncontrolling investments in U.S. legal entities by U.S. listed entities since ownership and control information relating to these investments/entities would be subject to public disclosure and reporting requirements.

However, there are situations where these 51 percent investments/entities would not be subject to public disclosure and reporting requirements, for example, non-U.S. subsidiaries of U.S. listed entities are not exempt under the current beneficial ownership framework. As a result, we would recommend that separate reporting requirements continue to be implemented for non-U.S. subsidiaries.

Finally, it should be noted that different standards apply to banks. Under the current framework, a legal entity customer is exempt from the beneficial ownership rule if it is a financial institution regulated by a Federal functional regulator or a bank regulated by a State regulator. As a result, the investment/ownership standard applicable is based upon whether the entity is a financial institution that is regulated by a Federal functional regulator.

Q.4. Also, what is your view of what constitutes sufficient ownership by an exempt entity to satisfy the “owned” threshold of this “formed and owned” requirement?

Is it 100 percent ownership?

A.4. Consistent with the current framework we recommend that ownership interests of 51 percent of U.S. entities by U.S. listed entities be indicative of control.

Q.5. Is it a simple majority ownership interest?

A.5. As set forth in the response immediately above, consistent with the current framework we recommend that ownership interests of 51 percent of U.S. entities by U.S. listed entities be indicative of control.

Q.6. Under the Corporate Transparency Act and similar proposals won’t it be left to future regulations to define this threshold—regulations which can be changed by a future Administration?

A.6. Regulations would be able to provide more flexibility to address situations where ownership and control information relating to these investments/entities changes and they may no longer be subject to public disclosure and reporting requirements.

Q.7. Should Congress not spell out the threshold for ownership?

A.7. As set forth in the response immediately above, regulations would be able to provide more flexibility to address situations where ownership and control information relating to these investments/entities changes and they may no longer be subject to public disclosure and reporting requirements.

Q.8. And why should it require that a subsidiary have been “formed” by an exempt entity that owns it?

A.8. We see little distinction in whether the U.S. entity was formed by the U.S. listed entity or subsequently acquired by the U.S. listed entity. In both cases, if the ownership interest exceeds 51 percent, the listed entity would be the control person and control information relating to these investments/entities would be subject to public disclosure and reporting requirements.

Q.9. Surely investigators can learn all they want about a subsidiary of an exempt entity given the nature of these entities and the degree to which they have fixed known locations, personnel, and operations, could they not?

A.9. We agree that the information to be reported through the beneficial ownership database would otherwise be available as a result of the public disclosure and reporting requirements for U.S. listed entities and their majority owned subsidiaries.

Q.10. What is the compelling reason to limit the exemption for a subsidiary of an exempt entity to only those that are BOTH “formed and owned” (however those terms may ultimately be defined by regulation)?

A.10. As previously noted, and as consistent with the current framework, we do not see a compelling reason to limit the exemption for a majority owned subsidiary.

**RESPONSES TO WRITTEN QUESTIONS OF SENATOR WARREN
FROM GROVETTA N. GARDINEER**

Q.1. According to a recent *New York Times* report, frontline Deutsche bank employees recommended that the bank file suspicious activity reports following a series of transactions by entities linked to President Trump and by a real estate company then-owned by White House Senior Advisor Jared Kushner, but their judgment was overturned by higher-level bank managers. According to employees, the bank’s approach to entities linked with Trump and Kushner were “part of a pattern of the bank’s executives rejecting valid reports to protect relationships with lucrative clients.”

If a bank were to decline to file an otherwise warranted suspicious activity report in order to maintain its relationship with a lucrative client, would that be consistent with the Bank Secrecy Act and other relevant rules and regulations?

A.1. Since the Federal Reserve is the primary regulator of this institution, the OCC cannot speak to the specifics of the case. However, all financial institutions are required by law to file a Suspicious Activity Report (SAR) when the characteristics of the transaction meets the legal standards in the SAR regulations. Failure to do so could result in civil money penalties and/or enforcement actions, depending on the severity and frequency of the unreported suspicious activity.

Q.2. According to the report, “dozens of politically exposed clients of the private-banking division, including Mr. Trump and members of his family were not” receiving the scrutiny at Deutsche Bank typically applied to people in politically important and sensitive positions. If Deutsche Bank declined to file otherwise warranted suspicious activity reports to avoid “provok[ing] the President’s wrath,” would that be consistent with the Bank Secrecy Act and other relevant rules and regulations?

A.2. Please see our response to Question 1 above.

Q.3. Deutsche Bank is currently operating under a consent order with the Federal Reserve that “requires it to do more to stop illicit activities.” Does the OCC share information with the Federal Reserve with respect to compliance with this order? What is the OCC’s position about whether Deutsche Bank is in compliance with that order?

A.3. The OCC is not the Federal regulator for this institution. In general, the OCC works closely with other banking supervisors and FinCEN to share supervisory information when permissible and appropriate.

Q.4. Has any political appointee in the Trump administration discussed or received any nonpublic information about an OCC examination or enforcement action related to Deutsche Bank?

A.4. The OCC is not the Federal regulator for Deutsche Bank. This question may be more appropriately addressed to the Federal Reserve which regulates this institution.

**RESPONSES TO WRITTEN QUESTIONS OF
SENATOR CORTEZ MASTO FROM GROVETTA N. GARDINEER**

Q.1. A bill under consideration in the House, the Corporate Transparency Act (H.R. 2513), would require corporations and limited liability corporations to disclose their true “beneficial owners” to FinCEN. It establishes control as any person or entity owning 25 percent or more of the equity of the company or who receives substantial economic benefit from the assets to be disclosed at the time the company is formed. Is this the right definition of beneficial owner? Could a 25 percent floor encourage owners to engage in misleading ownership structures to avoid registration?

A.1. The current Customer Due Diligence (CDD) Rule has a similar threshold in the definition of beneficial owners that banks must identify. Subject to exclusions from the definition of a legal entity customer, for each account opened by a legal entity, the CDD Rule requires banks to identify the following individuals:

- each individual, if any, who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise, owns 25 percent or more of the equity interests of a legal entity customer (i.e., the ownership prong); and
- a single individual with significant responsibility to control, manage, or direct a legal entity customer, including an executive officer or senior manager (e.g., a Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Managing Member, General Partner, President, Vice President, or Treasurer); or any other individual who regularly performs similar functions (i.e., the control prong). This list of positions is illustrative, not exclusive, as there is significant diversity in how legal entities are structured.

Under this definition, a legal entity will have a total of between one and five beneficial owners (i.e., one person under the control prong and zero to four persons under the ownership prong).

A similar inflexible threshold in a requirement that corporations and limited liability corporations disclose beneficial owners to FinCEN may permit bad actors to structure legal entities using multiple entities, trust arrangements, and other legal forms to create numerous ownership layers so that ownership percentages are below the threshold and some true owners may not be identified. One possible mechanism to address this concern would be to re-

quire the individual providing the information on behalf of a legal entity to attest to the truthfulness of the information provided.

Q.2. Do you recommend we make reliable beneficial ownership information available to regulatory, tax, and other law enforcement authorities but do not create a beneficial ownership registry available to the public?

A.2. Yes, we recommend that you make reliable beneficial ownership information available to regulatory, tax, and other law enforcement authorities but not create a beneficial ownership registry that is available to the public. Since beneficial ownership information includes personally identifiable information, this data should be afforded appropriate protections from general public disclosure. As I discussed during my testimony, while the OCC supports legislation to create a consistent, nationwide requirement or centralized database for beneficial ownership information, we are keenly aware of the importance of establishing a balance between the need for law enforcement, regulators, and bank access to this information and important data protection and privacy rights.

Regulatory, tax, and other law enforcement authorities could use this information to fulfill their respective missions while having effective data protection frameworks in place to safeguard their use of the information. Giving the general public access to this information, however, would create larger concerns over privacy issues.

Q.3. What rules should we put in place to ensure regulatory, tax, and other law enforcement entities can track ownership if an owner sells her/his shares?

A.3. The sale of shares should be captured at the time of the transaction and reported to the appropriate authorities within a certain time period. However, to reduce burden and capture the entire change in ownership profile, the sale and purchase should be recorded in a single form to capture both ends of the transaction and the resulting change in ownership percentage.

Q.4. There have been a number of proposals for collection of beneficial ownership information over the years including: States collecting this information; IRS making this information available since they collect that information; making banks collect it and verify it before any accounts can be opened; requiring all business entities to report to a centralized agency like FinCEN. In your opinion, what is the best mechanism or mechanisms to collect beneficial ownership information?

