

April 28, 2022

The Honorable Maxine Waters
Chairwoman
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

The Honorable Patrick McHenry
Ranking Member
Committee on Financial Services
U.S. House of Representatives
Washington, DC 20515

RE: Virtual Hearing titled “Oversight of the Financial Crimes Enforcement Network”

Dear Chairwoman Waters and Ranking Member McHenry,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we appreciate the opportunity to comment on your hearing titled, “Oversight of the Financial Crimes Enforcement Network.” The FACT Coalition is a non-partisan alliance of more than 100 state, national, and international organizations promoting policies to combat the harmful impacts of corrupt financial practices.¹

According to the U.S. Treasury Department, illicit proceeds equaling a staggering 2 percent of U.S. gross domestic product (GDP) move through our financial system each year.² As the inaugural 2021 U.S. Strategy to Counter Corruption noted, U.S. financial secrecy poses real dangers to average Americans, undermining public health, public safety, and national security.³

The Financial Crimes Enforcement Networks (FinCEN) has a critical role to play in addressing these dangers. FinCEN analyzes financial data to identify trends and help uncover illicit flows, provides support to law enforcement and national security officials to better investigate these cases, and implements structural reforms – such as those named in the U.S. Strategy on Countering Corruption – to prevent abuse of the U.S. financial system by the criminal and corrupt. The importance of this agency has only become clearer in light of U.S. sanctions against oligarchs allied with President Vladimir Putin in his illegal invasion of Ukraine.

Congress has a crucial oversight and appropriations role in empowering FinCEN to safeguard the U.S. financial system both effectively and efficiently.

¹ The FACT Coalition, “About Us,” <https://thefactcoalition.org/about-us/coalition-members-and-supporters/>

² U.S. Treasury Department, “Treasury Strategic Plan 2022-2026,” P. 23, March 2022, <https://home.treasury.gov/system/files/266/TreasuryStrategicPlan-FY2022-2026.pdf>.

³ White House, “U.S. Strategy on Countering Corruption,” December 2021, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

The Corporate Transparency Act

In January 2021, Congress passed the bipartisan Corporate Transparency Act (CTA) – the most meaningful update to U.S. anti-money laundering laws in two decades, which would effectively end the abuse of anonymous shell entities by requiring certain entities to name their true, natural owner to a secure directory housed at FinCEN.

While we understand that FinCEN is diligently working to implement the law through three anticipated rulemakings, none of these three rulemakings have been finalized and two rules are yet to be proposed. Treasury Secretary Yellen committed in testimony before this committee on April 6 that the next rulemaking would be delivered “in the coming months.”⁴

Congress should ask FinCEN to commit to standing up all final rules necessary to implement the CTA by no later than December 2022. Under the statute, rules implementing the CTA were to be promulgated by January 1, 2022. In order to be a credible host for December’s [International Anti-Corruption Conference](#) (IACC) in Washington, the U.S. must finalize all rules for the CTA by the end of the year to demonstrate to the world that the U.S. is truly committed to tackling corruption. The urgency of creating this database has only become clearer in light of the current context of Russia’s invasion of Ukraine.

We commend FinCEN for issuing a strong first draft rule defining beneficial ownership reporting requirements under the CTA, which hews closely to the statute and will yield meaningful disclosures from U.S. reporting entities. Still, **we encourage FinCEN to revise certain exemptions and resolve ambiguities around FinCEN identifiers in favor of transparency and efficiency, rather than secrecy inconsistent with the CTA.**⁵

Further, Congress should work with FinCEN ahead of the next rulemaking defining database access to ensure that authorized users have timely, uncomplicated, and complete access to the database in a manner consistent with the CTA, as this will be key to curbing the harmful practices associated with financial secrecy. Similarly, as the law allows foreign competent authorities to make requests of U.S. agencies for information in the database, **FinCEN should define access protocols in a way that facilitates international cooperation**, including in sanctions or human rights cases.⁶

⁴ Janet Yellen, “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System,” Testimony before U.S. House Committee on Financial Services, April 6, 2022, <https://financialservices.house.gov/events/eventsingle.aspx?EventID=409256>

