Hearing before the Senate Committee on the Judiciary
"S. 1241: Modernizing Anti-Money Laundering Laws to Combat Money Laundering and Terrorist Financing"
To Deputy Assistant Secretary Jennifer Fowler

Senator Charles E. Grassley

1. 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.?

    Answer: Bulk cash smuggling is one of the main methods used by drug traffickers to move drug cash proceeds from the U.S. back to the cartels in Mexico, but they also utilize the regulated financial system—foreign correspondent accounts and money service businesses—to move illicit proceeds.

    The 2015 U.S. National Money Laundering Risk Assessment (NMLRA) found that main methods to move dirty money involve exploiting a number of vulnerabilities, including (1) use of cash and monetary instruments in amounts under regulatory recordkeeping and reporting thresholds; (2) opening bank and brokerage accounts using nominees to disguise the identity of the individuals who control the accounts; (3) creating legal entities without accurate information about the identity of the beneficial owner; (4) misuse of products and services resulting from deficient compliance with anti-money laundering obligations; and (5) merchants and financial institutions wittingly facilitating illicit activity.

    Additionally, trade-based money laundering (TBML) is the process of disguising the origin of criminal proceeds through the import or export of merchandise and trade-related financial transactions. The 2015 U.S. NMLRA found that most TBML cases involved a complicit merchant or front company in the United States that accepted illicit proceeds in exchange for goods shipped. According to U.S. law enforcement, TBML is one of the more complex methods of money laundering to investigate, particularly because it involves complicit merchants and cross border investigations once a TBML scheme is detected.

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

    Answer: We are supportive of any effort to increase the criminal penalties from five to 10 years for professional bulk cash smugglers and, in particular, are supportive of enhanced fines in cases in which the defendant violates the bulk cash smuggling statute while also violating another federal law.

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

    Answer: Treasury does not believe that there is a regulatory loophole with respect to prepaid cards issued in the United States. Since 2011, under amended Bank Secrecy Act regulations, providers of open loop prepaid access must conduct customer identification and verification at zero dollar thresholds for prepaid cards that can exceed $1,000 in value or that permit international transmittal or person-to-person transfer or can be reloaded from non-bank sources. In addition, sellers of prepaid cards must also establish procedures to verify the identity of persons who obtain prepaid access (open or closed loop) to funds that exceed $10,000 per person during any one day, whether or not under a prepaid program, unless the seller has implemented policies and procedures reasonably adapted to prevent such a sales.

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

    Answer: When used for illicit purposes, branded general purpose reloadable prepaid debit cards can be used to cash out the proceeds of fraud and as an alternative to cash in much the same way that money orders, travelers' checks, and nonbank wires are used. However, the use of domestic or foreign-issued prepaid cards is not a preferred method for large-scale money laundering in the United States in comparison to other methods, and there are few documented examples of their use by criminals.

3. 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?

    Answer: United States law enforcement authorities use a variety of investigative techniques to identify potential money laundering (ML) activity. Most criminal investigations involving allegations of financial crime focus on proving the underlying criminal activity and, where the activity generates proceeds, how those illegal proceeds were generated and whether they can be forfeited. ML investigations tend to be large, complex investigations, often with international components. Due to the size of these investigations, special funding is often sought through internal agency channels to support an efficient and expeditious

process. U.S. prosecutors lean towards identifying all targets that could potentially be charged before bringing forth an indictment. ML investigations often require enhanced investigative techniques that are deployed over time, such as wiretaps and undercover operations. Law enforcement efforts to prevent or disrupt ML activity are thus not easily captured by statistics. The Financial Action Task Force Assessment of the United States in 2016 found that the United States is confiscating the proceeds and instrumentalities of crime effectively, based on domestic and foreign predicates. This includes proceeds that have been moved to other countries.

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

Answer: A number of Treasury components focus on investigating money laundering, including FinCEN and the Internal Revenue Service-Criminal Investigation (IRS-CI). IRS-CI is focused on developing investigations relating to numerous types of crimes using a combination of tax and publicly available information. Treasury has created a created program area with IRS-CI relating to Third Party Money Laundering (3PML) to ensure the availability of major case funding to combat the high costs generally associated with complex financial investigations. Our 3PML initiative, administered through Treasury's Executive Office of Asset Forfeiture (TEOAF), is aimed at disrupting professional money laundering networks and mechanisms. Ensuring that IRS-CI has proper infrastructure and resources in order to work significant financial investigations is the major goal of our program. We also fully support the DOJ efforts to identify and dismantle money laundering professionals and organizations. Other agencies such as the Department of Homeland Security's (DHS) Immigration and Customer's Enforcement (ICE), and the Drug Enforcement Administration (DEA) also play a broad role investigating and disrupting money laundering infrastructures.

