



FACTCOALITION

Financial Accountability & Corporate Transparency

July 12, 2022

The Honorable Sheldon Whitehouse  
Chairman  
Caucus on International Narcotics Control  
U.S. Senate  
Washington, DC 20510

The Honorable Chuck Grassley  
Ranking Member  
Caucus on International Narcotics Control  
U.S. Senate  
Washington, DC 20510

**RE: Virtual hearing on the role of the federal government in attacking the financial networks of cartels**

Dear Chairman Whitehouse and Ranking Member Grassley,

On behalf of the Financial Accountability and Corporate Transparency (FACT) Coalition, we appreciate the opportunity to comment on your hearing examining the role of the federal government in attacking the financial networks of cartels. 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.<sup>1</sup>

The United States is now the world's largest supplier of financial secrecy, per the 2022 Financial Secrecy Index.<sup>2</sup> 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.<sup>3</sup> 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.<sup>4</sup>

Today's hearing underscores the importance for the federal government – led by the Treasury Department and the Financial Crimes Enforcement Network (FinCEN) – to advance structural anti-money laundering reforms that will enable officials to go after the financial networks of

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

<sup>2</sup> Tax Justice Network, "2022 Financial Secrecy Index," May 2022, <https://fsi.taxjustice.net/>.

<sup>3</sup> U.S. Treasury Department, "Treasury Strategic Plan 2022-2026," P. 23, March 2022, <https://home.treasury.gov/system/files/266/TreasuryStrategicPlan-FY2022-2026.pdf>.

<sup>4</sup> 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>.

cartels. The Administration has already committed to an ambitious agenda of reforms in the U.S. Strategy on Countering Corruption that would mitigate the ability of drug trafficking organizations to move and launder ill-gotten gains through the United States. This includes finalizing rules for the 2021 enacted Corporate Transparency Act (CTA), as well as advancing rules to increase anti-money laundering safeguards in the opaque U.S. real estate and private investment markets. It is up to the Treasury Department, in conjunction with partner agencies, to deliver these reforms in a timely and meaningful manner.

The Treasury Department must also work with Congress to get additional authorities where necessary to carry the reforms identified in the Strategy, including by passing the “ENABLERS Act” to bring certain “gatekeepers” to the U.S. financial system under the U.S. anti-money laundering framework. These reforms are discussed in further detail below.

### **The Corporate Transparency Act**

The FACT Coalition applauds the Caucus’ bipartisan support for the enacted Corporate Transparency Act (CTA), requiring certain legal entities to name their true, “beneficial” owner to a secure directory housed at FinCEN. As the Caucus knows well, drug traffickers and the corrupt officials they work with rely on the financial secrecy provided by anonymous U.S. entities to hide their operations and illicit proceeds from law enforcement. Just this February, Da Ying Sze pled guilty to laundering \$653 million in drug money through shell companies with bank accounts in New York, New Jersey, and Pennsylvania.<sup>5</sup>

While we understand that FinCEN is 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. Under the statute, rules implementing the CTA were to be promulgated by January 1, 2022. Yet, the recent National Strategy for Combating Terrorist and Other Illicit Financing states that the “final rules” on the CTA will be finalized by 2024.<sup>6</sup> We need timely implementation to counter money laundering risks affiliated with financial secrecy.

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<sup>5</sup> Department of Justice, Queens Man Admits Orchestrating \$653 Million Money Laundering Conspiracy, Operating Unlicensed Money Transmitting Business, and Bribing Bank Employees, February 2, 2022, <https://www.justice.gov/usao-nj/pr/queens-man-admits-orchestrating-653-million-money-laundering-conspiracy-operati>

<sup>6</sup> U.S. Department of the Treasury, National Strategy for Combating Terrorist and Other Illicit Financing, 2022. <https://home.treasury.gov/system/files/136/2022-National-Strategy-for-Combating-Terrorist-and-Other-Illicit-Financing.pdf>

**The Caucus should urge the Treasury Department and FinCEN to commit to standing up all final rules necessary to implement the CTA by no later than December 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.

**Further, Congress should work with FinCEN ahead of the next CTA rulemaking defining access** to the beneficial ownership directory to ensure that state, local, and federal law enforcement and national security officials have timely, uncomplicated, and complete access to the directory in a manner consistent with the CTA, as this will be key to curbing the harmful practices associated with drug trafficking and money laundering.

International law enforcement cooperation and information sharing is key in narcotics investigations, which can span several continents. As the law allows foreign competent authorities to make requests of U.S. agencies for information in the directory, **Congress should further urge Treasury and FinCEN to define access protocols in a way that facilitates international cooperation.**<sup>7</sup>

**Finally, Congress should urge Treasury and FinCEN to employ internationally accepted best data practices in collecting, storing, and making available beneficial ownership information subject to the CTA.** FinCEN should, to the extent possible under the CTA, employ modern, internationally accepted data standards,<sup>8</sup> 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.<sup>9</sup> Employing best practices in CTA directory construction will further 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.<sup>10</sup>

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<sup>7</sup>The 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](https://thefactcoalition.org/wp-content/uploads/2022/02/FINCEN-2021-0005-0421_attachment_1.pdf)

<sup>8</sup> See FACT press release, "Anti-Corruption Campaigners Urge Treasury to Swiftly Implement Landmark Corporate Transparency Law," April 14, 2022, <https://thefactcoalition.org/anti-corruption-campaigners-urge-treasury-to-swiftly-implement-landmark-corporate-transparency-law/>.

<sup>9</sup> Open Ownership, "Data considerations for beneficial ownership registers," 2022, <https://www.openownership.org/en/publications/guide-to-implementing-beneficial-ownership-transparency/data-considerations-for-beneficial-ownership-registers/>.

