

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

April 25, 2022

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: April 28, 2022, Full Committee Hearing entitled, “Oversight of the Financial Crimes Enforcement Network”

The full Committee will hold a hybrid hearing entitled, “Oversight of the Financial Crimes Enforcement Network” on Thursday, April 28, 2022, at 10:00 AM Eastern in room 2128 of the Rayburn House Office Building/ Cisco Webex. There will be one panel with the following witness:

- Mr. Himamauli “Him” Das, Acting Director, Financial Crimes Enforcement Network (FinCEN)

Overview of the Financial Crimes Enforcement Network

Established in 1990, FinCEN is a bureau within the U.S. Department of the Treasury that is responsible for “safeguard[ing] the financial system from illicit use, combat[ing] money laundering and its related crimes including terrorism, and promot[ing] national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence.”¹

FinCEN serves as one of the primary agencies responsible for implementing, administering, and enforcing compliance with the Bank Secrecy Act (BSA) and other statutes collectively encompassing the U.S. legal regime for anti-money laundering and countering the financing of terrorism (AML/CFT). This includes developing regulations and policies that require banks and other financial institutions (FIs) to safeguard the U.S. financial system from illicit activity. In addition to its BSA oversight and rulemakings, FinCEN engages with the private sector, federal regulators, law enforcement, and the international community on AML/CFT matters. FinCEN also serves as the U.S. Financial Intelligence Unit (FIU), one of more than 167 such entities worldwide that are connected through the Egmont Group to share financial information and expertise with foreign counterparts.²

As part of its mission, FinCEN collects and maintains a central repository of financial intelligence (e.g., financial transaction data, including suspicious activity reports [SARs] and currency transaction reports [CTRs]) from FIs. FinCEN analyzes and disseminates such information to FIs, law enforcement agencies, and other authorized recipients in support of investigations pursuing perpetrators of white-collar crime; drug trafficking and other transnational criminal activity; sanctions evaders; and terrorism and other matters of national security concern.³ The “follow the money” approach to federal criminal investigations, built in part on the basis of financial intelligence collected by FinCEN and accessed by various law enforcement agencies, contributes to a substantial number of money laundering-related convictions each

¹ FinCEN, [Mission](#) (accessed Apr. 21, 2022).

² Egmont Group, [About](#) (accessed Apr. 21, 2022).

³ Note: While FinCEN has no criminal investigative or arrest authority, it uses its data and data analysis to support investigations and prosecutions of financial crimes, and refers possible cases to law enforcement partners when warranted. It also requests reporting from financial institutions and others with relevant information in conjunction with law enforcement agencies conducting criminal investigations. FinCEN has the authority to issue civil money penalties – but does not itself make seizures or forfeitures. An example of its analytics is found in its Financial Institution Advisory Program, which includes advisories on illicit finance threats.

year.⁴ In FY2021, FinCEN received approximately 23 million BSA-mandated financial transaction reports, including approximately 3.5 million SARs.⁵

The Anti-Money Laundering Act of 2020

On January 1, 2021, when Congress overrode a presidential veto to pass the FY2021 National Defense Authorization Act (NDAA), it achieved the most sweeping anti-money laundering reforms in decades, the Anti-Money Laundering Act of 2020 (AMLA2020).⁶ AMLA2020 also contains the landmark Corporate Transparency Act (CTA) which, for the first time, imposes a federal requirement for identifying beneficial owners of certain corporate entities.⁷ Implementation of AMLA2020's improvements to the existing AML/CFT framework under the BSA are a FinCEN priority, with several dozen reports, rulemaking processes, and other actions required.⁸ This testimony, the first of five AMLA2020-mandated annual hearings, is designed to review progress and recommendations of the AMLA2020 implementation. (See Annex II for a AMLA2020 deliverables table developed by the Congressional Research Service.)

AMLA2020 included authorization of appropriations for FinCEN and Special Hiring Authority for Treasury's Office of Terrorism and Financial Intelligence (which includes FinCEN) to execute the AMLA2020 mandates. Congress appropriated \$161 million for FinCEN for FY 22, \$29.5 million below the total funding request for the agency. At this finding level the agency will be able to hire about four new full-time employees (FTE), rather than the 80 FTE planned for AMLA2020 implementation. The President has requested an increase of \$49.3 million over FY 22 enacted levels to provide funding to fully implement AMLA2020 and CTA implementation.

