United States Senate
Caucus on International Narcotics Control
"The Role of the Federal Government in Attacking the Financial Networks of Cartels"
Submitted on July 20, 2022

Responses from Under Secretary of the Treasury for Terrorism and Financial Intelligence Brian E. Nelson

Senator Sheldon Whitehouse

1. During the hearing, I asked whether you are comfortable with the 2022 *National Drug Control Strategy*'s objective that calls for a 365 percent increase in the number of individuals and entities sanctioned because of their role as enablers in the drug trade. You shared that you are focused on "… prioritizing fentanyl and synthetic opioids networks by dedicating significant investigative resources to that particular problem set, which again, is less about the numbers but making sure that we are having a strategic effect."

   - **What specific "strategic effect" have Treasury's sanctions already had on attacking the fentanyl and synthetic opioids financial networks? Do you expect these actions to result in a reduction in the U.S. supply of these narcotics?**

     - **Answer:** As I said, we are absolutely committed to increasing the number of counter narcotics designations using Executive Order (E.O.) 14059. More than the numbers, we focus our targeting on high-impact networks to maximize strategic impact.

       Treasury has prioritized targeting fentanyl and synthetic opioids networks by dedicating significant investigative resources to this problem set. We continue to focus our efforts against actors in the illicit fentanyl and synthetic opioids supply chain that are most vulnerable to sanctions, including producers, enablers, facilitators, and financial intermediaries. Their inability to access the U.S. financial system would significantly disrupt the operations of global traffickers.

       Using E.O. 14059, Treasury is focused on strategic targets that traffic materials used in the production and distribution of fentanyl and synthetic opioids.

       However, sanctions alone will not achieve our national security objectives. Sanctions— whether against powerful elites or rogue regimes or other malign actors — are most effective when combined with other tools of U.S. power and implemented as part of an integrated, whole-of-government strategy jointly with our allies and partners.

   - **Does Treasury intend to expand its efforts to focus on the financial networks of narcotics traffickers who facilitate the production and sale of other illicit drugs, including methamphetamine and cocaine?**

- **Answer:** Global narcotics ranks among OFAC's top sanctions priorities, along with Russia, Iran, North Korea, cyber, terrorism, human rights, and corruption, among others. Within the global narcotics program, OFAC has a long history of successfully targeting financial networks associated with narcotics traffickers who facilitate the production and sale of other illicit drugs, including cocaine, heroin, and methamphetamine. This strategy continues today as we target financial networks associated with fentanyl and synthetic opioid manufacturing and distribution. We are also continuing to prioritize violent criminal organizations in Mexico, especially those involved in the production of synthetic opioids and pose a direct threat to Americans.

- **Are you encouraging partner nations to apply similar sanctions to narcotics traffickers and their financial networks? If so, which partner nations are you coordinating with, and what results have been achieved to date?**

  - **Answer:** Treasury maintains a regional office at the U.S. Embassy in Mexico City, which enables a significant amount of strategic and operational coordination on joint illicit finance priorities and allows us to work together to jointly take action against priority threat networks. We are working with our Mexican and Central American partners to target narcotics traffickers and their financial networks. In addition to Treasury's presence in Mexico City, Mexico, Treasury also has a regional office at the U.S. Embassy in Bogota, Colombia, which over two decades has allowed Treasury to coordinate with regional counterparts to disrupt narcotics networks in the region. For example, Colombian authorities have often pursued asset forfeiture cases targeting organizations that have also been sanctioned by Treasury, seizing and forfeiting billions of dollars since the beginning of our partnership. Additionally, Treasury looks for other opportunities, as appropriate, to coordinate with other nations in the disruption of narcotics trafficking organizations that represent the most immediate and direct threats to the U.S. homeland.

2. The *Fiscal Year 2021 National Defense Authorization Act* allows Treasury to deploy Attachés and Foreign Financial Intelligence Unit Liaisons to allied countries to help them strengthen their anti-money laundering capacities. Congress has appropriated funding for the Liaison program, but not the Attaché program.

- **What steps has Treasury taken to ensure that Liaisons have the required expertise to combat narcotics-related illicit finance? When will the Liaison program be fully implemented?**
- **What drug producing and transit countries, should the U.S. send Attachés and Liaisons to, and how will you determine which countries take priority?**

  - **Answer:** Foreign Financial Intelligence Unit (FIU) Liaisons will play a critical role in enhancing international information sharing and the efficiency of international cooperation to combat money laundering. Full

funding of FinCEN's FY 2023 budget request would enable FinCEN to fill these important FIU Liaison positions.

