



“The Pandora Papers and Alaska’s Trust Industry”

April 15, 2022

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Introduction

Good morning, and thank you for having me. For the record, my name is Ryan Gurule, and my affiliation is joining as the Policy Director of the Financial Accountability and Corporate Transparency (or FACT) Coalition—a broad, nonpartisan alliance of members dedicated to standing up structural reforms that combat harms flowing from financial secrecy and vulnerabilities in the U.S. financial system that facilitate money laundering, sanctions evasion, corruption, tax dodging, and illicit financial flows.

We were greatly encouraged by our invitation from Rep. Fields to speak with you this morning on the important topic of trust secrecy in Alaska and the Pandora Papers.

The Pandora Papers and Current State of U.S. Financial Secrecy

The Pandora Papers offer concrete evidence of a simple fact: the U.S. is a singular financial secrecy jurisdiction.¹ This undesirable status erodes our and our allies' tax base. It undermines our national security and compromises our financial markets. And it weakens democracy here and abroad. The effects of these harms manifest, not as academic concerns, but by directly impacting our local communities.

Further, we must acknowledge that the financial secrecy offered by the U.S. and our allies have previously enriched and empowered potentially adversarial regimes, including those of Russian President Putin, giving his inner circle a backdoor to evade the bite of earlier sanctions and emboldening their corrupt and criminal behavior.²

The Danger of Anonymous U.S. Shell Entities

The risks that financial secrecy poses are why President Biden's Administration and bipartisan efforts in Congress have prioritized bringing greater transparency to U.S. legal entities in the fight against corruption.³ Dismantling secretive systems that enable corrupt actors and tax dodgers to avoid accountability can also make well-coordinated sanctions targeting the wealth of Putin and oligarchs more effective today. Equally importantly, doing so makes it less likely that similar retaliatory efforts against kleptocrats will be needed in the future.

¹ Tax Justice Network, "2020 Financial Secrecy Index," February 2020, <https://fsi.taxjustice.net/en/>.

² See e.g., Anders Asland & Julia Friedlander, Defending the United States Against Russian Dark Money (Nov. 17, 2020), <https://www.atlanticcouncil.org/wp-content/uploads/2020/11/Russia-Dark-Money-Printable-PDF.pdf>.

³ See U.S. White House, "United States Strategy on Countering Corruption," December 6, 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>. As discussed below, the Corporate Transparency Act—creating the first U.S. beneficial ownership registry for legal entities and currently being implemented—was enacted on a bipartisan basis. See P.L. 116-283.

Anonymous shell companies and arrangements capable of being formed or otherwise investing or doing business in the U.S., pose one of the biggest vulnerabilities to the U.S. financial system. According to an analysis by Global Financial Integrity, until recently, in all 50 states, “more personal information is needed to obtain a library card than to establish a legal entity that can be used to facilitate tax evasion, money laundering, fraud, and corruption.”⁴

The Pandora Papers specifically implicate U.S. trusts as one of the most significant gaps in the U.S. anti-money laundering regulatory regime.⁵ Unfortunately, Alaska has its own sordid history with commoditizing financial secrecy, making the proposed reforms discussed today all the more critical.

Alaska’s Role

In the 1990’s, struggling with depressed oil prices, Alaska was understandably looking for new ways to attract outside capital investment.⁶ From that vulnerable position, Alaska considered and passed changes to its trusts laws first suggested by a New York lawyer that would push the State far outside existing trust laws and soon would result in other states like Delaware, Nevada and South Dakota, following Alaska into the rabbit hole. The result is a competition for foreign capital seeking—not just protection for future claims against heirs—but effective anonymity.⁷

The benefits of this anonymity for out-of-state tax-dodgers, corrupt politicians, and others seeking to avoid public accountability has been obvious since the start.⁸ Whether equivocal and offsetting benefits have been realized by Alaska’s citizenry or that of other states that are victims of the race-to-the bottom for attracting shadow capital is more questionable.⁹ And as international tax and financial transparency measures have begun to peel back secrecy in traditional “tax havens,” cross-border deposits in U.S. financial institutions, often held in trust or via other legal anonymous vehicles, have substantially increased.¹⁰

⁴ Global Financial Integrity, “The Library Card Project: The Ease of Forming Anonymous Companies in the United States,” March 2019, <https://gfintegrity.org/report/the-library-card-project>.

