

To: Members of the Committee on Financial Services

From: Financial Services Majority Staff

Date: April 24, 2023

Subject: National Security, Illicit Finance, and International Financial Institutions Subcommittee Hearing Entitled “Oversight of the Financial Crimes Enforcement Network (FinCEN) and the Office of Terrorism and Financial Intelligence (TFI)”

On Thursday, April 27, 2023 at 2:00 p.m. in Room 2220 of the Rayburn House Office Building, the Financial Services National Security, Illicit Finance, and International Financial Institutions Subcommittee will hold a hearing entitled “Oversight of the Office of Terrorism and Financial Intelligence (TFI) and the Financial Crimes Enforcement Network (FinCEN).” Testifying at the hearing will be the following individuals:

- Mr. Brian E. Nelson, Under Secretary for Terrorism and Financial Intelligence, U.S. Department of the Treasury
- Mr. Himamuli (Him) Das, Acting Director, Financial Crimes Enforcement Network (FinCEN)

Terrorism and Illicit Finance

The U.S. Department of Treasury (Treasury) has a dedicated office to develop and implement official U.S. government efforts to combat the financing of terrorism (CFT). The Office of Terrorism and Financial Intelligence (TFI) was established in 2004 to marshal Treasury’s policy, enforcement, regulatory, and intelligence functions “with the twin aims of safeguarding the financial system against illicit use and combating rouge nations, terrorist facilitators... and other national security threats.”¹ TFI is led by Undersecretary Brian Nelson, and is comprised of the Office of Terrorist Financing and Financial Crimes (TFFC), the Office of Intelligence and Analysis (OIA), the Office of Foreign Assets Control (OFAC), the Financial Crimes Enforcement Network (FinCEN), and the Treasury Executive Office for Asset Forfeiture (TEOAF).

TFFC is the policy development and outreach office for TFI, which, among other priorities, leads the U.S. delegation to the Financial Action Task Force (FATF).² OIA, which is a formal member of the U.S. Intelligence Community, contributes all-source financial threat assessments and products. OIA’s analysts have been central in interagency efforts to address terrorist financing

¹ P.L. 108-447. U.S. Dep’t of the Treasury, *Terrorism and Financial Intelligence*, (last updated June 28, 2013), <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Terrorism-and-Financial-Intelligence.aspx>.

² The Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) authorized the Secretary of the Treasury, or the Secretary’s designee, as the lead U.S. government liaison to the Financial Action Task Force.

such as the Afghanistan and Iraq Threat Finance Cells.³ OFAC administers multiple sanctions programs to block transactions and freeze assets within the United States of specified foreign terrorist, criminal, and political entities, including specially designated individuals and nation states. FinCEN is a separate Treasury Bureau which reports to the Undersecretary for TFI. FinCEN administers the Bank Secrecy Act (BSA) for Treasury, including collecting and analyzing data on financial crimes, investigating violations of the BSA, and enforcing penalties for BSA violations. Both FinCEN and OFAC pre-date the formation of TFI.

Terrorist Financing

Terrorist financing describes a type of financial crime, in which an individual or entity solicits, collects, or provides funds “with the intention that [these funds] may be used to support terrorist acts or organizations.”⁴ The U.S. government’s overall counterterrorism strategy is guided by the 2011 *National Strategy for Counterterrorism*, which encourages expanding and enhancing “efforts aimed at blocking the flow of financial resources to and among terrorist groups and to disrupt terrorist facilitation and support activities....”⁵ According to FATF, the international standard-setting body for anti-money laundering (AML) and CFT safeguards, the most common sources of terrorist financing include state sponsors, private donors, charitable entities, self-funding mechanisms, and various criminal activities like drug trafficking.⁶ Recognizing that terrorists, including the Islamic State of Iraq and Syria (ISIS), frequently grow as new and better methods of funding and finance arise, FATF re-evaluated terrorist financing methods in late-2015. FATF found that groups are increasingly fundraising through social media, the exploitation of new payment products like virtual currencies, and the appropriation of natural resources and cultural items for profit.⁷

According to Treasury, these threats collectively represent a source of risk generally to the United States, and to the financial system in particular.⁸ Specifically, Treasury concludes:

[t]he central role of the U.S. financial system within the international financial system and the sheer volume and diversity of international financial transactions that in some way pass through U.S. financial institutions expose the U.S. financial system to TF [terrorist financing] risks that other financial systems may not face.⁹

The three most common methods terrorists use to move money are: (1) the physical movement

³ OIA was established by the Intelligence Authorization Act for Fiscal Year 2004 (P.L. 108-177).