FinCEN anticipates that Foreign FIU Liaisons stationed in countries that are major drug-producing, transit-country, or major money laundering jurisdictions, will address narcotics-related illicit finance in addition to broader money laundering issues. FinCEN expects that any of those Liaisons would engage closely with host jurisdiction and regional government officials, including Foreign FIUs, Finance Ministries, investigative and prosecutorial bodies, and the private sector. FinCEN anticipates going through a careful selection process for Foreign FIU Liaisons that will ensure these officials have the relevant skills and knowledge to succeed in their mission. FinCEN will work closely with its partners in Treasury, the Department of State, and the interagency to ensure appropriate determination of Foreign FIU Liaison host countries.

3. Drug traffickers use gift cards and prepaid access devices, collectively known as stored value, to move their illicit profits out of the United States. Stored value is not subject to any federal oversight. To address this glaring vulnerability, Congress enacted the *Credit Card Accountability Responsibility and Disclosure (CARD) Act* in 2009, which in part, requires Treasury to issue regulations subjecting stored value to cross-border reporting requirements. Co-Chairman Grassley and I have pushed for the *CARD Act's* rules to be finalized since 2011.

   - **What barriers have prevented a final rule from being implemented?**
   - **What updates need to be made to the 2011 Notice of Proposed Rulemaking?**
   - **When will you publish a proposed rule?**

     - **Answer:** In response to the Credit Card Accountability Responsibility and Disclosure Act, FinCEN finalized a rule in July 2011 that imposed anti-money laundering and countering the financing of terrorism (AML/CFT) obligations on providers and sellers of prepaid access. Specifically, providers and sellers of prepaid access must implement and maintain AML programs, file Suspicious Activity Reports and Currency Transaction Reports with FinCEN, submit to periodic examinations by the IRS for AML compliance, and, in the case of providers of prepaid access, register with FinCEN as money services businesses (MSBs). Prepaid access providers operating in the United States, even if they are based outside the United States, must register with FinCEN as MSBs.

       As a result of this rulemaking, prepaid access, also known as stored value, is subject to federal regulation, even if transporting prepaid access devices linked to $10,000 or more into or out of the United States does not currently trigger the requirement to file a report with FinCEN. Additionally, as most prepaid access providers are, or are linked to, depository institutions of one kind or another, all of the oversight (AML, consumer protection, safety and soundness) that applies

to other bank products typically also applies to prepaid access products as well.

Subsequent to the issuance of the July 2011 final rule, in October 2011 FinCEN issued a supplemental proposed rule that would have redefined monetary instruments to include prepaid access. This proposed rule would have required cross-border reporting of prepaid access devices with $10,000 or more on FinCEN's Currency and Monetary Instruments Report. FinCEN received 18 comments in response to the proposed rule. Many of the comments were opposed to the rule and noted that many prepaid access devices are linked to depository institutions and therefore subject to comprehensive AML/CFT regulation.

In response to these comments, and the significant privacy concerns noted by industry at the time, FinCEN requested additional data from law enforcement to support the need for the rulemaking. FinCEN did not receive sufficient additional information to warrant the imposition of the additional regulatory burden. Therefore, based on the significant concerns expressed by industry, and the lack of additional information from law enforcement, FinCEN has not prioritized finalizing this rule, and law enforcement has not signaled this as a priority issue for them in recent engagements with FinCEN. Presently, FinCEN is prioritizing resources on implementation of the Anti-Money Laundering Act and the Corporate Transparency Act.

4. During the hearing, we discussed the need to make Geographic Targeting Orders (GTOs) permanent and nationwide. As part of this effort, it is critical that GTOs also apply to commercial real estate, as drug traffickers also use this sector to launder their ill-gotten gains.

- **What steps must Treasury take to subject commercial real estate to GTOs?**
    - **Answer:** We have serious concerns with the money laundering risks associated with the U.S. real estate sector. However, addressing these risks calls for a permanent solution, rather than the continued issuance of GTOs, which are of limited duration and geographic scope. To that end, in December 2021, FinCEN commenced the rulemaking process with the issuance of an Advance Notice of Proposed Rulemaking (ANPRM), to seek out public comment on various approaches to a recordkeeping and reporting requirement involving real estate transactions, and what would be covered by such a requirement.

