Questions for the Record
Criminal Division, U.S. Department of Justice
For a Hearing before the
Committee on the Judiciary
United States Senate
"S.1241: Modernizing AML Laws to Combat Money Laundering and Terrorist Financing"
November 28, 2017

Questions from Chairman Grassley

1. **Some court rulings have interpreted our statutes in a way that has made it harder to prosecute money laundering cases. For example, some courts have presumed that the "dirty money" is the "last out" of a comingled account for purposes of bringing a Section 1957 charge. And the Supreme Court's decision in *Cuellar* has made it more difficult to prove a case under the concealment money laundering statute.**

    a. **Can you explain how *Cuellar* and other court decisions have impacted the Department's ability to prosecute money laundering cases?**

RESPONSE: *Cuellar v. United States,* 553 U.S. 550 (2008), has tied the hands of prosecutors when it comes to charging certain culpable intermediaries with concealment. In that case, the Supreme Court interpreted the money laundering concealment statute to require that the government prove that a defendant knew that his cross-border transportation of criminal proceeds would have the effect of concealing or disguising the nature, location, source, ownership, or control of the proceeds, and that he also knew the transportation was specifically designed to achieve that effect. In other words, the Supreme Court required proof that a defendant knew not only that the cash was being transported in secret, but that the cash was being transported in secret specifically to conceal its criminal nature. The result has been an enforcement gap when it comes to intermediaries – for instance, couriers or persons who are knowingly and willfully moving concealed criminal proceeds across borders while ignorant of the overall money laundering design.

In addition, current law in at least two federal circuits holds that a defendant who transfers more than $10,000 from a commingled account – that is, an account that commingles "dirty" money with "clean" money – is entitled to a presumption that the first money moved out of the account is legitimate. This can be problematic in investigations involving human traffickers and narcotics smugglers along the Southwest border, for example, who may attempt to circumvent money laundering laws by commingling illegal proceeds with the proceeds of legitimate businesses. In practice, current law may prevent the government from pursuing money laundering charges under 18 U.S.C. § 1957 simply because some or all of the illegal proceeds were moved through a commingled account and thus cannot be counted toward the $10,000 threshold. The result has been that prosecutors are hampered in bringing cases against money launderers who have used commingled accounts to conceal the source of their funds.

b. What fixes are needed to address the issues arising from *Cuellar*, co-mingling of dirty money, and other conflicts in judicial opinions?

RESPONSE: The Administration supports the revisions in Section 4 of S. 1241, which would amend 18 U.S.C. § 1957 to clarify that the government can satisfy the statute's $10,000 threshold by showing the following: (1) that the monetary transaction involved the movement of more than $10,000 from an account in which more than $10,000 in proceeds of specified unlawful activity was commingled with other funds, or (2) that the defendant conducted a series of closely related sub-$10,000 transactions. This provision would ensure that money launderers cannot evade a Section 1957 charge by commingling dirty money with clean funds or by engaging in a series of low-dollar transactions.

In addition, the Administration supports the provisions in Section 7 of S. 1241, which aim to address the *Cuellar* decision. As noted above, the *Cuellar* decision removed prosecutors' most effective statutory weapon against persons who knowingly and willingly play an intermediary role in a multi-step money laundering operation while typically remaining ignorant of the overall money laundering design. This is true not only of couriers hired to transport currency across the nation's borders, such as the defendant in *Cuellar*, but also of persons who accept cash from relative strangers and agree to engage in transactions or transportation as directed.

Finally, the Administration supports S. 1241, Section 5's amendment to 18 U.S.C. § 1956 to allow the government the option of charging a defendant with a single count of money laundering for multiple violations "that are part of the same scheme or continuing course of conduct." When prosecuting cases in most federal judicial circuits, the government is currently not permitted to charge defendants with a single violation of the statute encompassing the entire course of conduct. Instead, each transaction must be charged as a separate count in the indictment. This provision would give the government the simpler and more practical option of charging a defendant with a single count, when relevant.

2. Bulk cash smuggling remains the most widely used method by drug traffickers to transport large sums of money across the border, but criminals are using new ways to move money.

a. Can you please explain what types of methods are now being used by criminals to move dirty money into and out of the U.S.?