Reports Required by AMLA2020

AML/CFT priorities. Among those required by AMLA2020 is Section 6101(b)(2)(C), which requires the Secretary of the Treasury to "establish and make public priorities" for AML/CFT policy, to be updated at least once every four years.⁹ Designed to assist FIs in determining where to focus their AML/CFT resources, pursuant to this mandate, FinCEN issued its first list of AML/CFT priorities on June 30, 2021: (1) corruption; (2) cybercrime, including relevant cybersecurity and virtual currency considerations; (3) foreign and domestic terrorist financing; (4) fraud; (5) transnational criminal organization activity; (6) drug trafficking organization activity; (7) human trafficking and human smuggling; and (8) weapons proliferation financing.¹⁰

Threat pattern and trend information. Section 6206 requires the FinCEN Director to "publish threat pattern and trend information," including typologies related to "emerging money laundering and terrorist financing threat patterns and trends."¹¹ These reports are to be published at least semiannually and are intended to "provide meaningful information about the preparation, use, and value of" BSA reporting by financial institutions.¹² To date, FinCEN has issued two such reports; the first in October 2021 on ransomware trends and the second in December 2021 on illicit finance threats from wildlife trafficking.¹³

Assessment of no-action letters. Section 6305 requires the FinCEN Director to submit a report to Congress within 180 days of enactment on whether to establish a process for the issuance of no-action

⁴ See Financial Action Task Force, [Mutual Evaluation of the United States](#), pp. 64-65 (Dec. 2016).

⁵ U.S. Department of the Treasury, [Financial Crimes Enforcement Network: Congressional Budget Justification and Annual Performance Plan and Report FY2023](#), p. 13 (Mar 2022).

⁶ Division F of the William M. (Mac) Thornberry National Defense Authorization Act (NDAA) for FY2021, [Pub. L. No. 116-283](#).

⁷ Title LXIV of Division F, [Pub. L. No. 116-283](#) (2021).

⁸ FinCEN, [Message from the FinCEN Director: 180-Day Update on AML Act Implementation](#) (Jun. 30, 2021).

⁹ Title LXI of Division F, [Pub. L. No. 116-283](#) (2021).

¹⁰ FinCEN, [Anti-Money Laundering and Countering the Financing of Terrorism National Priorities](#) (Jun. 30, 2021).

¹¹ Title LXII of Division F, [Pub. L. No. 116-283](#) (2021).

¹² *Ibid.*

¹³ FinCEN, [Ransomware Trends in Bank Secrecy Act Data Between January 2021 and June 2021](#) (Oct. 15, 2021) and [Illicit Finance Threat Involving Wildlife Trafficking and Related Trends in Bank Secrecy Act Data](#) (Dec. 20, 2021).

letters by FinCEN.¹⁴ On June 28, 2021, FinCEN submitted the report, concluding that “FinCEN assesses that it should establish a no-action letter process through rulemaking, provided sufficient resources are made available.”¹⁵

Rulemakings Required by AMLA2020

Arts and antiquities. Section 6110 requires the Secretary of the Treasury to issue proposed rules within 360 days of enactment to subject those in the antiquities trade to BSA requirements.¹⁶ As described by FinCEN, the trade in antiquities may facilitate illicit value transfers and be used as a money laundering method by terrorist organizations, transnational criminal networks, and other bad actors.¹⁷ On September 24, 2021, FinCEN issued an advance notice of proposed rulemaking (ANPRM) for applying BSA requirements to persons engaged in the trade in antiquities and the comment period closed October 25, 2021.¹⁸

SARs-related information-sharing pilot program. Section 6212 requires the Secretary of the Treasury to issue rules establishing a pilot program to permit financial institutions to share SARs-related information with foreign branches, subsidiaries, and affiliates.¹⁹ The pilot program would terminate three years after enactment but may be extended up to two additional years if authorizing such an extension is in the U.S. national interest. On January 25, 2022, FinCEN issued a notice of proposed rulemaking (NPRM) and the comment period closed March 28, 2022.²⁰

Review of regulations and guidance. Section 6216 requires the Secretary of the Treasury to conduct a formal review of AML/CFT regulations to ensure that “appropriate safeguards” are in place “to protect the financial system from threats” and to identify regulations and guidance that “may be outdated, redundant, or otherwise do not promote a risk-based” AML/CFT regime for financial institutions.²¹ FinCEN issued a request for information on December 14, 2021, seeking “comments on ways to streamline, modernize, and update” the U.S. AML/CFT regime in order to “protect U.S. national security in a cost-effective and efficient manner.”²² The deadline to submit comments was February 14, 2022.