⁵ The FACT Coalition, “Corporate Transparency Act’s Draft Rule Applauded by FACT Coalition,” February 8, 2022, <https://thefactcoalition.org/corporate-transparency-acts-draft-rule-applauded-by-fact-coalition/>

⁶The FACT Coalition, “RE: Beneficial Ownership Information Reporting Requirements,” Comment to the Financial Crimes Enforcement Network, February 7, 2022, P. 88, https://thefactcoalition.org/wp-content/uploads/2022/02/FINCEN-2021-0005-0421_attachment_1.pdf

Finally, we encourage FinCEN to employ internationally accepted best data practices in collecting, storing, and making available to authorized users, beneficial ownership information subject to the CTA. FinCEN should, to the extent possible under the CTA, employ [modern, internationally accepted data standards](#) that were [just endorsed in April](#) by the Government of the United Kingdom. Congress should encourage FinCEN to create standardized forms and processes in connection with beneficial ownership information collection, including to ensure that [data](#) is verified upon submission and across other government databases in a way that makes it highly useful to authorized users and to keep costs low for businesses.. Additionally, FinCEN should be encouraged to employ machine readable data and systems designed with intergovernmental and industry use concerns top of mind. Congress should also encourage FinCEN to set up standardized access protocols to facilitate directory access by authorized users. Importantly, implementing the CTA and employing best data practices in doing so will also make the U.S. more current with [recent revisions](#) to beneficial ownership recommendations developed by the Financial Action Task Force (FATF), the international anti-money laundering standard setter.

OTHER CRUCIAL REVISIONS TO THE U.S. ANTI-MONEY LAUNDERING (AML) REGIME

Real Estate

According to a report by Global Financial Integrity, at least [\\$2.3 billion](#) has been laundered through U.S. real estate in the past 5 years. In 2002, the Treasury Department identified the real estate sector as an industry that would be required to stand up anti-money laundering programs, but then granted the sector a “temporary” exemption from meeting those obligations. Twenty years later, that exemption is still in place. Previously, FinCEN took important but inherently limited steps to stem money laundering in real estate. FinCEN is now reassessing the exemption in light of ongoing and consistent abuse of the real estate sector.⁷

Congress should urge FinCEN to finalize a nationwide rule that would require real estate professionals to have some AML/CFT obligation to understand their customers in the course of any residential or commercial real estate transaction, without cash thresholds.⁸

⁷ Financial Crimes Enforcement Network, “Anti-Money Laundering Regulations for Real Estate Transactions,” <https://www.regulations.gov/document/FINCEN-2021-0007-0001/comment>.

⁸ The FACT Coalition, Submission to FinCEN Advanced Notice of Proposed Rulemaking. <https://thefactcoalition.org/wp-content/uploads/2022/02/FACT-Final-RE-ANPRM-submission.pdf>

Private Investment Funds

Treasury Secretary Yellen recommitted in her April 6 testimony that Treasury is “considering a rule that would address potential gaps in the AML/CFT for investment advisers,”⁹ which was included in the Administration’s Strategy on Countering Corruption. Like real estate, the private investment industry has also been temporarily exempted from risk-based AML/CFT for more than 20 years, but evidence of risks in the industry continue to mount.¹⁰

The \$11 trillion U.S. private investment industry is large, opaque, and complex, making it the ideal destination for drug traffickers, corrupt officials, and rogue states alike to anonymously invest illicit proceeds.¹¹ In July 2020, a leaked FBI intelligence bulletin revealed that the FBI believed with “high-confidence” that the U.S. private investment fund industry was being used to launder money.¹²

Congress should encourage FinCEN to undertake a timely rulemaking process and revise the 2015 draft rule to include registered investment advisers and unregistered investment companies. A rule should bring these individuals and entities into alignment with their counterparts in the U.S. financial system by requiring them to stand up basic risk-based AML programs, identify true beneficial owners of entity customers and investors, file Suspicious Activity Reports (SARs) with FinCEN, and maintain accurate records.

Risk-Based AML Approach Among Financial “Gatekeepers”

The new United States Strategy on Countering Corruption marks the Administration’s intention to bring key “gatekeepers” to the U.S. financial system under the purview of U.S. anti-money laundering laws.¹³ As these professions are situated to create and direct hidden wealth through the U.S. financial system through opaque entities or other modalities on behalf of their clients,

⁹ Janet Yellen, “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System.”