⁴ International Monetary Fund, Anti-Money Laundering/Combating the Financing of Terrorism – Topics, <https://www.imf.org/external/np/leg/amlcft/eng/aml1.htm>.

⁵ See White House, National Strategy for Counterterrorism, (June 29, 2011), <https://obamawhitehouse.archives.gov/blog/2011/06/29/national-strategy-counterterrorism>.

⁶ See Financial Action Task Force, *Terrorist Financing* (Feb. 29, 2008), [hereinafter Terrorist Financing FATF report], <http://www.fatf-gafi.org/publications/methodsandtrends/documents/fatfterroristfinancingtypologiesreport.html>.

⁷ See Financial Action Task Force, *Emerging Terrorist Financing Risks*, (Oct. 21, 2015), <http://www.fatf-gafi.org/publications/methodsandtrends/documents/emerging-terrorist-financing-risks.html>.

⁸ U.S. Dep’t of the Treasury, *National Terrorist Financing Risk Assessment*, (2015), [hereinafter Treasury TF Risk Assessment], <https://www.treasury.gov/resource-center/terrorist-illicit-finance/Documents/>

⁹ *Id.* at 2-3.

of cash; (2) the movement of funds through the banking system and non-bank financial institutions; and (3) the misuse of the international trade system.¹⁰ Given the central role that U.S. financial institutions play in facilitating global payments, the U.S. is vulnerable to the movement of funds associated with terror finance through the banking system. At some point, a portion of the money terrorist organizations use to fund their operations must enter the formal financial sector. . Therefore, it is paramount that Treasury has the necessary tools in place to identify such activity so our financial institutions do not become inadvertent conduits or enablers of the next terror attack.

Office of Foreign Assets Control (OFAC)

OFAC administers and enforces economic and trade sanctions programs primarily against countries and groups of individuals, such as terrorists and narcotics traffickers, who are involved in activities related to threats to the national security of the United States.¹¹ When a person or entity is sanctioned (or “designated”), any transactions they may have with a U.S. person are generally prohibited unless otherwise authorized with an OFAC license. In addition, foreign persons who provide financial or other support to a sanctioned entity may themselves run the risk of being sanctioned.

Financial Crimes Enforcement Network (FinCEN)

FinCEN was established in 1990 as an office within Treasury by order of the Secretary of the Treasury.¹² Congress codified FinCEN’s framework and mandate in 31 U.S.C. § 310. The statutory mandate for the new office was limited to analyzing financial data and providing strategic support to law enforcement authorities. At the time, FinCEN’s responsibilities were limited to data analysis. The Office of Financial Enforcement within Treasury was responsible for the administration and enforcement of the BSA. As such, Section 310(A) specified that one of FinCEN’s responsibilities was to “advise and make recommendations on matters relating to financial intelligence, financial criminal activities, and other financial activities to the Under Secretary of the Treasury for Enforcement.”¹³ The creation of FinCEN was meant to fill a much-needed gap in U.S. intelligence analysis.

In 1994, FinCEN’s data analysis responsibilities and that of the Office of Financial Enforcement were merged under FinCEN. This action resulted in FinCEN’s current role as the United States Financial Intelligence Unit (FIU). In its role as FIU, FinCEN is responsible for the dissemination and analysis of information, including information collected under the BSA to support local, state, federal, and foreign law enforcement, and regulatory authorities against money laundering, terrorism, and other financial crime and as the administrator and enforcer of the BSA.¹⁴

¹⁰ Terrorist Financing FATF report.

¹¹ OFAC, Sanctions Programs and Information, (last updated June 29, 2017), <https://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>.

¹² <https://www.govinfo.gov/content/pkg/USCODE-2010-title31/html/USCODE-2010-title31-subtitleI-chap3-subchapI-sec310.htm>.

¹³ Id.

¹⁴ <https://www.fincen.gov/resources/statutes-and-regulations/bank-secrecy-act/bsa-timeline>.