RESPONSE: Criminals employ a host of methods to launder the proceeds of their crimes. Those methods range from well-established techniques for integrating dirty money into the financial system to more modern innovations that make use of emerging technologies to exploit vulnerabilities. And as economies and financial systems become increasingly global, so too do the criminal organizations and other bad actors who attempt to exploit them. These criminals use the following methods to move their illicit proceeds, often across international borders:

- Cash: Criminals routinely attempt to smuggle bulk cash across the U.S. borders, and drug trafficking is likely the most significant single source of illicit cash. Mexican

drug trafficking organizations responsible for much of the U.S. drug supply, for example, commonly rely on bulk cash smuggling, among other methods, to move drug proceeds across the U.S.-Mexico border into Mexico.

- Trade-based money laundering: Using this method, criminals move merchandise, falsify its value, and misrepresent trade-related financial transactions in an effort to disguise the origin of the illicit proceeds and integrate them into the market. The Black Market Peso Exchange, used by Colombian drug cartels, is the most well-known trade-based money laundering scheme.

- Illicit use of banks: The Bank Secrecy Act's requirements are designed to help ensure that banks avoid doing business with criminals, but criminals frequently seek to thwart or evade these requirements. They may, for example, structure cash deposits to avoid threshold reporting requirements or seek out complicit merchants. They may also misuse correspondent banking services to further their illicit purposes. Because U.S. banks may not have a relationship with the originator of the payment when they receive funds from a correspondent bank, banks may face additional challenges in evaluating the money laundering risks associated with those transactions.

- Obscured beneficial ownership: Criminals are increasingly seeking access to the U.S. financial system by masking the nature, purpose, or ownership of their accounts and the sources of their income through the use of front companies, shell companies, or nominee accounts.

- Misuse of money services businesses (MSBs): These entities can serve as a means for criminals to move money. Although MSBs have some Bank Secrecy Act obligations, because of their business model and intended purpose, individuals who use these businesses may do so in a one-off fashion, without establishing an ongoing relationship like banks maintain with their customers. This can make it more difficult to identify money laundering.

- Prepaid access cards: These cards may be used as an alternative to cash. Criminals may use them in a variety of ways; drug traffickers, for example, may convert drug cash to prepaid debit cards, which they may then use to purchase goods and services or send to drug suppliers, who can use the cards to withdraw money from a local ATM.

- Virtual currencies: These are another alternative to cash. Criminals seek to use virtual currencies to conduct illicit transactions because they offer potential anonymity, as the transactions are not necessarily tied to a real-world identity and allow criminals to move criminal proceeds quickly among countries.

b. Some argue that increasing the penalties for bulk cash smuggling would help deter this conduct. Do you agree?

RESPONSE: The Administration supports the enhanced penalties for bulk cash smuggling in Section 3 of S. 1241. Bulk cash smuggling is one of the major methods of money laundering used by international drug cartels, and the penalty is currently too low to achieve appropriate punishment and deterrence.

3. According to law enforcement, criminals have adapted their methods of cross-border money laundering to include the use of pre-paid access devices as a means to hide illicit funds moving over the border. Section 13 of S. 1241 address pre-paid access devices in part to address those concerns.

a. Does DOJ believe pre-paid access devices present a legal loophole for transitional criminal organizations to launder illicit proceeds of crime?

RESPONSE: Prepaid access cards, also known as stored value cards, may be used as an alternative to cash. Prepaid access cards provide access to funds that have been paid in advance and can be retrieved or transferred through an electronic device such as a card, code, serial number, mobile identification number, or personal identification number. They function much like traditional debit or credit cards, and can provide portable and – absent regulation – potentially anonymous ways to access funds.

Prepaid access cards may be used by criminals in a variety of ways. Criminals can direct federal or state tax authorities to issue fraudulent tax refunds on prepaid debit cards. Drug traffickers, meanwhile, may convert drug cash to prepaid debit cards, which they may then use to purchase goods and services or send to drug suppliers, who can use the cards to withdraw money from a local ATM.

Certain Bank Secrecy Act regulatory requirements apply to prepaid access products. *See* 31 C.F.R. 1010.100(ff)(4), (7) (providers and sellers of prepaid access are money services businesses) *and* 31 C.F.R. Part 1022 (regulations applicable to money services businesses); *see also* Bank Secrecy Act Regulations—Definitions and Other Regulations Relating to Prepaid Access, 76 Fed. Reg. 45403 (July 29, 2011); FinCEN, "Frequently Asked Questions regarding Prepaid Access" (March 24, 2016) (*available at* https://www.fincen.gov/resources/statutes-regulations/guidance/frequently-asked-questions-regarding-prepaid-access); FinCEN, "Frequently Asked Questions: Final Rule—Definitions and Other Regulations Relating to Prepaid Access" (Nov. 2, 2011) (*available at* https://www.fincen.gov/sites/default/files/shared/20111102.pdf).