A.4. The OCC supports the establishment of a consistent, nationwide requirement for legal entities to provide accurate beneficial ownership information. There are a number of different mechanisms that could effectively accomplish this goal of creating a standardized approach to allow for the verification of beneficial ownership data that would benefit law enforcement, regulators, and the banks supervised by the OCC.

Q.5. At this point, the consensus seems to require Federal—not State—collection of information. If that changes and a State collection mechanism is recommended, how would we adequately fund the development or modification of 51 systems to collect and dis-

tribute this information? How will compliance be measured? How do you ensure a national standard for the States?

A.5. There are a number of different operational and funding mechanisms that have been proposed in the past which could effectively support a beneficial ownership information collection system. With regard to ensuring a national standard for collection of information by the States, legislation could provide minimum data elements to collect, or perhaps a sample form, similar to the beneficial ownership form template used in the CDD Final Rule. States could be given the option to use the template or their own form as long as it contains the requisite elements. Compliance could be measured, for example, through reviews or audits of business license or tax filings, if ownership information was required to be provided on either of those forms.

Q.6. If there is a requirement that the States notify their customers of a requirement to report beneficial ownership to a centralized agency—What should that notification look like? Will there be any funding to the States to accomplish proper notification? How will compliance be measured?

A.6. States may be able to communicate this requirement to their customers by including the notification in the packages of information/instructions provided to prospective corporate registration applicants on the relevant agency websites and in the registration forms themselves. Such notification could inform the impacted parties of the requirement to accurately report beneficial ownership information, the reason for this requirement, where and how to report the information, the timeframe for doing so, and possible penalties for noncompliance or providing false statements.

There have been past proposals for mechanisms to provide funding for the States, and any such funding could be coordinated through collective State representation, such as the National Association of Secretaries of State. As noted above, compliance could be measured, for example, through reviews or audits of business license or tax filings, if ownership information was required to be provided on either of those forms.

Q.7. What has been the involvement of State banking supervisors in discussions regarding updates to the Bank Secrecy Act and anti-money-laundering rules? Should State banking regulators be more involved in these discussions regarding BSA/AML?

A.7. While the BSA is a Federal statute, the Federal agencies that are members of the Federal Financial Institutions Examination Council (FFIEC) regularly coordinate with State banking supervisors where there are overlapping processes or coordinated approaches to supervision, for example, updating the FFIEC BSA/AML examination procedures. State banking regulators are represented in FFIEC proceedings by the Conference of State Bank Supervisors and State Liaison Committee, which actively participate in these types of discussions. While not a member of the FFIEC, FinCEN also participates actively in the FFIEC's BSA/AML Working Group, which includes discussion of rulemaking proposals.

Q.8. You have worked at the OCC for a long time. Have you ever written a letter to someone who commented on a rule telling them you disagreed with their comments?

A.8. No, I have never written a letter to a commenter in response to a comment the agency received during a rulemaking.

In general, when the OCC receives comments in response to a request for comment during the rulemaking process, the agency will enter the comments received into a docket and publish them on the Regulations.gov website. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure.

OCC staff then review and consider these comments as part of the rulemaking process, including summarizing and addressing comments in the preambles of final rules published in the *Federal Register*.

Q.9. Have you ever published an op-ed critiquing comments from members of the public on an OCC proposed rule?

A.9. The OCC has published no article nor made any other criticism of comments submitted in response to a formal rulemaking. The article by Deputy Comptroller of the Currency Barry Wides, which was published in the *American Banker* on March 25, 2019, responded to inaccurate public comments made in the press, online, and in other public settings. The article is available at <https://www.americanbanker.com/opinion/setting-the-record-straight-on-cra-reform>.

Q.10. Will you ensure comments on bank mergers are not relegated to a separate CRA process but instead considered as part of the merger application?

A.10. The OCC will continue to comply with requirements of the statute. Referring actionable comments to supervision staff allows those comments to be reviewed and addressed in the most expedient manner.

Q.11. Will you ensure access to information through the Freedom of Information Act with timely responses without requiring high fees?

A.11. The OCC will continue to comply with the Freedom of Information Act and applicable policies regarding fees and fee waivers.

Q.12. There has been an epidemic of fake comments on controversial issues. How will you ensure that comments on proposed rules and mergers are accurate and not based on stolen identities?

A.12. The OCC is not familiar with data suggesting an “epidemic of fake comments on controversial issues” and would welcome the opportunity to review such data. While the OCC cannot control the advocacy techniques and letter-writing practices used by many, the agency reviews each letter submitted. Identical letters, often the result of form letters, typically do not present additional new information and are easily grouped together in responding to those comments.

ADDITIONAL MATERIAL SUPPLIED FOR THE RECORD

LETTER SUBMITTED BY THE AMERICAN BANKERS ASSOCIATION

James Ballentine
Executive Vice President
Congressional Relations
And Political Affairs
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May 20, 2019

The Honorable Michael Crapo
Chairman
Senate Banking, Housing and Urban
Affairs Committee
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Senate Banking, Housing and Urban
Affairs Committee
Washington, D.C. 20150

Dear Chairman Crapo and Ranking Member Brown:

On behalf of the members of the American Bankers Association, I write to express our support for the Committee's efforts to examine illicit financing and beneficial ownership requirements. This is a matter of great importance, and ABA supports congressional and regulatory efforts to bring enhanced transparency to corporate entities.

It has been nearly a year since the Treasury-drafted Customer Due Diligence rule went into full effect. When the rule was issued in May 2016, Treasury recommended that Congress adopt legislation to create a federal registry for beneficial owners, a step that ABA supports. While the rule provided some clarity for banks, one of the flaws in the rule is that there is no mechanism to verify the information that bank customers provide. ABA strongly believes that a federal registry would help rectify that flaw.

The rule was adopted to address concerns by international bodies and law enforcement about the lack of transparency in corporate structures and to help identify the individuals who control or benefit from those legal entities. The void in obtaining beneficial ownership information has long been a concern of law enforcement because it helps criminals hide behind corporate structures – especially shell companies – to move illicit funds. While the rule was a step in the right direction, it is limited to those companies over which Treasury had authority.

A single federal registry would also help ease the burden on companies because the beneficial ownership information would be located in one place. A company would not be required to provide that information to a financial institution each and every time it opens a new account. The information also would be readily accessible to law enforcement and would provide an easy way for financial institutions to verify beneficial ownership information.

Concerns have been raised about a possible burden on small businesses. We are mindful of these concerns, but there are ways to ensure those businesses are notified about the requirements. Giving Treasury regulatory authority to implement the requirement would help address those concerns. It also is important that financial institutions be able to access the information without seeking customer permission; requiring customer consent adds an unnecessary step to the process and also will serve as a barrier to FinCEN allowing banks to rely on the database instead of customer certification. And, Treasury should be required to update the existing rule to be consistent with the Congressional mandate.

While some have suggested that existing information filed with the Internal Revenue Service would provide an alternative to the creation of a federal registry, the information filed with the IRS lacks key elements. Furthermore, the IRS has been reluctant to grant the broad access to its records that would be necessary to meet the needs of the financial sector and law enforcement.

Finally, while the most logical transition to a federal registry would be to have companies register at the time of formation, a mechanism needs to be adopted to transition in companies that already exist. A cliff registration after two years will cause a burden on the manager of the database. Instead, a phased-in process would be the most effective and efficient way to incorporate existing companies into the database.

ABA strongly believes that a carefully structured federal registry would go a long way to meet the needs of law enforcement and prevent criminals and terrorists from abusing the corporate structure to hide and move illicit funds. It would also create an avenue to alleviate burden on financial institutions and their customers inherent in the existing process.

ABA looks forward to working with Congress to craft an effective federal registry for beneficial owners.

Sincerely,



James C. Ballentine

cc: Members of the Senate Banking, Housing and Urban Affairs Committee

LETTER SUBMITTED BY THE CONSUMER BANKERS ASSOCIATION



CBA

May 20, 2019

HELPING FINANCE THE AMERICAN DREAM SINCE 1919.

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban
Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban
Affairs
534 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairman Crapo and Ranking Member Brown:

On behalf of the Consumer Bankers Association (CBA), we thank you for holding the hearing entitled, "Combating Illicit Financing By Anonymous Shell Companies Through the Collection of Beneficial Ownership Information." CBA is the voice of the retail banking industry; whose products and services provide access to credit for consumers and small businesses.