Following the terrorist attacks on September 11, 2001, the USA PATRIOT Act of 2001 was enacted. The purpose of the USA PATRIOT Act (PATRIOT Act) was to deter and punish terrorist acts in the United States and around the world and to enhance law enforcement investigatory tools. Specifically, Title III, Subtitle B, Section 361 of the USA PATRIOT Act codified FinCEN as an official bureau of the Treasury.

In addition to codifying FinCEN, the PATRIOT Act expanded its authorities. Under the PATRIOT Act, the due diligence requirements for U.S. financial institutions transacting business both domestically and abroad, including increased customer identification, suspicious activity reporting, and requirements that financial institutions establish anti-money laundering programs (Appendix I), were all expanded.

The fragmented nature of FinCEN's legislative authorities led FinCEN on November 7, 2008, to publish a proposal to transfer and reorganize its regulations. The proposal was intended to increase the efficiency and effectiveness of its regulatory oversight. Like many other regulatory agencies, FinCEN's rules were reorganized and reordered under a standalone chapter of Title 31.¹⁵ Title X did not alter any of FinCEN's existing rulemaking, but instead attempted to make the regulatory obligation clearer in structure and more readily accessible to regulated institutions.¹⁶

FinCEN Structure

FinCEN's work is organized into seven divisions, each headed by an Associate Director who reports to the FinCEN Director. The divisions are: the Global Investigations Division, the Intelligence Division, the Enforcement Division, the Policy Division, the Strategic Operations Division, the Technology Division, and the Management Division. The individual divisions work closely, and their responsibilities often overlap.¹⁷

- **Global Investigations Division** investigates and acts against foreign financial institutions, jurisdictions, classes of transactions, or types of accounts that are of primary money laundering concern under Section 311 of the USA PATRIOT Act.
- **Intelligence Division** collects, analyzes, and produces multi-source financial intelligence analysis to support U.S. national security policy, law enforcement investigations, and intelligence community activities; and serves as experts on illicit finance.
- **Enforcement Division** examines financial institutions for compliance with, and conducts investigations into violations of, the BSA; and takes enforcement action as appropriate.
- **Management Division** develops and manages integrated and comprehensive programs, including human capital, workforce management, budget, financial management and accounting, procurement, performance budgeting/metrics, facilities and logistics, privacy, records, environmental, health and safety, and security and emergency preparedness.
- **Policy Division** issues and interprets BSA regulations; develops advisories to alert

¹⁵ <https://www.ecfr.gov/current/title-31/subtitle-B/chapter-X>.

¹⁶ <https://www.fincen.gov/31-cfr-chapter-x-translator>.

¹⁷ <https://www.fincen.gov/glossary/>.

financial institutions to illicit finance risks; issues exceptive relief and administrative rulings to encourage innovation and clarify the application of the BSA; leads BSA/Anti- Money Laundering regulatory reform for Treasury; and provides subject matter expertise to the U.S. delegation to the Financial Action Task Force (FATF).

- **Strategic Operations Division** designs and implements FinCEN’s partnerships with industry, law enforcement, and the 165 members of the Egmont Group of Financial Intelligence Units; manages FinCEN’s operational information sharing and stakeholder engagement; and safeguards access to BSA information, tools, and resources.
- **Technology Division** provides all technology, data management, and support to collect, store, analyze, secure, and appropriately share more than 20 million BSA reports per year; and hosts and operates the Egmont Secure Web system used by 165 Financial Intelligence Units worldwide to exchange information securely.

FinCEN’s current mission is “to safeguard the financial system from illicit use, combat money laundering, and promote national security through the collection, analysis, and dissemination of financial intelligence and strategic use of financial authorities.”¹⁸ Broadly speaking, it accomplishes this mission by identifying the flow of financial resources to terrorists, terrorist organizations, money launderers, and other criminal elements through intelligence analysis, and sharing lead data with relevant law enforcement, Intelligence Community, and international partners for investigation and disruption. Under the BSA and its implementing regulations, FinCEN also has the power to bring enforcement actions for misreporting, inaccurate recordkeeping, or other violations of the BSA.¹⁹ FinCEN’s Office of Enforcement evaluates matters that may result in a variety of remedies, including the assessment of civil money penalties.²⁰

Legislation for Consideration

1. H.R. __, “*Accountability through Confirmation Act of 2023*” [Draft]

This bill would require the director of FinCEN to be appointed by the President and with the advice and consent of the Senate.