The Administration is discussing potential concerns with the proposed changes related to prepaid access devices found in Section 13 of S. 1241, and will follow up with the Committee with any further Administration comments.

b. Can you provide specific case examples or instances where pre-paid access devices have indeed been utilized to launder illicit proceeds of crime?

RESPONSE: The Department of Justice (Department) has prosecuted cases involving the use of prepaid access cards in criminal activity. Below are two examples:

- In October 2016, an indictment was unsealed charging a total of 56 individuals and five entities for their alleged involvement in a transnational criminal organization that has victimized tens of thousands of persons in the United States through fraudulent schemes that resulted in hundreds of millions of dollars in losses. The indictment charged the defendants with conspiracy to commit identity theft, false personation of an officer of the United States, wire fraud, and money laundering. The indictment alleged that the defendants were involved in a sophisticated fraudulent scheme organized by conspirators in India, including a network of call centers in Ahmedabad, India. Using information obtained from data brokers and other sources, call center operators allegedly called potential victims while impersonating officials from the Internal Revenue Service or U.S. Citizenship and Immigration Services. According to the indictment, the call center operators then threatened potential victims with arrest, imprisonment, fines, or deportation if they did not pay taxes or penalties to the government. If the victims agreed to pay, the call centers would then immediately turn to a network of U.S.-based co-conspirators to liquidate and launder the extorted funds as quickly as possible by purchasing prepaid debit cards or through wire transfers. The prepaid debit cards were often registered using misappropriated personal identifying information of thousands of identity theft victims, and the wire transfers were directed by the criminal associates using fake names and fraudulent identifications. In 2017, 24 individuals pleaded guilty in connection with the scheme.

- An investigation by federal and state law enforcement agencies found that a North Carolina man had operated a large-scale drug trafficking organization in New Jersey and then, beginning around 2012, in Wilmington, North Carolina. Between 2012 and 2015, the organization "flooded" Wilmington with kilogram quantities of heroin. Couriers were employed to transport the heroin and heroin proceeds between New Jersey and Wilmington. The drug trafficking organization used prepaid debit cards, multiple bank accounts, and wire transfers to launder hundreds of thousands of dollars in drug proceeds. The leader of the organization was convicted of conspiracy to distribute heroin and conspiracy to launder monetary instruments; ten other individuals were convicted on a range of drug trafficking, money laundering, and other charges.

c. Can you provide specific data showing how many DOJ investigations in 2013, 2014, 2015, 2016 and 2017 (in a year-by-year breakdown) involve the use of pre-paid access devices, including:

i. The total amount of money involved in suspected money laundering efforts with regard to pre-paid access devices;

ii. A breakdown of whether those cases involved close-loop versus open-loop pre-paid access devices;

RESPONSE: While the Department gathers statistics on overall money laundering prosecutions based on the statute charged, the data does not include whether the money laundering involved

specific types of devices. Therefore, the Department cannot accurately estimate the total amount of money involved in suspected money laundering efforts with regard to prepaid access devices, or the breakdown of cases involving closed-loop versus open-loop prepaid access devices. The Organized Crime Drug Enforcement Task Forces (OCDETF) Program, however, gathers figures on the number of their cases involving certain money laundering methods, including the use of stored value cards. These figures – detailed below – provide an indication of the prevalence of this method in OCDETF's cases, almost all of which feature major drug trafficking as the underlying specified unlawful activity. OCDETF, however, does not gather data on closed-loop and open-loop prepaid access devices.

OCDETF Statistics			
Fiscal year	**Stored value cases, total**	**Total number of cases**	**Stored value cases as % of total**
2017	58	818	7.1%
2016	63	955	6.6%
2015	76	964	7.9%
2014	78	1,015	7.7%
2013	67	1,075	6.2%

Please note that a single OCDETF case may contain multiple money laundering methods. Accordingly, the prepaid card access matters described above may have also involved other types of money laundering.

d. Does DOJ believe that pre-paid access devices should be subject to the same cross border reporting requirements as other forms of monetary instruments?