CBA's members serve the critical function of monitoring, identifying and reporting suspicious activity to law enforcement, ensuring criminals do not access the American financial system to launder ill-gotten gains. Our members promote national security and deter financial crimes by committing significant resources towards the compliance of the Bank Secrecy Act (BSA), the USA PATRIOT Act, related anti-money laundering laws (AML) and the recently implemented FinCEN Customer Due Diligence (CDD) rule that requires financial institutions to collect beneficial ownership information on potential business customers and report this information to FinCEN and law enforcement agencies.

Criminal organizations that use shell companies with anonymous ownership structures to carry out their illegal activities should be stopped. CBA strongly encourages the Committee to consider proposals that would shift the collection of beneficial ownership information from banks to FinCEN. FinCEN is appropriately suited to perform these duties as its purpose is to safeguard the financial system, combat money laundering, and collect, analyze and disseminate financial intelligence. In addition, Congress should allow FinCEN to create a federal database for financial institutions and law enforcement to use to verify the legitimacy of a company and its owners. A federal database of beneficial ownership information would provide transparency, would enable financial institutions and law enforcement to search and rely on the government's information to more efficiently deploy resources in the fight against money laundering, and would better protect the nation's financial system from corruption, terrorism, and criminal activity.

CBA stands ready to work with Congress to pass beneficial ownership legislation that will prevent criminals from accessing the financial system and conducting illicit activities through the use of anonymous shell companies.

Sincerely,

A handwritten signature in dark ink, appearing to read "Richard Hunt".

Richard Hunt
President and CEO
Consumer Bankers Association

1225 EYE STREET, NW, SUITE 550, WASHINGTON, D.C. 20005
consumerbankers.com

LETTER SUBMITTED BY THE CREDIT UNION NATIONAL ASSOCIATION



Jim Nussle
President & CEO

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99 M Street SE
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May 21, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban
Affairs
United States Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban
Affairs
United States Senate
Washington, DC 20510

Dear Chairman Crapo and Ranking Member Brown:

On behalf of America's credit unions, I am writing today regarding the Senate Banking Committee's hearing entitled, "Combating Illicit Financing by Anonymous Shell Companies Through the Collection of Beneficial Ownership Information." The Credit Union National Association (CUNA) represents America's credit unions and their 115 million members. CUNA and our nation's credit unions support reasonable protections, including those under the Bank Secrecy Act (BSA), aimed at reducing financial crimes.

FinCEN's Customer Due Diligence Rule

The Financial Crimes Enforcement Network's (FinCEN) Customer Due Diligence (CDD) Rule went into effect for credit unions and other financial institutions a little over a year ago.¹ The rule requires financial institutions to obtain identifying information about the beneficial owners of their legal entity accounts. The CDD Rule amends BSA regulations to improve financial transparency and prevent criminals and terrorists from misusing companies to disguise illicit activities and launder ill-gotten gains. CUNA strongly supports these objectives.

Specifically, the CDD Rule requires covered financial institutions to establish and maintain written policies and procedures that are reasonably designed to (1) identify and verify the identity of customers; (2) identify and verify the identity of the beneficial owners of companies opening accounts; (3) understand the nature and purpose of customer relationships to develop customer risk profiles; and (4) conduct ongoing monitoring to identify and report suspicious transactions and, on a risk basis, to maintain and update customer information.

While implementation of the changes necessary to comply with the CDD Rule were challenging, the two-year implementation period as well as several exemptions included in the final CDD Rule have provided some relief for credit unions on an on-going basis. We urge this Committee to continue to encourage FinCEN to work with the industry on compliance issues as they arise. Doing so will continue to allow the financial industry to meet the compliance requirements of the rule while at the same time aiding FinCEN in achieving the objectives of the rule, including in the area of anonymous shell companies.

BSA/AML Concerns Generally

We support efforts to track money laundering and terrorist financing, but also believe it is important to strike the right balance between the costs to financial institutions, like credit unions, and the benefits to the federal government from the BSA, anti-money laundering (AML), and Office of Foreign Assets Control (OFAC) regulations. As such, we support legislative and regulatory changes to address the redundancies, unnecessary burdens, and opportunities for efficiencies within the BSA/AML statutory framework. We support changes to:

1. Minimize the duplication of the same or similar information;
2. Provide additional flexibility based on the reporting institution type or level of transactions;
3. Curtail the continually enhanced CDD requirements;
4. Increase the threshold requiring Currency Transaction Reports (CTRs);

cuna.org

5. Reduce and simplify the reporting requirements of Suspicious Activity Reports (SARs) that have limited usefulness to law enforcement; and
6. Allow for greater regulatory and examination consistency among regulators, including the National Credit Union Administration (NCUA) and state credit union regulators, in order to help with interpretations of BSA requirements and guidance and to minimize regulatory overlap.

BSA regulations, administered by FinCEN, are the foundation of all efforts by our government to stop criminal money laundering and terrorist financing. These have been strengthened through AML laws, which include part of the USA PATRIOT Act. These laws require financial institutions such as banks, credit unions, and non-depository financial institutions to keep records of events that could signal money laundering and terrorist financing.

Unfortunately, the current BSA requirements are not proving to be all that effective. “The United Nations Office on Drugs and Crime estimates that financial crimes now yield about \$1.6 trillion annually, of which only 1% is caught . . . Furthermore, catching this 1% costs banks [and credit unions] an estimated \$50 billion a year. This means that [financial institutions] incur astronomical costs and risks for poor results.”²

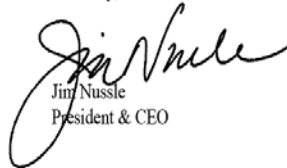
The reality is the cost of technology for monitoring and ensuring compliance with BSA/AML laws and regulations is disproportionately burdensome on smaller and less complex institutions, such as credit unions. Often, credit unions choose not to serve certain markets because of the complexities of compliance. Money Service Businesses are a prime example of where many credit unions have difficulty providing needed services because of the BSA and AML ongoing due diligence requirements associated with serving these businesses. Nevertheless, our government can ease the compliance burden for smaller or less complex financial institutions, such as credit unions, while maintaining the protections needed.

Conclusion

Credit unions take BSA/AML compliance seriously and dedicate significant resources to it. However, when credit unions are spending their limited resources disproportionately on compliance, this means they are spending fewer resources on innovating and providing safe and affordable products and services. We recognize that regulatory agencies—whether it be the NCUA, the Consumer Financial Protection Bureau, or bank regulators—have a renewed focus on BSA/AML compliance, particularly on issues such as cybersecurity and mobile payments. However, we encourage a regulatory regime that recognizes the time and effort that goes into good faith compliance with laws and does not unduly punish financial institutions for unintentional technical or minor errors. The seemingly never-ending stream of regulatory expectations for credit unions, often with small and stretched staffs, must be considered in agency examinations and when laws and requirements are enacted.

On behalf of America’s credit unions and their 115 million members, we appreciate the Committee’s commitment to combating illicit financing. Thank you for considering our views.

Sincerely,



Jim Nussle
President & CEO

**LETTER SUBMITTED BY THE NATIONAL FRATERNAL ORDER OF
POLICE**



**NATIONAL
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CHUCK CANTERBURY
NATIONAL PRESIDENT

JAMES O. PASCO, JR.
EXECUTIVE DIRECTOR

20 May 2019

The Honorable Michael D. Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
United States Senate
Washington, D.C. 20510

The Honorable Sherrod C. Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Senator Brown,

I am writing on behalf of the members of the Fraternal Order of Police to advise you of our strong support for the collection of beneficial ownership information to combat illicit finance and corruption. The FOP has supported legislation like H.R. 2513, the "Corporation Transparency Act," for many years, and we are grateful that your committee will be holding a hearing on the issue this week.

Transnational criminal organizations and terrorist operations are using our banks, financial institutions and other means to profit from their illegal activity. This is a well-documented problem for our financial institutions and for law enforcement as we work together to shut down these sophisticated criminal enterprises. Congress and this committee have played a leadership role in identifying the problem and worked with law enforcement to develop legislation like H.R. 2513. In addition, this Administration also agrees with this approach—last July, U.S. Secretary of the Treasury Steven T. Mnuchin testified House Financial Services Committee and stated that there is a real need to "have access to beneficial ownership information for law enforcement and for combating terrorist financing."

The Secretary's remarks made it very clear that this is a pressing issue and the vulnerability of our financial institutions is a genuine threat to public safety and national security. Under current laws, shell corporations may be used as front organizations by criminals conducting illegal activity, such as money laundering, fraud, and tax evasion. We need legislation like "Corporation Transparency Act" to combat this misuse of U.S. corporations by requiring the U.S. Department of the Treasury, specifically the Financial Crimes Enforcement Network (FinCEN), to collect beneficial ownership information from corporations and limited liability companies formed under State laws. It is vital that such information, once collected, be available to law enforcement at every level—local, State, tribal and Federal—using the appropriate protocols. For this reason, the FOP opposes any legislation which would have the Internal Revenue Service (IRS) as the entity collecting the beneficial ownership information.