Real estate. While action on real estate settlement is not explicitly stated in AMLA2020, the expansion of FinCEN reporting authorities in section 6102 gave FinCEN the authority to develop flexible compliance requirements for collection and reporting. Drafters contemplated application of AMLA2020 to the development of a permanent process for reporting BSA data on commercial and residential real estate transactions.²³ To this end, on December 6, 2021, FinCEN issued an ANPRM to increase

¹⁴ Title LXII of Division F, [Pub. L. No. 116-283](#) (2021). Note: In other contexts, regulated entities may inquire whether certain prospective conduct would lead to enforcement actions taken against them; a regulatory agency may in turn respond in writing, indicating its intention to exercise enforcement discretion or not.

¹⁵ FinCEN, [A Report to Congress: Assessment of No-Action Letters in Accordance with Section 6305 of the Anti-Money Laundering Act of 2020](#), p. 14 (Jun. 28, 2021).

¹⁶ Title LXI of Division F, [Pub. L. No. 116-283](#) (2021).

¹⁷ FinCEN, [FinCEN Launches Regulatory Process for New Antiquities Regulations](#) (Sept. 23, 2021).

¹⁸ Anti-Money Laundering Regulations for Dealers in Antiquities, [86 FR 53021](#) (proposed Sept. 24, 2021) (to be codified at 31 CFR chapter undefined).

¹⁹ Title LXII of Division F, [Pub. L. No. 116-283](#) (2021).

²⁰ Pilot Program on Sharing of Suspicious Activity Reports and Related Information With Foreign Branches, Subsidiaries, and Affiliates, [87 FR 3719](#) (proposed Jan. 25, 2021) (to be codified at 31 CFR 1010).

²¹ Title LXII of Division F, [Pub. L. No. 116-283](#) (2021).

²² Review of Bank Secrecy Act Regulations and Guidance, [86 FR 71201](#) (proposed Dec. 15, 2021) (to be codified at 31 CFR chapter undefined).

²³ See pg. 733 of the [Joint Explanatory Statement of Conferees for FY2021 NDAA](#) which states, “In addition, the laundering of money through real estate transactions continues to be an issue of concern, and the conferees encourage Treasury to examine whether reporting on certain commercial, as well as certain residential, real estate transactions would be a source of highly useful information to law enforcement and the national security community.”

transparency of the domestic real estate market while minimizing burden on reporting companies and the comment period closed February 7, 2022.²⁴

Beneficial ownership. Following an earlier ANPRM in April 2021, FinCEN released an NPRM in December 2021 to implement the legal entity reporting requirements under AMLA2020).²⁵ This will be the first of three rules that FinCEN says it will issue to execute the components of the CTA.²⁶ See below for more on CTA implementation.

Definitional Changes

Cryptocurrency. Section 6102 amends the BSA’s definition of *monetary instrument* to include “value that substitutes for currency,” ensuring that digital assets or other future stores of value that can be used for money laundering are captured by the BSA.²⁷ Similarly, this section amends the BSA’s definitions of *financial institution* and *money transmitter* to include businesses exchanging or transmitting “currency, funds, or value that substitutes for currency or funds.”²⁸

The Corporate Transparency Act and FinCEN Implementation

Prior to AMLA2020, there was no federal requirement for natural persons who own or control, indirectly or directly, corporate entities, such as limited liability corporations (LLCs), to disclose their identities.²⁹ This lack of transparency has long impeded the ability of U.S. law enforcement, intelligence agencies, and federal regulators to effectively ‘follow the money’ and pursue bad actors, like Russian oligarchs, who are hiding or moving the proceeds of their crimes through U.S. real estate or other assets by using complex structures and the anonymity that they provide (e.g., shell companies).³⁰