RESPONSE: The Administration is discussing potential concerns with the changes proposed in S. 1241 and will follow up with the Committee with any further Administration comments.

4. With so much illegal money flowing through the U.S. financial system, it seems obvious that this should be a priority and a focus for law enforcement. Often, however, money laundering charges are an after-thought in the investigation and prosecution of drug, terrorism, or other cases.

a. Why have our law enforcement agencies not been able to identify, target, seize, and prosecute more of this illegal money flowing into our country?

RESPONSE: The Department, in coordination with our colleagues from other agencies and international law enforcement partners, has had numerous recent successes in thwarting criminals who sought to move, hide, or otherwise shelter their criminal proceeds using the U.S. financial system. But criminals will always work to exploit gaps and vulnerabilities in existing laws and regulations to find new methods to conduct their illicit transactions. New methods are always being devised, as the criminal underworld seeks to take advantage of emerging technologies and to outpace the development of new detection and investigation tools by law enforcement. Moreover, the United States has the deepest, most liquid, and most stable markets

in the world. These features of the U.S. financial system attract legitimate trade and investment, foster economic development, and promote confidence in our markets and government – but they also attract criminals and their illicit funds. Criminals will continue to use every feasible money laundering method available to them, exploiting opportunities wherever they find them.

b. What is DOJ doing to focus exclusively on investigating and prosecuting money laundering cases?

RESPONSE: The Criminal Division's Money Laundering and Asset Recovery Section (MLARS) leads the Department's anti-money laundering efforts. MLARS works in parallel with U.S. Attorneys' Offices around the country, other government agencies, and domestic and international law enforcement colleagues to pursue complex, sensitive, multi-district, and international money laundering and asset forfeiture investigations and cases. MLARS's Bank Integrity Unit, for example, investigates and prosecutes criminal cases involving financial institutions and their employees or agents who violate federal criminal statutes, including the Bank Secrecy Act, the Money Laundering Control Act, and economic and trade sanctions authorized by statute. MLARS's Money Laundering and Forfeiture Unit investigates and prosecutes professional money launderers who provide their services to criminal organizations, such as Mexican drug cartels, and – in partnership with U.S. Attorneys' Offices – litigates criminal and civil forfeiture cases. In addition, as part of its efforts to fight global corruption and money laundering on the international stage, MLARS leads the Department's Kleptocracy Asset Recovery Initiative. This initiative seeks to protect the U.S. financial system from the harmful effects of large flows of corruption proceeds, and – whenever possible – to return stolen or illicit funds for the benefit of the citizens of the affected countries. Also instrumental in the Department's anti-money-laundering efforts are the Criminal Division's Fraud Section, Computer Crimes and Intellectual Property Section, Narcotic and Dangerous Drug Section, Organized Crime and Gang Section; the Tax Division; the Civil Rights Division's Human Trafficking Prosecution Unit; the U.S. Attorneys' Offices; OCDETF; and the Department's investigative agencies, including the Federal Bureau of Investigation and the Drug Enforcement Administration. These prosecutors and investigators lend critical expertise in the predicate offenses involved in money laundering.

In addition, MLARS, OCDETF, and the Executive Office for United States Attorneys' (EOUSA) Office of Legal Education (OLE) – among others – provide extensive training on money laundering and seizing and forfeiting the proceeds of crime. These courses have been attended by attorneys, agents, investigators, and others from every judicial district, nearly every federal law enforcement agency, and numerous state and local law enforcement agencies. Training has also been delivered in every judicial circuit in the country. The following are examples of these courses:

- Beginning and Advanced Money Laundering: MLARS and OLE have offered each of these multi-day courses on the legal framework for money laundering and relevant issues each year since 1998 (except in 2014, due to sequestration). Approximately 100 prosecutors, agents, and others attend each of these courses every year.

Financial Investigations Seminar: MLARS conducts between eight and 13 sessions annually of this three-day, hands-on course covering the building blocks of a financial investigation. Thus far, nearly 10,000 attorneys, investigators, analysts, and others from a broad range of federal, state, and local agencies have attended this course, which has been offered since 2004.

- OCDETF supplements this multi-agency training through its OCDETF District-Specific Financial Investigations Training. This training is presented on-site at the request of federal prosecutors in individual judicial districts and is tailored to the district's specific needs regarding the development of financial investigations.