2. H.R. __, “*FinCEN Inspector General Act of 2023*” [Draft]

This bill establishes within the office of the Inspector General of the Department of the Treasury an Office of Audit and Investigations for FinCEN. The legislation is needed to ensure the inspector general is properly focused on FinCEN multiple mandates, and remediation of forthcoming Treasury IG report conclusions.

3. H.R. __, “*Civil Liberties Protection Act of 2023*” [Draft]

This bill establishes the role of Civil Liberties Protection Officer for FinCEN within the Office of the Secretary of the Treasury. The new officer will be selected by the Secretary from among members of the Senior Executive Service, and report directly to the Secretary. This officer will

¹⁸ FinCEN, Mission, <https://www.fincen.gov/about/mission>.

¹⁹ FinCEN, Enforcement Actions, <https://www.fincen.gov/news-room/enforcement-actions>.

²⁰ *Id.*

ensure that protection of civil liberties and privacy are appropriately protected at FinCEN. This bill also contains an oversight piece of reporting to Congress any unlawful activities.

4. H.R. __, *“FinCEN Record Keeping Act of 2023” [Draft]*

This bill ensures that HFSC and Senate Banking, and, to the maximum extent consistent with Freedom of Information Act (5 U.S.C. 552(b)) exemptions, the public will have access to Department of the Treasury documents giving authority or instructions to FinCEN or its Director, including any changes made to such documents from time to time. Controlling documents include: departmental delegations of authority to, and departmental instructions to, FinCEN or its Director. Such information will assist the committees in ensuring that FinCEN activities remain within appropriate limits and in formulating any legislation needed to govern such activities.

5. H.R. __, *“Extension of FinCEN’s Hearing Mandate Act of 2023” [Draft]*

This bill extends FinCEN’s “Annual for 5 years” statutory hearing obligation in the Anti-Money Laundering Act of 2020 to 10 years.

6. H.R. __, *“Financial Privacy Act of 2023” [Draft]*

This bill requires the Secretary of the Treasury to submit a report to HFSC and Senate Banking on the ways in which FinCEN shares information with the intelligence community. This includes the number and type of reports, the protocols in place regarding access to, and retention of information, and number of annual queries by intelligence agencies.

7. H.R. __, *“Financial Reporting Threshold Modernization Act” [Draft]*

This bill updates the thresholds for Suspicious Activity Reports (SAR) and Currency Transaction Reports (CTR) to \$30,000 for CTR and multiple changes to the SAR thresholds.

8. H.R. __, *“Financial Technology Protection Act”*

This bill provides for the investigation of new financial technologies and their use to combat terrorism and other illicit activities by establishing the Independent Financial Technology Working Group to Combat Terrorism and Illicit Financing, which must research terrorist and illicit use of new financial technologies and issue an annual report.

9. H.R. __, *“Time Is Up Act of 2023”*

This bill requires the President, within 15 days, to announce any prohibition of a CFIUS transaction that has exceeded conventional time limits for investigations – regardless of refilings. The prohibition must then be completed within 30 days.

10. H.R. __, *“Stop Chinese Fentanyl Act of 2023”*

This bill expands the Fentanyl Sanctions Act beyond “illicit activity” to cover Chinese negligence, both within drug companies but also among the PRC officials overseeing them. The bill also requires a determination of specific PRC officials with responsibility over fentanyl trafficking and extends the sunset of the Fentanyl Sanctions Act.

11. H.R. _____, “*AML Examiners Academy Act*” (Waters)

This bill would establish an AML Examiners Academy for federal, state, and foreign examiners, via the FFIEC.

12. H.R. _____, “*Exposing China’s Support for the Taliban Act*” (Lynch)

This bill would require Treasury to carry out a study and brief Congress on the financial activities of China and Chinese entities in connection with the finances of Afghanistan and the Taliban, including activities that support illicit financial networks. This bill was introduced in the 117th Congress as an amendment to the FY2023 NDAA and the America COMPETES Act, and as H.R. 6524.