Once FinCEN has the ability to share this information, law enforcement will be able to investigate possible connections between these corporations and terrorist funding. All too often, investigations hit a dead end when we encounter a company with hidden ownership. Just as robbers or burglars wear masks to hide their faces and make identifying them more difficult; the criminals we are chasing in these cases use shell corporations as masks, concealing themselves while still profiting from their crimes.

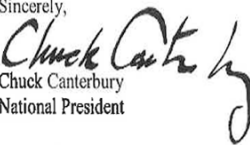
—BUILDING ON A PROUD TRADITION—



When we are able to expose the link between shell companies and drug trafficking, corruption, organized crime and terrorist finance, law enforcement will be able to bring these criminals to justice and make our citizens and our nation safer.

On behalf of the more than 348,000 members of the Fraternal Order of Police, I want to thank this committee for its leadership on this issue and most of all, for its willingness to engage and work with the law enforcement community on the collection of beneficial ownership information. We strongly urge the committee to protect our financial system and our nation from criminal and terrorist organizations by passing legislation to collect this vital data. If I can provide any additional information on this matter, please do not hesitate to contact me or my Executive Director, Jim Pasco, in my Washington office.

Sincerely,


Chuck Canterbury
National President

ICBA STATEMENT AND WHITE PAPER



On behalf of the more 52,000 community bank locations across the nation represented by ICBA, we thank Chairman Crapo, Ranking Member Brown, and members of the Banking Committee for convening today's hearing on "Combating Illicit Financing by Anonymous Shell Companies Through the Collection of Beneficial Ownership Information." ICBA is pleased to have the opportunity to submit this statement for the hearing record. The attached ICBA white paper, "Modernizing Anti-Money Laundering and Anti-Terrorist Financing Laws and Regulations," provides a more comprehensive exposition of the community bank perspective on this critical issue.

Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. The Financial Crimes Enforcement Network (FinCEN) Customer Due Diligence (CDD) Rule under the Bank Secrecy Act requires "covered financial institutions" to identify the beneficial owners who own or control certain legal entity customers at the time a new account is opened. Mandatory compliance with the CDD Rule began just over one year ago on May 11, 2018. In this statement, ICBA recommends an alternative to the CDD Rule that would create a more effective means of collecting beneficial ownership information for law enforcement.

Customer Due Diligence Rule

The purpose of the CDD rule is to create more transparency and thereby deter the abuse of anonymous legal entities for money laundering, corruption, fraud, terrorist financing and sanctions evasion.

ICBA agrees that such transparency is important. We strongly disagree that bank collection of beneficial ownership information is an effective means of creating this transparency. Our recommendation is that beneficial ownership information be collected and verified at the time a legal entity is formed by FinCEN or other appropriate federal or state agency. This solution would provide uniformity and consistency across the United States. Making the formation of an entity contingent on receiving beneficial owner information would create a strong incentive for equity owners and investors to provide such information. Additionally, periodic renewal of an entity's state registration would provide an efficient and effective vehicle for updating beneficial ownership information. ICBA believes this solution must be implemented in a way that safeguards the privacy of business owners and ensures the integrity of data held at FinCEN.

Furthermore, information regarding beneficial owners could be more easily shared between law enforcement and government agencies than between banks and law enforcement. Privacy laws do not permit banks to share personal information with a government agency absent a subpoena or similar directive. Information should be collected by the party that can make the most effective use of it to deter the criminal use of legal entities. This is the government.

For these reasons, ICBA supports the Corporate Transparency Act (H.R. 2513), sponsored by Representative Carolyn Maloney, which would require corporations and limited liability companies to disclose their "beneficial



owners” to FinCEN at the time the company is formed.

For banks, collection of beneficial ownership information for all legal entity customers is difficult to implement and an onerous and inefficient task for both the customer and the employee. Front-line bank staff is required to conduct several additional intermediate steps during the account-opening process to ensure they have a reasonable belief of the true identity of each beneficial owner. While the ownership interest and management responsibility of a business may be straightforward in certain cases and specified in a legal organizational document in other cases, certain legal structures make determining ownership equity extremely difficult, at best. Obtaining this information and assessing the risk requires a sophisticated understanding of various legal structures and ownership interests that is well beyond the training of a typical community bank loan officer. On the other hand, the provision of this information to FinCEN by business management, under H.R. 2513, would create no incremental burden over what businesses are required to provide to banks today under the CDD rule.

Closing

Thank you again for convening today’s hearing. ICBA looks forward to working with this committee to modernize the Bank Secrecy Act in a way that will strengthen critical law enforcement while rationalizing community bank compliance with this important law.

Attachment

ICBA White Paper: “Modernizing Anti-Money Laundering and Anti-Terrorist Financing Laws and Regulations”

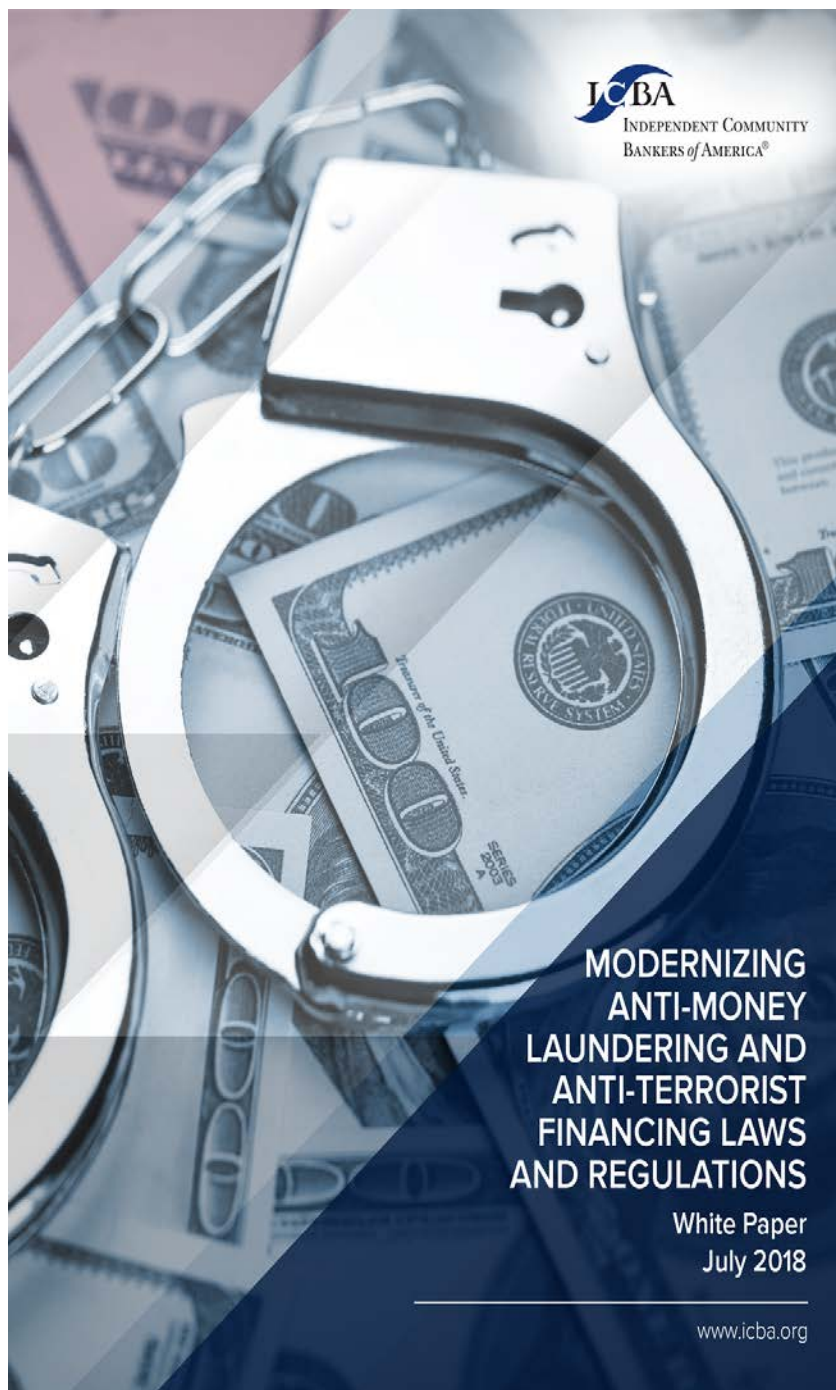


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Introduction

In today's world, it is imperative that financial institutions, law enforcement, and our government work together to combat and prevent financial crime, money laundering, and terrorist financing. Community bankers are committed to supporting balanced, effective measures that will prevent terrorists from using the financial system to fund their operations and prevent money launderers from hiding the proceeds of criminal activities. However, anti-money laundering/combating the financing of terrorism and Bank Secrecy Act ("BSA") compliance programs (collectively "AML/CFT") consume a growing share of community banks' scarce resources.