The CTA addresses this loophole by requiring those persons forming or owning certain entities to provide FinCEN with identifying information about their beneficial owners defined, in part, to mean persons who directly or indirectly own 25% or more of a legal entity or exercise “substantial control” over it.³¹ Covered entities are also required to update information as it changes. FinCEN must store the information in a nonpublic database for at least five years and allow authorized government entities and financial institutions to access the information.³² There are severe penalties for failure to secure the confidentiality of the information in the database; conversely, penalties for failure to report are only applied to those who knowingly failed to report or intentionally omitted such information.^{33 34}

Regulations to implement the CTA are required within one year of enactment. Assessment reports on the functioning of the beneficial ownership registry are due one year after the effective date of implementing regulations and annually thereafter. The Secretary of the Treasury is also required to evaluate within two years of enactment whether there is a need to shorten the deadline for entities to update changes in beneficial ownership information (currently set at one year after such information changes).

²⁴ Anti-Money Laundering Regulations for Real Estate Transactions, [86 FR 69589](#) (proposed on Dec. 8, 2021) (to be codified at 31 CFR chapter undefined).

²⁵ Beneficial Ownership Reporting Requirements, [86 FR 177557](#) (proposed Apr. 5, 2021) and Beneficial Ownership Reporting Requirements, [86 FR 69920](#) (proposed Dec. 8, 2021) (to be codified at 31 CFR 1010).

²⁶ FinCEN, [FinCEN Launches Regulatory Process for New Beneficial Ownership Reporting Requirement](#) (Apr. 1, 2021).

²⁷ Title LXI of Division F, [Pub. L. No. 116-283](#) (2021).

²⁸ *Ibid.*

²⁹ Congressional Research Service, [Beneficial Ownership Transparency in Corporate Formation, Shell Companies, Real Estate, and Financial Transactions](#) (July 8, 2019) (CRS-R45798).

³⁰ *Ibid.*

³¹ [31 USC § 5336\(a\)\(3\)](#)

³² [31 USC § 5336\(c\)](#)

³⁴ [31 USC § 5336\(h\)](#)

FinCEN's December 7, 2021, proposed rule identified two types of reporting companies—domestic and foreign—and FinCEN noted that it expected these to include limited liability partnerships, limited liability limited partnerships, business trusts, and most limited partnerships, in addition to corporations and LLCs, because such entities appear typically to be created by a filing with a secretary of state or similar state-level office.^{35 36} A subsequent proposed rule (not yet issued) would detail who could access FinCEN's database to house this information, and how, the agency noted.³⁷

FinCEN's role in countering Russian Oligarchs and other Bad Actors

In general, FinCEN's authorities for money laundering and financial crime include countering bad actors like Russian oligarchs. At the direction of President Biden, on March 2, 2022, U.S. Attorney General Merrick Garland announced the creation of an interagency law enforcement team, Task Force KleptoCapture, to coordinate prosecutors and other federal investigators to enforce sanctions imposed against Russian officials and oligarchs in response to the invasion of Ukraine.³⁸ Complementing this effort is the Russian Elites, Proxies, and Oligarchs (REPO) multilateral task force, launched by AG Garland, Secretary Yellen, and allied governments on March 16, 2022, intended "to collect and share information to take concrete actions, including sanctions, asset freezing, civil and criminal asset seizure, and criminal prosecution."³⁹ That same month, FinCEN issued two Alerts to assist financial institutions in identifying suspicious transactions related to likely methods of Russian sanctions evasion.^{40 41} Methods covered include the use of anonymous corporate and trust entities, convertible virtual currencies, cyber-enabled financial crime, real estate, luxury goods, and other high-value assets.

FinCEN Report on Russia as a Primary Money Laundering Concern

Separate from the FinCEN authorities conferred under AMLA2020, Section 9714 of FY2020 NDAA requires the Secretary of the Treasury to make a determination as to whether Russia should be designated as a jurisdiction of Primary Money Laundering Concern (PMLC) and submit a report to Congress within one year on any necessary regulatory or statutory changes to counter Russian money laundering and illicit financial activities.⁴² This report was delayed due to the absence of a classified annex for the report. These technical fixes were codified in Section 6106 of FY22 NDAA, an amendment offered by Rep. Stephen Lynch (D-MA).⁴³

³⁵ Beneficial Ownership Reporting Requirements, 86 FR 69920 (proposed Dec. 8, 2021) (to be codified at 31 CFR 1010).