- Suspicious Activity Report (SAR) Review Team Training: MLARS and OLE have offered this in-depth training on using SARs in investigations and prosecutions every other year since 2002. Approximately 800 people have attended this training since its inception.

Additionally, MLARS attorneys staff a duty attorney line to field questions from prosecutors, investigators, and others from across the law enforcement community on all types of money laundering and asset recovery matters. Finally, MLARS has compiled a short-form guide to the money laundering and asset forfeiture statutes to assist prosecutors, agents, and others in pursuing these cases.

Virtually all of the federal law enforcement investigative agencies also include financial investigative and money laundering training in their initial training courses for new personnel. This training is supplemented by advanced training, which is available in person and via electronic means such as webinars and periodic updates in agency publications. Similarly, MLARS, OCDETF, and OLE sponsor multiple basic and advanced financial training seminars, webinars, and educational material for agents and prosecutors on a regular basis.

The Department publicizes its training programs widely to prosecutors, agents, task force officers, analysts, and other support personnel, including those in other federal agencies, such as the Department of Homeland Security and the Treasury Department (Treasury), as well as state, local, and tribal law enforcement agencies.

c. Can you identify how many cases DOJ indicted last year that had money laundering-related charges as the lead or sole charges in the indictment?

RESPONSE: The below chart shows the number of cases in which violations of 18 U.S.C. § 1956 (laundering of monetary instruments), 18 U.S.C. § 1957 (engaging in monetary transactions in property derived from specified unlawful activity), and 18 U.S.C. § 1960 (prohibition of unlicensed money transmitting businesses) – the primary money laundering statutes – were the lead or sole charges. Figures are shown for the fiscal years ending September 30, 2016, and September 30, 2017. Please note, however, that this data reflects matters reported by the various Department components and U.S. Attorneys' Offices, and thus may not represent all cases in such categories; moreover, this data may not reflect cases in which prosecutors

charged money laundering, but money laundering was not identified as the lead charge in the indictment.

Statute	Cases, FY ending Sept. 30, 2016	Cases, FY ending Sept. 30, 2017
18 U.S.C. § 1956	120	114
18 U.S.C. § 1957	9	16
18 U.S.C. § 1960	3	10

d. Can you identify how many open investigations focus solely on money laundering last year?

RESPONSE: The Department cannot comment on open investigations.

e. How many prosecutors does DOJ have across the country who focus solely on money laundering?

RESPONSE: As noted above, MLARS in the Department's Criminal Division has litigating units staffed with prosecutors devoted to money laundering and asset recovery investigations and cases. While the U.S. Attorneys' Offices typically do not have prosecutors focused solely on money laundering, many of these prosecutors have significant expertise in predicate offenses as well as money laundering. Federal prosecutors have secured, on average, more than 1,200 federal money laundering convictions each year, and have successfully investigated and prosecuted complex, global, and high-value money laundering cases.

Questions from Senator Crapo

1. **In both of your written statements, in Ms. Fowler's oral testimony, and in response to questions posed by Senator Whitehouse, you indicated that Treasury and DOJ are examining steps that could be taken beyond the Customer Due Diligence (CDD) rule for collecting beneficial ownership information from private entities. Specifically, that the two agencies currently examine the means by which the government would collect beneficial ownership information during the company formation and incorporation process.**

   Please describe what additional options beyond the CDD rule are currently being reviewed by Treasury and DOJ.

RESPONSE: The pervasive use of front companies, shell companies, nominees, or other means to conceal the true beneficial owners of assets is one of the greatest loopholes in this country's anti-money-laundering regime. As noted by the Financial Action Task Force in a 2016 evaluation, the lack of beneficial ownership information can significantly slow investigations because determining the true ownership of bank accounts and other assets often requires that law enforcement undertake a time-consuming and resource-intensive process. For example, investigators may need grand jury subpoenas, witness interviews, or foreign legal assistance to unveil the true ownership structure of shell or front companies associated with serious criminal conduct. Moreover, while it has recently changed with the May 11, 2018 Applicability Date for the Department of the Treasury's Customer Due Diligence Final Rule (CDD rule), the previous lack of a legal requirement to collect beneficial ownership information also undermined financial institutions' ability to determine which of their clients pose compliance risks, which in turn harms banks' ability to guard against money laundering.