Since the inception of the anti-money laundering laws in 1970 and anti-terrorist financing laws in 2001, the burdens placed on banks increasingly create an environment where financial institutions are essentially tasked with identifying, investigating, policing, and reporting potential criminal activity. Each year, community banks must invest more time, money and resources to combat this threat. Yet, community banks report that the current outdated framework is more an exercise of completing forms and strictly adhering to policies and procedures developed from regulatory requirements rather than making an impact in combating financial crime.



A primary challenge facing community banks today is the sharply increasing and disproportionate burden of complying with these growing regulatory requirements.

These regulations also diminish community banks' ability to attract capital, support the financial needs of their customers, serve their communities, and contribute to their local economies. Additionally, many of them do not have dedicated legal and compliance departments and they have a smaller asset base over which to spread compliance costs.

Federal regulators are in the early stages of identifying areas in which burdens can be reduced while maintaining the effectiveness of the AML/CFT regime.

Modernization will produce more useful information while alleviating compliance burden

Modernization and reform of the BSA will produce more useful information for law enforcement while alleviating one of the most significant and costly sources of community bank compliance burdens. Rather than having banks devote their resources to tasks that are inefficient or redundant, a more efficient and technologically advanced framework would better serve law enforcement and enable community banks to more effectively utilize their resources. BSA modernization will free community bank resources to better serve customers and communities.

ICBA recommends several areas in which the AML/BSA framework can be modernized:

Update reporting thresholds

As the federal government combats money laundering and terrorist financing, ICBA strongly recommends an emphasis on quality over quantity for all BSA reporting. Reporting thresholds are significantly outdated and capture far more transactions than originally intended. The currency transaction report (CTR) threshold, which was set in 1970, should be raised from \$10,000 to \$30,000 with future increases linked to inflation.



CTRs are intended to collect information for investigations in tax evasion, money laundering, terrorist financing and other financial crimes. However, the overwhelming percentage of CTRs relate to ordinary business transactions, which create an enormous burden on financial institutions that is not commensurate with financial crime investigations. While the BSA provides banks with the ability to exempt certain customers from CTR reporting, a higher threshold would produce more targeted, useful information for law enforcement.

Suspicious activity reports ("SARs") are the cornerstone of the BSA system and were established as a way for banks to provide leads to law enforcement. Because community banks have a strong incentive to file SARs as a defensive measure to protect themselves from examiner criticism, SARs are filed in increasing and vast numbers without a commensurate

benefit to law enforcement. As the government combats money laundering and terrorist financing, ICBA strongly recommends an emphasis on quality over quantity for SAR filing. ICBA recommends reforming the SAR process by increasing the reporting thresholds, which have not been adjusted since becoming effective in 1992, and by emphasizing those instances in which an institution may rely on risk-based reporting.

Currently, an institution is required to file a SAR for:

- 1 criminal violations involving insider abuse in any amount;
- 2 criminal violations totaling \$5,000 or more when a suspect can be identified;
- 3 criminal violations aggregating \$25,000 or more regardless of a potential suspect; and
- 4 transactions conducted or attempted by, at, or through the bank (or an affiliate) if the bank knows, suspects, or has reason to suspect that the transaction is suspicious.

ICBA recommends the current SARs threshold should be raised from \$5,000 to \$10,000 which will modernize thresholds by emphasizing quality over quantity in information collection.



In the current regulatory environment, community banks are faced with a cumbersome and overly burdensome process to ensure they are protected and no mistakes are made when reviewed by examiners. They are questioned about the number of SARs filed in relation to the number of accounts and transactions initially identified as suspicious rather than the quality of the bank's monitoring system or investigative process. Additionally, bankers are questioned regarding the total number of SARs filed since the last examination as though a quota is required. As a result, bank employees often file SARs as a defensive measure and to ensure that in hindsight they did not miss or overlook any details and to ensure they filed a requisite number of SARs. The current focus is also a daunting task for banks because it usurps resources by requiring significant time monitoring for thresholds (quantity) and less time focused on actual suspicions (risk).

For each transaction the bank identifies as suspicious, a thorough investigation is conducted that typically includes monitoring and reviewing all documentation and account activity, interviewing appropriate personnel, a review of the investigation by a BSA-trained employee, and sometimes a second review by either a compliance or BSA committee, BSA officer or senior level staff. The investigation is documented, with documents retained on transactions for which a SAR is filed as well as for investigations for which a SAR is not filed. If a SAR is not filed, banks must document and subsequently justify to their examiner why a flagged transaction did not result in a filed SAR. This is done for every suspicious transaction no matter how minor or severe the potential offense. The process is time consuming and labor intensive and community banks are skeptical that the method by which SARs are completed provides commensurate value to law enforcement.

Moreover, the archaic and labor-intensive nature of the SAR process makes the SAR regime ineffective and cumbersome. As stated previously, community banks follow the same SAR procedure for every suspicious transaction no matter how minor the potential offense. This approach leaves community banks skeptical that SARs have real value to law enforcement.

Increasing filing thresholds for both SARs and CTRs would enable community banks to provide more targeted and valuable information to law enforcement.

Collection of beneficial ownership information by federal or state government

On May 11, 2018, the Financial Crimes Enforcement Network's ("FinCEN") new beneficial ownership rule, which requires banks to collect information on the beneficial owners of legal entity accounts, became effective. FinCEN defines a legal entity customer as a corporation, limited liability company, or other entity that is created by the filing of a public document with a Secretary of State or similar office, a general partnership, and any similar entity formed under the laws of a foreign jurisdiction, that opens an account.

FinCEN states that legal entities are at times abused to obfuscate ownership interests and used to engage in illegal activities such as money laundering, corruption, fraud, terrorist financing and sanctions evasion. Criminals have exploited the anonymity that legal entities can provide to engage in a variety of crimes, and often take advantage of shell and front companies to conduct such activity. Making legal entities more transparent by requiring identifying information of natural person owners would likely hinder such

abuses. However, shifting the responsibility and oversight of collecting this information to the private sector—financial institutions—is misguided and ineffective.



Collecting and verifying the identity of all natural-person owners of each entity by either the Internal Revenue Service or other appropriate federal agency and/or state in which the entity is formed would provide uniformity and consistency across the United States. By making the formation of an entity contingent on receiving beneficial owner information, strong incentives would be created for equity owners and investors to provide such information. Additionally, periodic renewal of an entity's state registration would provide an efficient and effective vehicle for updating beneficial ownership information.

The customer due diligence and beneficial ownership rule is a component of Treasury's broader strategy and corresponds with the Administration's and Congress' ongoing work to require the collection of beneficial ownership information at the time that legal entities are formed in the United States. However, requiring both the federal government and financial institutions to collect the same information on the same entities is ineffective, duplicative, unnecessary, and costly. It is important to ensure that any additional requirements maintain a balanced approach that promotes the purposes of BSA with the limited and already strained resources of community banks. This rule does not achieve that balance.

Furthermore, information regarding beneficial owners could be more easily shared between law enforcement and government agencies than between banks and law enforcement. While privacy laws do not permit banks to share personal information with a government agency absent a subpoena or similar directive, inter-agency sharing of personal information is permissible if certain amendments are in place.

Additionally, obtaining beneficial ownership on all legal entity customers, and verifying their identity on certain business accounts, is an onerous task and is difficult to implement. While the ownership interest and management responsibility of a business may be straightforward in certain cases and specified in a legal organizational document in other cases, certain legal structures make determining ownership equity extremely difficult, at best.

Each community bank must have a written customer identification program ("CIP") that enables it to form a reasonable belief that it knows the true identity of each customer. Existing CIP and Enhanced Due Diligence ("EDD") practices apply to natural-person customers as well as legal entity customers. However, incorporating beneficial owners into existing CIP practices and risk assessments creates an implicit requirement for bank employees to understand various legal structures and ownership interests in order to assess risk.

As such, a bank's front-line staff is required to conduct several additional intermediate steps during the account-opening process to ensure they have a reasonable belief they know the true identity of each beneficial owner. This adds significantly more time to each business account opened.