<sup>10</sup> Financial Action Task Force, "Revisions to Recommendation 24 and the Interpretive Note – Public Consultation," 2022, [https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Pdf-file\\_R24-Beneficial-Ownership-Public-Consultation.pdf](https://www.fatf-gafi.org/media/fatf/documents/recommendations/pdfs/Pdf-file_R24-Beneficial-Ownership-Public-Consultation.pdf).

## **Rules to Counter Money Laundering Through U.S. 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.<sup>11</sup> 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.<sup>12</sup>

The U.S. real estate sector has become a magnet for international narcotics funds. In one case, a boutique investment firm in Florida allegedly laundered more than \$100 million tied to a Colombian cartel through high-end U.S. real estate as part of the Black Market Peso Exchange.<sup>13</sup>

**Congress should urge Treasury and FinCEN to finalize a nationwide rule** that would require real estate professionals to have some AML/CFT obligation to understand their true customers in the course of any direct or indirect residential or commercial real estate transaction, without cash thresholds.<sup>14</sup> This rule should be finalized no later than the second Summit for Democracy, likely to be held the first quarter of 2023.

## **Rules to Counter Money Laundering Through U.S. Private Investment**

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,”<sup>15</sup> which was included in the Administration’s Strategy on Countering Corruption. Like real estate, the private

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<sup>11</sup> Lakshmi Kumar and Kaisa de Bel, “Acres of Money Laundering: How U.S. Real Estate is a Kleptocrat’s Dream,” Global Financial Integrity, August 2021,

<https://gfindtegrity.org/report/acres-of-money-laundering-why-u-s-real-estate-is-a-kleptocrats-dream/>.

<sup>12</sup> Financial Crimes Enforcement Network, “Anti-Money Laundering Regulations for Real Estate Transactions,” <https://www.regulations.gov/document/FINCEN-2021-0007-0001/comment>.

<sup>13</sup> Lakshmi Kumar, Gary Kalman, and Erica Hanichak. “Private Investments, Public Harm: How the Opacity of the Massive U.S. Private Investment Industry Fuels Corruption and Threatens National Security,” Global Financial Integrity, Transparency International-US, and the FACT Coalition, December 2021, [https://thefactcoalition.org/wp-content/uploads/2021/12/TI\\_Private-Investments-Public-Harm-10.pdf](https://thefactcoalition.org/wp-content/uploads/2021/12/TI_Private-Investments-Public-Harm-10.pdf).

<sup>14</sup> 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>

<sup>15</sup> Janet Yellen, “The Annual Testimony of the Secretary of the Treasury on the State of the International Financial System.”

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.<sup>16</sup>

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.<sup>17</sup> 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.<sup>18</sup> In one such case, Mexican drug cartels in California used hedge funds to launder \$1 million a week.

**Congress should encourage Treasury and 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 Safeguards for U.S. Financial “Gatekeepers”**

The U.S. 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.<sup>19</sup> 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, this would be a key step to ensure criminals and corrupt officials are denied financial safe haven in the United States.

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<sup>16</sup> 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/>.

<sup>17</sup> 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/>.

<sup>18</sup> 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>

<sup>19</sup> 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>.

Just last week, on July 7, a brother and sister serving as the “legitimate” face of U.S. operations for a cartel were indicted for laundering more than \$42 million in narcotics trafficking profits through 22 shell corporations into the U.S. financial system.<sup>20</sup>

The House of Representatives is poised to pass legislation – known as the “ENABLERS Act” – as part of the annual must-pass National Defense Authorization Act that would require 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.

**The Senate should work with FinCEN and the Treasury Department to advance this legislation** to help close these long-standing gaps in safeguards for the U.S. financial system. We implore Congress to pass this legislation this year in a bid to strengthen the anti-money laundering procedures, finally bringing the professional service providers that act as gatekeepers to the U.S. financial system in line with international anti-money laundering standards.

#### FinCEN Appropriations

These reforms – essential to modernizing law enforcement’s tools for cracking down on cartels’ financial networks – demand increased resources for the Treasury Department and Financial Crimes Enforcement Network. FinCEN in particular – 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.

We appreciate efforts by this Caucus to champion increased funds for the Financial Crimes Enforcement Network. The House Appropriations Financial Services and General Government (FSGG) Subcommittee has put forward a budget of \$210.33 million for fiscal year 2023.<sup>21</sup> **Senate appropriators should match the number put forward by the House, and approve a total of \$210.33 million for FY2023 for FinCEN.**

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<sup>20</sup> Department of Justice, Brother-Sister Duo Indicted for Laundering More Than \$42 Million of Drug Proceeds Through 22 Shell Corporations, July 7, 2022, <https://www.justice.gov/usao-sdca/pr/brother-sister-duo-indicted-laundering-more-42-million-drug-proceeds-through-22-shell>

<sup>21</sup> House Appropriations Committee, Financial Services and General Government FY2023 Funding Bill, June 14, 2022, <https://docs.house.gov/meetings/AP/AP23/20220616/114911/BILLS-117-SC-AP-FY2023-FServices.pdf>; summary available here: <https://appropriations.house.gov/news/press-releases/appropriations-committee-releases-fiscal-year-2023-financial-services-and>.

## **CONCLUSION**

Thank you for your time. If you have any questions, you can contact Patricia Ainembabazi ([painembabazi@thefactcoalition.org](mailto:painembabazi@thefactcoalition.org)).

Sincerely,

Ian Gary  
*Executive Director*

Erica Hanichak  
*Government Affairs Director*

Ryan Gurule  
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