The CDD Rule is a critical step toward a system that makes it difficult for sophisticated criminals to circumvent the law through use of opaque corporate structures. Important as it is, however, the CDD rule is only one step toward greater transparency. More effective legal frameworks are needed to ensure that criminals cannot hide behind nominees, shell corporations, and other legal structures to frustrate law enforcement, including stronger laws that target individuals who seek to mask the ownership of companies, accounts, and sources of funds.

The Department has reviewed and continues to consider various legislative proposals that address the collection of beneficial ownership information from private entities, as well as the new offenses proposed by S. 1241 related to beneficial ownership (Sections 18 and 19). The Administration will follow up with the Committee with any further Administration comments on these provisions.

2. **Currently, the incorporation and company formation process is regulated under state law. Over the years, several legislative proposals have been put forward that would have the effect of federalizing the company formation process and removing it from state regulation.**

Does DOJ or Treasury believe that it is feasible or appropriate for Congress to pass legislation that would federalize this process and negate the laws in each of the 50 states?

RESPONSE: As noted above, the Department has reviewed and continues to consider various legislative proposals that address the collection of beneficial ownership information from private entities.

3. **One of the issues we have heard about regarding the difficulty of addressing the issue of company beneficial ownership information is the standard by which an individual qualifies as a beneficial owner, such that their information should be provided to the federal government. In its CDD rule, and after much consideration and public comment, Treasury adopted a clear 25 percent ownership threshold, such that no more than five individuals would be disclosed as beneficial owners. In considering legislation addressing company beneficial ownership, do you agree that Congress should align the definition of beneficial owner with that in the CDD rule?**

RESPONSE: The CDD rule is a critical step toward a system that makes it difficult for sophisticated criminals to circumvent the law through use of opaque corporate structures. The collection of beneficial ownership information under the CDD rule will generate better law enforcement leads and speed up investigations by improving financial institutions' ability to monitor and report suspicious activity, and will also enable the United States to better respond to foreign authorities' requests for assistance in the global fight against organized crime and terrorism. But at the same time, more effective legal frameworks are needed to ensure that criminals cannot hide behind nominees, shell corporations, and other legal structures to frustrate law enforcement, including stronger laws that target individuals who seek to mask the ownership of companies, accounts, and sources of funds.

As noted above, the Department has reviewed and continues to consider various legislative proposals that address the collection of beneficial ownership information from private entities.

Questions on Titles 18 and 31 of the U.S. Code:

4. **Section 6 makes significant changes to 18 USC 1960. What is the potential impact on industry and on AML supervision of broadening the scope of 1960 to include all MSBs?**

RESPONSE: The Administration is discussing potential concerns with these proposed changes and will follow up with the Committee with any further Administration comments.

5. **What is the potential impact on industry and on BSA supervision of imposing an aggravated penalty for transactions?**

RESPONSE: The Administration is discussing potential concerns with these proposed changes and will follow up with the Committee with any further Administration comments.

6. **What impact would the inclusion of "digital currencies" in the statutory definition of financial institution under the BSA have on industry and the current AML regulatory structure?**

RESPONSE: With respect to S. 1241's amendments to 31 U.S.C. § 5312(a)(2)(K) related to digital currency, the Administration is discussing potential concerns with these proposed changes and will follow up with the Committee with any further Administration comments.

7. **How does the criminal activity created in sections 18 and 19 of the bill affect current AML supervision and compliance for financial institutions?**

RESPONSE: The Administration is discussing potential concerns with the proposed offenses in sections 18 and 19 and will follow up with the Committee with any further Administration comments.

8. **How are the broad forfeiture provisions in sections 18 and 19 connected to the criminal activity in the proposed additions to title 31?**

RESPONSE: The Administration is discussing potential concerns with the proposed offenses in sections 18 and 19 and will follow up with the Committee with any further Administration comments.

9. **How would broadening the definition of monetary instrument to intangible instruments and payment channels affect the reporting requirements and the thresholds?**

RESPONSE: The Administration is discussing potential concerns with these proposed changes and will follow up with the Committee with any further Administration comments.