¹⁰ See e.g., Todd C. Frankl, The search for oligarchs’ wealth in U.S. is hindered by investment loopholes, Washington Post (Mar. 16, 2022), <https://www.washingtonpost.com/business/2022/03/16/private-equity-regulation-gap/>.

¹¹ FACT Coalition, Global Financial Integrity, and Transparency International-US Office, “Private Investments, Public Harm: How the Opacity of the Massive U.S. Private Investment Industry Fuels Corruption and Threatens National Security,” December 2, 2021, <https://thefactcoalition.org/report/private-investments-public-harm/>.

¹² FACT Coalition, Global Financial Integrity, and Transparency International-US Office, “Private Investments, Public Harm: How the Opacity of the Massive U.S. Private Investment Industry Fuels Corruption and Threatens National Security.”

See also Timothy Lloyd, “FBI concerned over laundering risks in private equity, hedge funds - leaked document,” Reuters, July 14, 2020, <https://www.reuters.com/article/bc-finreg-fbi-laundering-private-equity/fbi-concerned-over-laundering-risks-in-private-equity-hedge-funds-leaked-document-idUSKCN24F1TP>

¹³ U.S. White House, “United States Strategy on Countering Corruption,” December 6, 2021, p. 23, <https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf>.

this would be a key step to ensure criminals and corrupt officials are denied financial safe haven in the United States.

The Financial Services Committee has noticed a discussion draft the “Transparency and Accountability in Service Providers Act”. This legislation would take a risk-based approach to countering money laundering risk by requiring certain “gatekeepers” to the U.S. financial system to adopt procedures to help detect, flag, and prevent the laundering of corrupt and other criminal funds into the United States.

Congress should work with FinCEN and the Treasury Department to advance legislation, like the Transparency and Accountability in Service Providers Act that was noticed for this hearing as a discussion draft, to help close these long-standing gaps in safeguards for the U.S. financial system.

Digital Assets

FinCEN has engaged in efforts to incorporate cryptocurrency and other digital assets into existing anti-money laundering regimes, including through proposed regulations promulgated and most recently extended in January of 2021.¹⁴ We encourage FinCEN to make clear that cryptocurrency and digital assets are subject to current anti-money laundering rules, to further rulemakings that address specific risks associated with technologies capable of avoiding traditional third-party reporting regimes. **Congress should encourage FinCEN to avoid creating any loopholes or exemptions within the U.S. anti-money laundering framework on the basis of incentivizing a “novel” technology or otherwise.**

FinCEN Appropriations

In the Administration’s inaugural [Strategy on Countering Corruption](#), FinCEN plays a leading role in bringing U.S. anti-money laundering (AML) laws into the 21st century. Yet FinCEN – tasked with safeguarding the world’s largest economy – currently has half of the staff of the analogous financial intelligence unit in Australia, which has an economy less than 1/15th the size of that of the United States.

The President’s budget request of [\\$210.3 million for FY2023](#) is essential to enable the agency to enact necessary U.S. AML reforms. Congress should consider this a floor, not a ceiling, on funding for the agency.

¹⁴ Financial Crimes Enforcement Network, “FinCEN Extends Comment Period for Rule Aimed at Closing Anti-Money Laundering Regulatory Gaps for Certain Convertible Virtual Currency and Digital Asset Transactions,” January 14, 2021, <https://www.fincen.gov/news/news-releases/fincen-extends-comment-period-rule-aimed-closing-anti-money-laundering>

Enacted levels for FY2022 appropriations fell \$30 million short of the Administration's discretionary request. The national security implications – whether the urgent case of responding to Russia's war in Ukraine, or the long-term vulnerabilities of our lacking financial safeguards – warrant appropriations that exceed the President's request, to make the agency whole for \$240.3 million. **Congress should appropriate a total of \$240.3 million for FY2023 for FinCEN.**

CONCLUSION

Thank you for your time. If you have any questions, you can contact Erica Hanichak (ehanichak@thefactcoalition.org).

Sincerely,

Ian Gary
Executive Director

Erica Hanichak
Government Affairs Director

Ryan Gurule
Policy Director