Additionally, the rule requires banks to confirm the beneficial ownership information each time a customer opens an additional account. This is duplicative and extremely burdensome because the bank has already undergone the onerous task of confirming the beneficial ownership information in the first place, and it is on file. To do so each time a new account is opened adds no benefit whatsoever to law enforcement.

Although banks may generally rely on the representations of the customer when answering the financial institution's questions about the natural persons behind the legal entity, bank employees still require some advanced business acumen in order to understand and determine to whom the definition applies.

This rule also requires banks to obtain and verify beneficial ownership information on financial product renewals, such as certificate of deposits and loans, for products established before May 11, 2018. In order to comply with this unreasonable requirement, banks need to stop automatic renewals long enough to obtain a customer's beneficial owner certification (and continue following up with customers who do not respond in a timely manner) because most banks do not require customer interaction for automatic renewals. Not only is this requirement a useless exercise, but there is no reason to believe that a roll over product, loan or certificate of deposit renewal, or automatic renewal is evidence of change in beneficial ownership. These products are scheduled for the customer's convenience and are triggered by maturity or due dates and not changes in ownership. Furthermore, these products are low-risk for financial crimes.

Enhanced communication among industry, law enforcement and the federal government

Communication and cooperation are critical to an effective working partnership among the government, law enforcement, and financial institutions. Community banks seek more current information from the federal government to better understand what specific methods of terrorist financing and money laundering they are trying to prevent so banks can more readily identify and report truly suspicious transactions.



Ensuring a balanced approach to combating financial crimes

Assisting law enforcement in its fight against financial crimes is important to community banks. Currently, however, banks are effectively deputized to identify, investigate, report, and police potential financial crimes. While banks are eager to cooperate with law enforcement, they should not act as police. More balance is needed between the responsibilities of the public versus private sectors to detect and prevent financial crime.

For community banks, BSA compliance represents a significant expense in terms of both direct and indirect costs. BSA compliance, whatever the benefit to society at large, is a governmental, law enforcement function. As such, the costs should be borne by the government. ICBA supports the creation of a tax credit to offset the cost of BSA compliance.

Additionally, community banks spend significant resources—in terms of both direct and indirect costs—complying with the BSA and anti-money-laundering laws and regulations. However, the cumulative impact of these regulations places a burden on community banks that is often disproportionate to the benefits of the additional regulatory requirements. As the government continues to combat money laundering and terrorist financing, it is important to focus on quality over quantity for all BSA reporting.

ABOUT

ICBA

Independent Community Bankers of America® (ICBA), the nation's voice for nearly 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

CONTINUE THE CONVERSATION

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REAL ESTATE JOINT TRADES LETTER

May 7, 2019

The Honorable Maxine Waters
Chairwoman
U.S. House Committee on
Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Mike Crapo
Chairman
United States Senate Committee on
Banking, Housing, and Urban Affairs
512 Dirksen Senate Office Building
Washington, D.C. 20510

The Honorable Patrick McHenry
Ranking Member
U.S. House Committee on
Financial Services
4340 O'Neill House Office Building
Washington, D.C. 20024

The Honorable Sherrod Brown
Ranking Member
United States Senate Committee on
Banking, Housing, and Urban Affairs
512 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Chairwoman Waters, Ranking Member McHenry, Chairman Crapo, and Ranking Member Brown:

We urge the House Financial Services Committee and Senate Banking Committee to work towards ending the misuse of anonymous shell companies by passing the Corporate Transparency Act of 2019. A requirement for companies to report their beneficial ownership will help law enforcement identify and combat the use of real estate in money laundering. This is integral for efforts to modernize the United States anti-money laundering and countering the financing of terrorism (AML/CFT) regime.

States do not require companies to disclose their beneficial owners at the time of creation. This reduces the value of financial intelligence provided by banks, title insurance companies, and other financial institutions under their AML and geographic targeting order obligations. A single national repository, operated by law enforcement, would ensure FinCEN obtains valuable information about anonymous shell companies from the sources with the best knowledge.

The Corporate Transparency Act of 2019 would create a single repository at FinCEN to collect and record a corporation or LLC's beneficial ownership information. The information would be available through appropriate protocols, only to law enforcement, financial intelligence agencies and financial institutions with the consent of their customer. This system would provide law enforcement with a valuable tool for combating money laundering in real estate, without creating new compliance burdens for industry stakeholders.

We appreciate and thank you for your continued work on this vital issue.

Sincerely,
American Escrow Association
American Land Title Association
National Association of REALTORS®
Real Estate Services Providers Council, Inc. (RESPRO)

**LETTER SUBMITTED BY THE DUE PROCESS INSTITUTE AND
FREEDOMWORKS**



May 20, 2019

The Honorable Mike Crapo
Chairman
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing and Urban Affairs
U.S. Senate
Washington, DC 20510

RE: Hearing on "Combating Illicit Financing By Anonymous Shell Companies Through the Collection of Beneficial Ownership Information"

Dear Chairman and Ranking Member:

The **Due Process Institute** and **FreedomWorks** write jointly to raise important considerations that will likely not be addressed by the all-government witness panel testifying before the Senate Committee on Banking, Housing, And Urban Affairs in a hearing entitled "Combating Illicit Financing By Anonymous Shell Companies Through the Collection of Beneficial Ownership Information" on May 21, 2019.

While there is no specific legislation that is the subject of this hearing, it should be noted that, for several years, there have been many previously proposed legislative efforts in the Senate regarding the collection of beneficial ownership information. There is no doubt that these bills were well-intentioned efforts to address criminal conduct; however, a broad array of groups have raised concerns with these previous bills and it is our hope that you consider the multitude of concerns raised before moving forward on this issue.

In essence, the proposals all began with the same premise. They would create new mandates that require people who form or already own business entities, including smaller independent businesses and certain nonprofits, to submit additional personal, financial, and business-related information to the government. Unfortunately, however, numerous key terms and phrases in past bills have been left undefined or have been so broad as to be essentially meaningless. For example, every version of the bill has defined a "beneficial owner" [the people who would be subject to the law's requirements] as anyone who "directly or indirectly" exercises substantial control or receives substantial economic benefit from the entity. But what does it mean to *indirectly* control an entity? The bills never explain, and this lack of clarity has very serious consequences when each of these bills has also created numerous new federal criminal laws that do nothing but increase this nation's overreliance on criminalization as a cure for every problem. Vague or overly broad statutory text leaves people vulnerable to unfair criminal prosecutions.

Furthermore, previous legislative proposals have exempted most large entities with the compliance teams necessary to help them navigate new and burdensome requirements. Determining what is to be reported, when, and by whom, in a complex regulatory scheme is difficult. Large corporations have successfully lobbied to be spared these requirements—leaving the reporting burdens solely to small or independent businessowners and nonprofit managers. Compounding this problem, these new disclosure requirements would apply not only to newly formed entities but those who have already been in existence—yet an owner (even a first-time offender) who fails to learn of the law or who fails to comply with any aspect of the requirements could face a prison sentence. These kinds of requirements easily set traps for honest people trying to faithfully comply with complex laws, particularly those who lack experience or significant funds to retain sophisticated business lawyers who can help them.

Despite what you will likely hear from the government witnesses at this hearing, creating criminal penalties for paperwork errors will not prevent money laundering, terrorism, and or any other crimes. First, you would have to accept the premise that those engaging in such crimes—and who are doing so with the intention to hide behind a legal entity and go unnoticed—would comply with a new legal requirement to disclose themselves. Meanwhile, those attempting to comply in good faith would be providing information including their passport or driver's license numbers, along with other personal and sensitive information, to government entities that may then share it with other government entities with little meaningful assurance that their privacy will be properly protected. (None of the previous bills have adequately or specifically addressed how all of the personal and financial information disclosed to, and collected by, the government would be used solely for legitimate purposes or how privacy interests would be protected.) Second, past iterations of these bills have included so many exemptions that those seeking to engage in criminal acts would just have to take advantage of one to avoid detection. Rather than curbing abuse, these bills have sought to impose criminal penalties, including jail time, on people who fail to meet esoteric compliance requirements with no real indication that such requirements would curtail international money laundering cartels. The truth is: there are *already* hundreds of federal criminal laws on the books, along with a wide swath of powerful investigative tools and authorities, that the government already uses to address, prevent, and punish money laundering and other illicit financing crimes and these new criminal legislative proposals are an unnecessary step in the wrong direction.

The **Due Process Institute** and **FreedomWorks** believe the Committee should not move forward with these kinds of legislative proposals until these concerns are meaningfully addressed.