⁵ Debbie Cenziper, Will Fitzgibbon, and Salwan Georges, “Foreign Money Secretly Floods U.S. Tax Havens. Some of It’s Tainted,” October 4, 2021, <https://www.washingtonpost.com/business/interactive/2021/booming-us-tax-haven-industry/>.

⁶ See *id.*

⁷ See *id.*

⁸ See *id.* (““Make no mistake about one thing: This bill is aimed at one type of trust that the out-of-state lawyer who is behind this bill wants to create for his wealthy clients.””) (quoting Lawrence Waggoner).

⁹ See *id.*

¹⁰ See Sebastian Beer, Maria Delgado Coelho & Sebastian Leduc, Hidden Treasure: The Impact of Automatic Exchange

Already, we know from the Pandora Papers, that U.S. trusts are being heavily abused. The same secrecy afforded by Alaska created the impetus for a known human rights’ violator to relocate his trust assets from the Bahamas to the U.S., for example.¹¹ We should be clear, however, that the Pandora Papers are just one leak of data, and should not be viewed as indicative of the entire universe of problematic anonymous U.S. investment by corrupt or criminal actors. Rather, the Pandora Papers serve as an indictment on the financial secrecy afforded by U.S. laws, including those in Alaska.

The Corporate Transparency Act and the Trust Loophole

Last year, Congress finally took steps to address threats posed by anonymous legal entities and passed the bipartisan Corporate Transparency Act on January 1, 2021 – a measure that requires corporations, limited liability companies (LLCs), and “other similar entities” formed or registering to do business in a state by a filing with a secretary of state or “similar office,” to disclose their true, natural owner to a secure directory housed and maintained at Treasury’s Financial Crimes Enforcement Network, or FinCEN.¹²

The FACT Coalition previously filed comments on best practices for establishing the directory in response to FinCEN’s first proposed rulemaking, including addressing who should file disclosures, when they should file, what information they should provide, and how certain exemptions should be handled.¹³ FinCEN has announced that it plans to issue a second proposed rulemaking addressing access to the directory, including by state, tribal and local law enforcement agencies. FACT has advocated for uncomplicated and complete access for authorized users.¹⁴

Yet, the application of the CTA to certain trusts remains unclear. For those trusts that file only with local courts or that do not file at all in connection with formation or other key events, such as relocating to Alaska, the CTA may apply to varying degrees based on final rules when promulgated.

of Information on Cross-Border Tax Evasion, (IMF Working Paper WP/19/286, Dec. 2019); Elisa Casi, Christoph Spengel & Barbara M.B. Stage, Cross-border Tax Evasion After the Common Reporting Standard: Game Over?, 190 J. PUB. ECON. 1, 11 (2020).

¹¹ Fitzgibbon et. al supra note 5.

¹² Title LXIV of P.L. 116-283.

¹³ See Financial Crimes Enforcement Network (FinCEN), “Beneficial Ownership Information Reporting Requirements,” Federal Register, 86 FR 69920-74 (Docket Number: FINCEN-2021-0005, RIN: 1506-AB49), Dec. 8, 2021, <https://www.govinfo.gov/content/pkg/FR-2021-12-08/pdf/2021-26548.pdf> (hereinafter “First Proposed Rule”); Re: Beneficial Ownership Information Reporting Requirements, FACT Coalition (Feb. 7, 2022), available at https://thefactcoalition.org/wp-content/uploads/2022/02/FINCEN-2021-0005-0421_attachment_1.pdf [hereinafter “FACT Proposed Rule Comments”]; Re: Beneficial Ownership Reporting Requirements, FACT Coalition (May 5, 2021), available at <https://thefactcoalition.org/wp-content/uploads/2021/05/FACT-CTA-ANPRM-Comment-20210505-0329am-FINAL.pdf>.

¹⁴ See FACT Proposed Rule Comments supra note 12 at 88.

What Alaska Can Do:

House Bill 405 takes important steps to clarify the application of the Corporate Transparency Act to trusts administered in Alaska and to also make clear that Alaska will have ready access to the information necessary to ensure that its trust industry is attracting the type of investment that does not put Alaskan citizens at risk of greater national security threats or rising prices contributed to by global geopolitical conflicts.