Questions from Senator Kennedy

1. **Should we index the $10,000 standard we use for reporting monetary possession in terms of present dollar value and inflation?**

RESPONSE: Law enforcement relies extensively on Currency Transaction Reports (CTRs) and SARs in civil and criminal investigations and prosecutions, including those involving money laundering and terrorist financing. The Department uses the information contained in these filings – on both a proactive and reactive basis – to carry out investigations of specific individuals and entities and to identify leads, connect the dots, and otherwise advance investigations in their early stages. A change in the $10,000 trigger for CTRs would decrease CTR filing and reduce law enforcement's access to information regarding the use of cash. This change in the thresholds for CTR reporting could eliminate an array of data that provides critical leads and information for law enforcement when pursuing investigations and prosecutions. Bulk cash smuggling remains a significant money laundering threat – even as legitimate transactions move increasingly to electronic formats. Any change to the $10,000 reporting amount must be carefully balanced against the risk of law enforcement losing visibility into certain cash and suspicious transactions.

2. **Every year, many wealth measurement companies come out with a list of the world's wealthiest individuals. Putin, Saddam Hussein, Muammar Gaddafi – They all had or have billions. How many financial supporters of terrorism are in these lists? Now and in past years? Which world leaders have or have ever used their net worth to support terrorism?**

RESPONSE: As part of Treasury's broader enforcement efforts, the Office of Foreign Asset Control (OFAC) lists individuals, groups, and entities – including terrorists and narcotics traffickers – designated under OFAC programs. Accordingly, the Department defers to Treasury for further comment on its designations.

3. **If someone has online banking access on a cell phone and their bank account exceeds $10,000, would they be carrying digitally-accessible currency across the border like this bill prohibits?**

RESPONSE: Under the Currency or Monetary Instruments Reports (CMIR) statute, 31 U.S.C. § 5316, an individual transporting monetary instruments with an aggregate value exceeding $10,000 into or out of the United States is required to file a CMIR with U.S. Customs and Border Protection (CBP). Monetary instruments are defined in 31 U.S.C. § 5312(a)(3) and 31 C.F.R. § 1010.100(dd). Under current regulations, "monetary instruments" are defined to include, among other things, currency, traveler's checks in any form, and negotiable instruments (*e.g.*, checks), securities, or stock in bearer form or otherwise in such form that title passes on delivery.

S.1241, as proposed, would expand the definition of "monetary instruments" in section 5312(a)(3)(B) to include "prepaid access devices." The Administration is discussing potential

concerns with these proposed changes and will follow up with the Committee with any further Administration comments.

4. **Are there any unintended consequences that could derive from this bill? If this bill raises regulations and oversight on these digital capabilities – do you think it will push criminals more towards cash or other methods?**

RESPONSE: Criminals will always strive to exploit gaps and vulnerabilities in existing laws and regulations to find new methods to conduct their illicit transactions and abuse and weaken our financial system and economy. As criminal organizations seek to take advantage of emerging technologies and to outpace the development of new detection and investigation tools by law enforcement, the Department draws on the full complement of its law enforcement tools. S. 1214 is designed to strengthen existing law enforcement tools and provide new ones. The Administration supports many of this bill's provisions, although we are continuing to discuss potential concerns with several specific provisions, namely Section 6, Illegal Money Services Businesses; Section 13, Prepaid Access Devices, Digital Currencies, or Other Similar Instruments; Section 15, Obtaining Foreign Bank Records from Banks with U.S. Correspondent Accounts; Section 18, Prohibition on Concealment of Ownership of Account; and Section 19, Prohibition on Concealment of the Source of Assets in Monetary Transactions. We will follow up with the Committee with any further Administration comments as to those provisions.

Otherwise, the bill would – among other things – increase the maximum penalty for bulk cash smuggling, ensure that money launderers cannot evade money laundering charges by commingling dirty with clean funds or by engaging in a series of low-dollar transactions, and close an enforcement gap related to intermediaries. These intermediaries include, for instance, couriers or persons who agree to engage in transactions or transportation as directed for cash and who may be ignorant of the overall money laundering design yet are knowingly and willfully moving concealed criminal proceeds across borders. By strengthening these authorities and closing legal loopholes, S. 1241 would enable the Department to more effectively confront the broad array of methods used by criminals to launder their illicit proceeds.

Questions from Senator Franken

1. **Please explain any steps the Department of Treasury and bank regulators are taking to coordinate with the Department of Justice regarding enforcement of laws and regulations relating to money transfers to individuals in Somalia.**

RESPONSE: The Department and Treasury work in close partnership on money laundering-related regulatory and enforcement matters generally. On this specific issue of money transfers to individuals in Somalia, the Department defers to its colleagues at Treasury.