If you have further questions, feel free to contact Shana O'Toole (202-558-6683 or Shana@iDueProcess.org) or Jason Pye (202-942-7634 or jpye@freedomworks.org).

Respectfully,

Due Process Institute
FreedomWorks

“DEUTSCHE BANK STAFF SAW SUSPICIOUS ACTIVITY IN TRUMP AND KUSHNER ACCOUNTS”, DAVID ENRICH, NEW YORK TIMES

5/21/2019

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times

The New York Times

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts

By David Enrich

May 19, 2019

JACKSONVILLE, Fla. — Anti-money-laundering specialists at Deutsche Bank recommended in 2016 and 2017 that multiple transactions involving legal entities controlled by Donald J. Trump and his son-in-law, Jared Kushner, be reported to a federal financial-crimes watchdog.

The transactions, some of which involved Mr. Trump's now-defunct foundation, set off alerts in a computer system designed to detect illicit activity, according to five current and former bank employees. Compliance staff members who then reviewed the transactions prepared so-called suspicious activity reports that they believed should be sent to a unit of the Treasury Department that polices financial crimes.

But executives at Deutsche Bank, which has lent billions of dollars to the Trump and Kushner companies, rejected their employees' advice. The reports were never filed with the government.

The nature of the transactions was not clear. At least some of them involved money flowing back and forth with overseas entities or individuals, which bank employees considered suspicious.

Real estate developers like Mr. Trump and Mr. Kushner sometimes do large, all-cash deals, including with people outside the United States, any of which can prompt anti-money laundering reviews. The red flags raised by employees do not necessarily mean the transactions were improper. Banks sometimes opt not to file suspicious activity reports if they conclude their employees' concerns are unwarranted.

But former Deutsche Bank employees said the decision not to report the Trump and Kushner transactions reflected the bank's generally lax approach to money laundering laws. The employees — most of whom spoke on the condition of anonymity to preserve their ability to work in the industry — said it was part of a pattern of the bank's executives rejecting valid reports to protect relationships with lucrative clients.

“You present them with everything, and you give them a recommendation, and nothing happens,” said Tammy McFadden, a former Deutsche Bank anti-money laundering specialist who reviewed some of the transactions. “It's the D.B. way. They are prone to discounting everything.”

5/21/2019

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times



Deutsche Bank employees flagged concerns about activity in accounts linked to both Mr. Kushner and Mr. Trump. Pablo Martinez Monsivals/Associated Press

Ms. McFadden said she was terminated last year after she raised concerns about the bank's practices. Since then, she has filed complaints with the Securities and Exchange Commission and other regulators about the bank's anti-money-laundering enforcement.

Kerrie McHugh, a Deutsche Bank spokeswoman, said the company had intensified its efforts to combat financial crime. An effective anti-money laundering program, she said, "requires sophisticated transaction screening technology as well as a trained group of individuals who can analyze the alerts generated by that technology both thoroughly and efficiently."

"At no time was an investigator prevented from escalating activity identified as potentially suspicious," she added. "Furthermore, the suggestion that anyone was reassigned or fired in an effort to quash concerns relating to any client is categorically false."

Amanda Miller, a spokeswoman for the Trump Organization, the umbrella company for the Trump family's many business interests, said: "We have no knowledge of any 'flagged' transactions with Deutsche Bank." She said the Trump Organization currently has "no operating accounts with Deutsche Bank." She did not respond when asked if other Trump entities had accounts.

Karen Zabarsky, a spokeswoman for Kushner Companies, said: "Any allegations regarding Deutsche Bank's relationship with Kushner Companies which involved money laundering is completely made up and totally false. The New York Times continues to create dots that just don't

5/21/2019

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times

connect.”

Deutsche Bank's decision not to report the transactions is the latest twist in Mr. Trump's long, complicated relationship with the German bank — the only mainstream financial institution consistently willing to do business with the real estate developer.

Congressional and state authorities are investigating that relationship and have demanded the bank's records related to the president, his family and their companies. Subpoenas from two House committees seek, among other things, documents related to any suspicious activities detected in Mr. Trump's personal and business bank accounts since 2010, according to a copy of a subpoena included in a federal court filing.

Mr. Trump and his family sued Deutsche Bank in April, seeking to block it from complying with the congressional subpoenas. The president's lawyers described the subpoenas as politically motivated.

Suspicious activity reports are at the heart of the federal government's efforts to identify criminal activity like money laundering and sanctions violations. But government regulations give banks leeway in selecting which transactions to report to the Treasury Department's Financial Crimes Enforcement Network.

Lenders typically use a layered approach to detect improper activity. The first step is filtering thousands of transactions using computer programs, which send the ones considered potentially suspicious to midlevel employees for a detailed review. Those employees can decide whether to draft a suspicious activity report, but a final ruling on whether to submit it to the Treasury Department is often made by more senior managers.

In the summer of 2016, Deutsche Bank's software flagged a series of transactions involving the real estate company of Mr. Kushner, now a senior White House adviser.

Ms. McFadden, a longtime anti-money laundering specialist in Deutsche Bank's Jacksonville office, said she had reviewed the transactions and found that money had moved from Kushner Companies to Russian individuals. She concluded that the transactions should be reported to the government — in part because federal regulators had ordered Deutsche Bank, which had been caught laundering billions of dollars for Russians, to toughen its scrutiny of potentially illegal transactions.

Ms. McFadden drafted a suspicious activity report and compiled a small bundle of documents to back up her decision.

Typically, such a report would be reviewed by a team of anti-money laundering experts who are independent of the business line in which the transactions originated — in this case, the private-banking division — according to Ms. McFadden and two former Deutsche Bank managers.

5/21/2019

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times

That did not happen with this report. It went to managers in New York who were part of the private bank, which caters to the ultrawealthy. They felt Ms. McFadden's concerns were unfounded and opted not to submit the report to the government, the employees said.

Ms. McFadden and some of her colleagues said they believed the report had been killed to maintain the private-banking division's strong relationship with Mr. Kushner.

After Mr. Trump became president, transactions involving him and his companies were reviewed by an anti-financial crime team at the bank called the Special Investigations Unit. That team, based in Jacksonville, produced multiple suspicious activity reports involving different entities that Mr. Trump owned or controlled, according to three former Deutsche Bank employees who saw the reports in an internal computer system.

Some of those reports involved Mr. Trump's limited liability companies. At least one was related to transactions involving the Donald J. Trump Foundation, two employees said.

Deutsche Bank ultimately chose not to file those suspicious activity reports with the Treasury Department, either, according to three former employees. They said it was unusual for the bank to reject a series of reports involving the same high-profile client.

Mr. Trump's relationship with Deutsche Bank spans two decades. During a period when most Wall Street banks had stopped doing business with him after his repeated defaults, Deutsche Bank lent Mr. Trump and his companies a total of more than \$2.5 billion. Projects financed through the private-banking division include Mr. Trump's Doral golf resort near Miami and his transformation of Washington's Old Post Office Building into a luxury hotel.

When he became president, he owed Deutsche Bank well over \$300 million. That made the German institution Mr. Trump's biggest creditor — and put the bank in a bind.

Senior executives worried that if they took a tough stance with Mr. Trump's accounts — for example, by demanding payment of a delinquent loan — they could provoke the president's wrath. On the other hand, if they didn't do anything, the bank could be perceived as cutting a lucrative break for Mr. Trump, whose administration wields regulatory and law enforcement power over the bank.

In the past few years, United States and European authorities have punished Deutsche Bank for helping clients, including wealthy Russians, launder funds and for moving money into countries like Iran in violation of American sanctions. The bank has paid hundreds of millions of dollars in penalties and is operating under a Federal Reserve order that requires it to do more to stop illicit activities.

5/21/2019

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times



Employees in Deutsche Bank's offices in Jacksonville, Fla., vet transactions for compliance with anti-money laundering laws. Willie J. Allen Jr. for The New York Times

On two palm-tree-lined campuses in Jacksonville, Deutsche Bank has thousands of employees who vet customers and transactions. Six current and former bank employees there said the operations were deeply troubled.

Anti-money laundering workers were pressured to quickly sift through transactions to assess whether they were suspicious, the employees said. As a result, they often erred on the side of not flagging transactions.

5/21/2019

Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times

Two former employees said that they had raised concerns about transactions involving companies linked to prominent Russians, but that managers had told them not to file suspicious activity reports. The employees were under the impression that the bank did not want to upset important clients.

Several employees said they had complained about the bank's anti-money laundering processes to Joshua Blazer, the head of Deutsche Bank's financial crimes investigations division in Jacksonville, and had then been criticized for having a negative attitude. One employee said she resigned last summer over concerns about the bank's ethics.