FACT supports H.B. 405, and Alaska's innovative efforts to pivot from the secrecy rat-race toward being a singular leader in promoting greater financial transparency. To ensure that H.R. 405 brings greater transparency to the trust industry in Alaska in a way that does not afford workarounds to bad actors and helps to bring about an end to the American tax-haven, FACT urges Alaska to ensure that this bill advances, incorporating the following policy recommendations:

1. At a minimum, beneficial ownership reporting should apply to any trust governed by Alaskan law, administered in whole or in part in Alaska or by an Alaskan trustee, or that otherwise has situs in Alaska. Legacy trusts should be timely incorporated into the regime, as should any relocating trust.
2. All relevant actors should be covered. A strong definition of beneficial owners should look to control of trust governance and assets and rights to, or control over, distributions of trust assets, including for protectors, trustees, settlors or grantors, and beneficiaries.
3. The bill should create a clear, affirmative obligation for Alaskan trusts to file under the CTA.
4. The bill should require ongoing reporting, monitoring, and verification. Changes in beneficial ownership should be reported in a timely fashion, and data best practices should apply to the collection, storage, and authorized dissemination of information collected under the bill. While we would expect reporting burdens to be minimal in all but the most complicated structures—which are likely purposefully opaque—employing standardized, best data practices only further reduces reporting costs.
5. Additional secrecy rights should not be created by the bill, and appropriate penalties or distribution prohibitions for any party that provides false information, directly or indirectly, or that fails to provide required information should be considered.

HB 406

Alaska should consider typical real estate anti-money laundering typologies and creative corporate structuring that is available to sanctioned individuals, such as the ability to purchase real estate through trusts or other anonymous legal entities or arrangements, or via nominees, in promulgating House Bill 406. H.B. 406 would need to contemplate and look past legal blinders to identify problematic buyers. In other words, H.B. 405 should be viewed as an essential component of the structural reforms that are necessary to address opacity in the real estate market, and can help to ensure that H.B. 406 is effectively implemented in Alaska. Similar transparency with respect to other Alaskan entities might be further considered, which can build off the Corporate Transparency Act and bring greater transparency to Alaska with minimal additional costs or burdens for Alaskans. In turn, this will ensure that sanctions against oligarchs cannot be avoided through secrecy.

As a complement to these reforms, Alaska might also consider how it might best support efforts by the Treasury Department to create a more comprehensive national anti-money laundering reporting regime for persons involved in real estate transactions. Recognizing the need for greater transparency in real estate markets nationwide, Treasury recently solicited comments on an advanced notice of proposed rulemaking, seeking to build off its information-oriented geographic targeting orders, that require title agents to report beneficial owners of purchasing entities in certain residential real estate transactions.¹⁵ FACT and our ally Global Financial Integrity, separately provided robust comments on how to best implement reporting requirements on a nation-wide basis for residential and commercial real estate transactions, requiring certain real estate professionals to identify beneficial owners behind purchaser and seller clients with minimal reporting burdens.¹⁶ These reforms would make H.B. 406 more effective and ensure it has minimal costs on Alaskan real estate professionals. When it comes to transparency, comprehensive regimes are necessary to avoid dirty money from leaking through the cracks and to ensure that the Alaskan economy works to encourage the types of investment that will benefit its citizenry and not the globe's bad actors.

Conclusion

¹⁵ See FinCEN Launches Regulatory Process for New Real Estate Sector Reporting Requirements to Curb Illicit Finance (Dec. 6, 2021), <https://www.fincen.gov/news/news-releases/fincen-launches-regulatory-process-new-real-estate-sector-reporting-requirements>.

¹⁶ See, e.g., FACT Comment Letter Urges FinCEN to Address Dangerous Vulnerability Allowing Kleptocrats and Criminals to Stash Wealth in U.S., FACT Coalition (Feb. 22, 2022), <https://thefactcoalition.org/fact-welcomes-treasury-department-action-to-counter-money-laundering-through-u-s-real-estate/>.

In conclusion, our system of Federalism is made better when states innovate in ways that reinforce our democracy, our open and transparent markets, and our national security; the opposite is true when states compete for investment through financial secrecy to lure potentially corrupt, illicit or criminal capital. This legislative body—just like Congress—has an important role to play in ensuring that the Alaskan and U.S. financial systems are not vehicles for tax dodging, corruption, human rights abuses, or other financial harms.

I want to thank you again for inviting FACT to participate in this important process, and I look forward to our conversation.