      Treasury is considering how best to focus its regulatory attention on both residential and commercial real estate transactions. As noted in the ANPRM, money laundering risks stem from transactions in both the commercial and residential real estate sectors, and both merit appropriate regulatory treatment. However, the ANPRM also recognized that the commercial real estate market is both more diverse and complicated than the residential real estate market and presents unique challenges to the application of the same reporting requirements

or methods as for residential transactions. For instance, in commercial real estate, possible payment structures are more complex than in the residential real estate market.

To ensure that due consideration was given to this issue, the ANPRM invited comments regarding the approach that should be taken with respect to regulatory treatment of residential and commercial real estate and the money laundering threats presented by these sectors. In particular, the ANPRM raised the question of whether an iterative approach may be warranted given the complexities and differences between different market sectors and the potential burdens that new reporting and recordkeeping requirements may have for businesses. If an iterative approach is warranted, Treasury could initially focus on residential real estate followed by additional action to promulgate regulations covering the commercial real estate sector, as well as any other regulatory gaps that may exist with money laundering vulnerabilities involving real estate.

FinCEN received 151 comments in response to the Real Estate ANPRM and is carefully considering each comment as it charts the best path forward to protect the U.S. real estate market from abuse by illicit and corrupt actors.

Senator Ben Ray Luján

1. The rise of deferred prosecution and non-prosecution agreements at the Department of Justice has raised significant concern about regulatory and criminal oversight of financial institutions. In 2012, HSBC Holdings agreed to pay a $1.9 billion fine points to a lack of adequate control processes in compliance and anti-money laundering and criminal proceedings were deferred. In addition to the fine, regulatory monitors were installed in the bank by US regulators. However, there is significant concern on the effectiveness of these regulators. According to reporting from last July, HSBC is accused of not having disclosed information it discovered on $4.2 billion worth of payments on a suspected money laundering network to the installed monitors.

   - **When monitors are installed at a financial institution as part of a prosecution agreement, how can we be sure those monitors are truly independent and empowered to conduct real oversight?**

     - **Answer:** I defer to the Department of Justice (DOJ) with respect to any actions they undertake, including the details of prosecution agreements with financial institutions.

   - **You previously worked at the Department of Justice, please describe how you to plan to work with DOJ to make criminal referrals when appropriate.**

     - **Answer:** The Treasury Department values its relationship with the DOJ. Both the Financial Crimes Enforcement Network (FinCEN)—which serves as the primary administrator and regulator of the Bank Secrecy Act (BSA)—and the Office of Foreign Assets Control (OFAC)—which administers and enforces U.S. economic sanctions programs—collaborate frequently with the DOJ on matters of mutual concern and interest. I am committed to supporting and reinforcing the strong collaborative efforts between TFI components and the DOJ to ensure any conduct or violation that appears criminal in nature is referred to DOJ in an effective, efficient, and timely manner. In support of this goal, I recently appointed a new Counselor for Enforcement who is tasked with coordinating between TFI's components and the DOJ on all OFAC- and FinCEN-related enforcement activities.

   - **Do you see the current increase in the rate of deferred prosecution and non-prosecution agreements at the DOJ as hampering the ability to hold banks accountable for their role in money laundering for drug cartels?**

     - **Answer:** I defer to the DOJ with respect to any actions they undertake.

   - **If a bank does not have adequate controls and processes in place to ensure compliance with BSA, can bank executives be held accountable?**

     - **Answer:** The BSA and its implementing regulations authorize FinCEN to impose civil money penalties on financial institutions that willfully violate the BSA, and on current and former employees

who willfully participate in such violations. FinCEN has taken enforcement action against senior-level employees and owner-operators of financial institutions in recent years for committing violations of the BSA. For example, in 2020 FinCEN took action against the former Chief Operational Risk Officer of a major U.S. financial institution for failing to prevent violations of the BSA that occurred at the bank during the individual's tenure.

Senator Charles E. Grassley

1. You hold an important role in our fight against illicit drug use.

    - **What can Congress do to ensure law enforcement has the tools it needs to combat the ever-changing landscape of money laundering crimes?**

        - **Answer:** As outlined in the 2022 National Strategy to Combat Terrorist and Other Illicit Finance, law enforcement partners have the right tools, technology, and support to combat financial crime. FinCEN provides extensive support to the law enforcement community through its receipt, analysis, and dissemination of financial intelligence; administration of information collection tools, public-private partnerships, and international information sharing on behalf of law enforcement; and provision of training. For specific information on law enforcement tools, I defer to the Department of Justice, Department of Homeland Security and other law enforcement partners.