³⁶ FinCEN, [Fact Sheet: Beneficial Ownership Information Reporting Notice of Proposed Rulemaking \(NPRM\)](#), (Dec. 7, 2021).

³⁷ *Ibid.*

³⁸ U.S. Department of Justice, [Attorney General Merrick B. Garland Announces Launch of Task Force KleptoCapture](#), (Mar. 2, 2022).

³⁹ U.S. Department of Justice, [U.S. Departments of Justice and Treasury Launch Multilateral Russian Oligarch Task Force](#), (Mar. 16 2022).

⁴⁰ FinCEN, [FinCEN Advises Increased Vigilance for Potential Russian Sanctions Evasion Attempts](#), (Mar 7, 2022).

⁴¹ FinCEN, [FinCEN Alert on Real Estate, Luxury Goods, and Other High Value Assets Involving Russian Elites, Oligarchs, and their Family Members](#), (Mar. 16, 2022).

⁴² Title XCVII of Division H, Pub. L. No. 116-283 (2021).

⁴³ Title LXI of Division F, [Pub. L. No. 117-81](#) (2022).

Annex I: Legislation

- **H.R. 7080, “Nowhere to Hide Oligarchs Assets Act” (Waters, D-CA), as amended.** This bill would assist the Financial Crimes Enforcement Network (FinCEN), the nation’s Financial Intelligence Unit, by removing the geographic limitation to its Geographic Targeting Order (GTO) authority to allow an order to cover the entire United States, and by expanding the agency’s authority to enquire about foreign financial agencies to include foreign nonfinancial trades or businesses.
- **H.R. 7128, “Special Measures to Fight Modern Threats Act” (Himes, D-CT).** This bill would amend FinCEN’s existing Special Measures authorities to target Primary Money Laundering Concerns that operate outside of the traditional banking sector.
- **H.R. 7195, “To provide for certain whistleblower incentives and protections” (Adams, D-NC).** This bill would modify the structure of FinCEN's whistleblower fund, ensuring that individuals who provide information that leads to successful enforcement are able to receive awards as intended by AMLA.
- **H.R. 5764, “Gun Violence Prevention Through Financial Intelligence Act” (Dean, D-PA)** This bill directs FinCEN to collect information from financial institutions and develop an advisory regarding the reporting of suspicious transactions related to gun violence. Specifically, FinCEN must gather information and develop an advisory related to (1) the procurement of firearms and firearm accessories for the purpose of carrying out lone-wolf acts of terror, and (2) how the U.S. firearms market can be exploited to facilitate gun violence.
- **H.R. ___, “Timely Delivery of Bank Secrecy Act Reports Act” (Discussion Draft).** This bill establishes a time frame for the production of Bank Secrecy Reports to Congress by requiring that the Secretary of the Treasury, upon request by Congress or Congressional Committees, to deliver BSA reports to Congress not later than the end of a 30-day period beginning on the date such information is requested by Congress. Similarly, it would require that a financial institution, upon a subpoena by Congress, to deliver BSA reports to Congress not later than the return date specified for such reports in the subpoena.
- **H.R. ___, “Transparency and Accountability in Service Providers Act” (Discussion Draft).** This bill requires FinCEN to apply Bank Secrecy Act compliance to those who provide certain “gatekeepers” services to corporations, trusts, and other entities, facilitating the opaque, complex structures used by bad actors to avoid scrutiny.
- **H.R. ___, “Survivor Safety Banking Act” (Discussion Draft).** This discussion draft ensures that survivors of intimate partner violence have safe access to their financial accounts by providing guidance on training for financial institution employees to identify and report suspected economic abuse and immunity to financial institutions from civil or administrative proceedings if a trained, covered employee reports suspected economic abuse of a customer or potential customer. It additionally requires financial institutions to report suspected economic abuse to covered agencies for data analysis and publication—not for law enforcement purposes.