Mr. Blazer, hired by Deutsche Bank in 2017 to strengthen the bank's financial crime-fighting apparatus, declined to comment.

Ms. McFadden's job at Deutsche Bank was to inspect clients and transactions in the company's private-banking division — the unit that lent money to Mr. Trump. She joined the bank in 2008, after working for Bank of America, also in Jacksonville.

Ms. McFadden had left Bank of America in 2005, and later sued for racial discrimination and wrongful termination. According to court records, her lawsuit was settled on confidential terms the same year she joined Deutsche Bank, where she went on to win multiple performance awards.

Around the time she flagged the Kushner Companies' transactions, Ms. McFadden said, she also complained about how the bank was scrutinizing the accounts of high-profile customers, such as those in public office. Those customers — known as politically exposed persons — are regarded as at heightened risk of being involved in corruption. As a result, their accounts are subject to extra vetting.

Ms. McFadden said she had told her superiors that dozens of politically exposed clients of the private-banking division, including Mr. Trump and members of his family, were not receiving that added attention. Her superiors told her to stop raising questions, according to Ms. McFadden and the two former managers.

After taking her complaint to the human resources department, Ms. McFadden was transferred to another division. She was terminated in April 2018. The bank told her that she was not processing enough transactions.

Ms. McFadden disputed that. She said her superiors had reduced the number of transactions she was assigned to review after she voiced her concerns. She and the two former managers said they perceived her termination as an act of retaliation.

"They attempted to try to silence me," she said. "I'm at peace because I know that I did the right thing."

5/21/2019 Deutsche Bank Staff Saw Suspicious Activity in Trump and Kushner Accounts - The New York Times

Follow David Enrich on Twitter: @davidenrich.

Kitty Bennett and Susan C. Beachy contributed research.

A version of this article appears in print on May 20, 2019, on Page A1 of the New York edition with the headline: Trump Activity Raised Red Flag Inside His Bank

READ 994 COMMENTS

**LETTER SUBMITTED BY STEVEN R. ROSS AND LESLIE B. KIERNAN,
AKIN GUMP**

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May 10, 2017

The Honorable Chris Van Hollen
United States Senate
110 Hart Senate Office Building
Washington, D.C. 20510

Re: Deutsche Bank

Dear Senator Van Hollen:

We write in response to your letter dated April 12, 2017 to our client Deutsche Bank regarding its reported banking relationship with the President of the United States, his family and certain related entities. You express concern about the potential for conflicts of interest and seek certain information and assurances from Deutsche Bank with respect to such matters.

As you know, state and federal law requires that financial institutions such as Deutsche Bank maintain the privacy of their customers and the confidentiality of information relating to those customers. Deutsche Bank, accordingly, is unable to comment on whether the individuals and entities identified in your letter are clients of the Bank or on the details of any accounts, loans or other transactions that any such individual or entity may have or may have had with the Bank.

That said, the Bank has in place policies, processes and other controls to address issues such as those referenced in your letter. The Bank recognizes the heightened sensitivity of managing relationships with clients who hold public office or perform public functions in the U.S. and has, accordingly, taken steps to ensure that its policies, processes and controls address the potential for conflicts of interest and the safeguarding of the integrity of the decision-making process with respect to such clients.

The Bank similarly seeks to ensure that its dealings with its regulators and other governmental authorities are handled in an appropriate manner and in accordance with applicable ethical and legal standards. As you are aware, such matters often involve highly sensitive and confidential client and Bank information, and the Bank is therefore subject to various legal

Akin Gump
STRAUSS HAUER & FELD LLP

The Honorable Chris Van Hollen
May 10, 2017
Page 2

provisions designed to ensure the confidentiality of the regulatory process. The Bank's dealings with regulators and other governmental authorities also implicate various other legal rights and obligations, which the Bank necessarily seeks to uphold. Handling and communicating about such matters in compliance with applicable ethical and legal standards is and will remain a fundamental priority for the Bank.

We hope that the information set forth in this letter resolves your concerns. Please feel free to address any future correspondence on this subject directly to the undersigned.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven R. Ross", with a long horizontal flourish extending to the left.

Steven R. Ross ,

A handwritten signature in black ink, appearing to read "Leslie B. Kiernan", written in a cursive style.

Leslie B. Kiernan

**LETTER TO BILL WOODLEY, CEO DEUTSCHE BANK U.S.A.
CORPORATION, FROM SENATOR CHRIS VAN HOLLEN**

CHRIS VAN HOLLEN
MARYLAND

SUITE GH-110
HART BUILDING
WASHINGTON, DC 20510

United States Senate

April 12, 2017

Bill Woodley
CEO Deutsche Bank USA Corporation
CEO Deutsche Bank Americas
60 Wall Street
New York, NY, 10005

Dear Mr. Woodley,

I write to you with great concern regarding conflicts of interest between Deutsche Bank and the President of the United States and how these conflicts may impact ongoing investigations and regulatory oversight of your institution. Last month, I wrote to Attorney General Jeff Sessions asking him to commit to a fully impartial investigation or appoint an independent counsel – he has failed to respond to my inquiries. Now, I am asking that you do not use your institution's ties to President Trump as leverage in any of these ongoing cases or ongoing regulatory oversight. Further, I ask that Deutsche Bank and its executives do not take any actions to assist Mr. Trump in circumventing any of his ethical obligations to avoid conflicts of interest.

One legal expert called the relationship between the President and Deutsche Bank "the biggest conflict that we know about in terms of dollar amounts and the scale of legal exposures."¹ That same expert also said that it "may be impossible" to avoid the appearance of impropriety related to these obligations.² Prior financial disclosures have listed two loans and two mortgages for which Deutsche Bank was the lender and the President was the borrower.³ These loans reportedly amount to roughly \$340 million, with another \$950 million extended to a venture in which the President owns a 30 percent stake.⁴

Those issues are separate from the conflicts of interest with the President's family, many of whom are now federal employees. For example, the President's son-in-law, Jared Kushner, holds a multi-million dollar line of credit at Deutsche Bank and \$370 million in financing on the Kushner Companies' Time Square retail condo property.⁵

¹ Eisinger, Jesse. "Deutsche Bank Remains Trump's Biggest Conflict of Interest despite Settlements." ProPublica, February 9, 2017.

² Id.

³ See Donald J. Trump, Office of Government Ethics Form 278e (May 16, 2016) at 57. The listed properties are Trump National Doral, TIHT Chicago, and the Trump Old Post Office.

⁴ Eaglesham, Jean and Lisa Schwartz. "Trump's Debts Are Widely Held on Wall Street, Creating New Potential Conflicts." Wall Street Journal, January 15, 2017.

⁵ Balbi, Danielle. "Kushner Times Square Retail Condo Gets \$370M Financing from Deutsche Bank, SL Green." Commercial Observer, October 21, 2016.

Mr. Kushner now serves as Senior Advisor to President Trump, with a portfolio that ranges from tax and banking policy to military and international affairs.

As you know, your institution is being investigated by multiple law enforcement entities and regulators around the world. In the United States, the U.S. Department of Justice's office in the Southern District of New York had been engaged in settlement negotiations tied to Deutsche Bank's role in the mortgage crisis and in ongoing investigations of the bank on other matters. At the same time, the Federal Reserve Bank of New York is also engaged in an investigation into currency manipulation.

We will never know the extent of the President's conflicts until he agrees to release his tax returns. It is important for the American people to know the extent of your bank's ties to the President. Given these concerns, I ask that you provide my office with:

1. Written assurances that your institution will not use your relationship with the President to circumvent ongoing investigations by law enforcement and regulators.
2. An explanation about your efforts to restructure President Trump's debt with your institution, including whether or not it has been sold to foreign entities.
3. Assurances that you have not given the President or his family preferential treatment in that debt restructuring that would violate federal ethics laws.
4. Detailed accounts of meetings between Deutsche Bank and the Administration.
5. Information about the Politically Exposed Person's review undertaken by Deutsche Bank as it relates to President Trump.⁶ Please describe the risk management your bank is now undertaking with the accounts you identified in this review. Please identify any irregularities that came up in the review and how your institution's plan for managing these irregularities.

Please ensure that Deutsche Bank responds by May 12, 2017. Thank you for your attention to this issue.

Sincerely,


Chris Van Hollen
United States Senator

⁶ Harding, Luke, Stephanie Kirchgaessner, Nick Hopkins and David Smith. "Deutsche Bank examined Donald Trump's account for Russia links." The Guardian, February 17, 2017