2. I supported the passage of the Corporate Transparency Act (CTA). However, we've heard of delays in making its rules which have delayed its full implementation. For example, FinCEN hasn't proposed CTA rules on who can access the beneficial owner registry or how to update consumer due diligence rules to comply with the CTA.

    - **In December of 2021, FinCEN published a Notice of Proposed Rulemaking. And at the hearing, Chairman Whitehouse asked you directly if you would be "wrapped up this year?" I appreciate that you are working through the hundreds of comments, but I'd like to echo Chairman Whitehouse's question and ask if you will be able to wrap this up by the end of this year?**

        - **Answer:** Thank you for acknowledging the hundreds of comments FinCEN received in response to its proposed beneficial ownership information reporting rule. That level of interest from the public demonstrates how important it is to get the rule right as the centerpiece of the broader CTA implementation effort. This effort also includes developing a novel information technology system to support the first national U.S. beneficial ownership information registry, as well as revising the customer due diligence requirements with which thousands of financial institutions have spent millions of dollars to comply. These are complex, interdependent tasks. I am pleased to say that FinCEN has accomplished the first of its major rulemaking milestones, issuing a final beneficial ownership information (BOI) reporting rule on September 30, 2022. FinCEN is working assiduously to accomplish the other elements of our CTA obligations with the resources available. While issuing the final BOI reporting rule has been a big step, implementing the CTA in full will take longer. We appreciate your continued patience as FinCEN develops a technology and regulatory infrastructure reflective of congressional intent and beneficial to law enforcement agencies, the intelligence community, financial institutions, and other stakeholders.

3. As was discussed at the hearing, in the last 10 years, e-commerce and virtual currencies have become prominent means by which DTOs quickly launder their money. We strive to stay

ahead of the curve in our fight against DTOs.

- **Where do you predict our fight against money laundering is going in the next 5-10 years, and what can we do now to stay ahead of the curve?**

    - **Answer:** The Department of the Treasury is committed to ensuring our AML/CFT framework can adapt to an evolving threat environment, along with structural and technological changes in financial services and markets to ensure continued success in the fight against illicit finance. We anticipate that DTOs and other criminal actors will continue to use a variety of methods to launder their illicit proceeds. These methods include traditional techniques like bulk cash smuggling, and trade-based money laundering. U.S. financial institutions, including banks and money services businesses (MSBs) remain vulnerable to exploitation by DTOs that use front and shell companies and third parties, such as money mules, to move proceeds from the United States to their base of operations.

      We anticipate that criminals will also launder drug proceeds in the United States through the purchase of real estate as an investment, to use as stash houses, or as locations to grow, manufacture, and distribute illicit narcotics. We assess they will continue to rely on complicit merchants, gatekeepers, and professional money launderers, particularly Chinese money laundering organizations (CMLOs).

      It is to combat these threats that Treasury has prioritized implementation of a number of regulatory updates, including the provisions of the Corporate Transparency Act (CTA) regarding beneficial ownership transparency. We will continue to assess how to update the U.S. AML/CFT framework, and we will work with your staff to propose legislation to address any gaps that we identify, if needed.

      We note that DTOs are growing more comfortable with darknet markets and the use of virtual assets to launder funds, although size and scope of drug proceeds generated on these platforms remain low in comparison to cash. With respect to virtual assets specifically, the key illicit financing risk that we face is the lack of implementation of the international AML/CFT standards for virtual assets and related financial service providers abroad. Gaps in effective implementation provide opportunities for criminals to misuse virtual assets, particularly given the ease of transferring some virtual assets across borders nearly instantaneously. Treasury efforts to mitigate this and other illicit financing risks related to virtual assets focus on engaging international partners to strengthen AML/CFT regimes applied to virtual assets and VASPs, including through our work at the Financial Action Task Force.

      To meet this challenge, Treasury will continue to expose and hold accountable VASPs and actors that conduct or facilitate illicit activities related to virtual assets, such as the recent designation of Hydra. This action built upon previous U.S. government actions and international cooperation to shut down other darknet markets, including Silk Road and Alphabay. Hydra's offerings have included ransomware-as-a-service, hacking services

and software, stolen personal information, counterfeit currency, stolen virtual assets, and illicit drugs.