4. In 2009, Congress imposed a statutory deadline on Treasury to issue regulations in final form implementing the Bank Secrecy Act, regarding the sale, issuance, redemption, or international transport of stored value, including stored value cards, to make pre-paid access devices subject to cross-border reporting requirements. Nearly a decade later, no action has been taken.

a. What is the current status of the proposed rule?

Answer: Much has changed over the last half decade, both with respect to our knowledge about the misuse of prepaid cards and the regulatory framework. Notably, while money launderers use all types of financial institutions and products to launder funds, including prepaid cards, the scale of misuse of prepaid cards is limited versus other methods.

In 2011, FinCEN began regulating prepaid access providers as money services businesses, imposing anti-money laundering and combating the financing of terrorism obligations on those providers. Under this rule, providers of open loop prepaid access must conduct customer identification and verification at zero dollar thresholds for prepaid cards that can exceed $1,000 in value, or that permit international transmittal or person-to-person transfer, or that can be reloaded from non-bank sources.

In addition, pursuant to guidance issued by FinCEN and other federal financial regulators in 2016, today, sellers of prepaid cards must also establish procedures to verify the identity of persons who obtain prepaid access (open or closed loop) to funds that exceed $10,000 per person during any one day, whether or not under a prepaid program, unless the seller has implemented policies and procedures reasonably adapted to prevent such sales.

The rule was withdrawn under the previous Administration, because there was insufficient evidence demonstrating a threat.

Senator Crapo

Beneficial Ownership

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.

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

    Answer: Treasury is familiar with several proposed bills that would require the collection of beneficial ownership information at the time of company formation. At the time of this hearing, Treasury is reviewing the various legislative proposals and looks forward to working with Congress to support legislation that addresses the issue.

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.

    a. 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?

Answer: At the time of this hearing, Treasury is aware of options in proposed legislation to report beneficial ownership information at the State or the Federal level. We are evaluating the proposals and look forward to working with Congress to support legislation that addresses the issue of reporting beneficial ownership information at the time of company formation.

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.

    a. 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?

    Answer: At the time of this hearing, Treasury is aware of options in proposed legislation to report beneficial ownership information at the State or the Federal level. We are evaluating the proposals and look forward to working with Congress to support legislation that addresses the issue of reporting beneficial ownership information at the time of company formation. In terms of the beneficial ownership definition used in the CDD rule, it was developed after years of outreach with the financial industry and law enforcement. We believe that the resulting 25 percent ownership threshold appropriately balances the benefit to law enforcement against the burdens to legitimate legal entities from a lower mandatory threshold.

Titles 18 and 31 of the U.S. Code.

1. 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?

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

3. 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?

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

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

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

Answer to Questions (1) through (6)
We agree with the goal of strengthening the government's ability to combat money laundering, terrorist financing, and other financial crimes. There are many parts of the bill that we support, such as expanding the predicate for money laundering to all unlawful activity, not just specified acts. There are other sections that, as drafted, could have limited effectiveness and unintended negative consequences. We look forward to discussing these issues with Committee staff. We stand ready to discuss these issues with Committee staff. To this end, we propose an in-person meeting with DOJ, Treasury, and Committee and Member staff.

Senator John Kennedy

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

Answer: Financial intelligence generated by financial institutions, including currency and suspicious activity reports, is extremely important for law enforcement as it pursues money laundering and terrorist financing investigations. We recognize the value of evaluating whether reporting thresholds are set at a level appropriate to today, and if any changes to the thresholds would undermine law enforcement's ability to investigate and prosecute financial and other crimes. Treasury is currently conducting data-driven analysis of Currency Transaction Reports (CTRs) and Suspicious Activity Reports (SARs) to inform the decision making process. We also continue to discuss the threshold issue with law enforcement and other relevant stakeholders in the Bank Secrecy Act Advisory Group (BSAAG) and other fora to determine whether any changes to reporting levels would be appropriate.

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?

Answer: An individual does not need to be extraordinarily wealthy to be a significant financial facilitator for a terrorist group. Some of the key terrorist financiers designated by Treasury have raised hundreds of thousands or even millions of dollars, significant sums that can support terrorist groups for an extended period of time, but nowhere near the amount of money held by the world's wealthiest individuals.

Nevertheless, Treasury has used its authorities aggressively to target individuals, entities, and governments who provide financial, material, technological, or other support to terrorist groups around the world. To take action against national governments that support terrorism, the State Department has designated several countries as a state sponsor of terrorism (SST). A designation as a SST results in sanctions that include: restrictions on U.S. foreign assistance; a ban on defense exports and sales; certain controls over exports of dual use items; and miscellaneous financial and other restrictions. Currently Sudan, Syria, Iran, and North Korea are designated as SSTs. Treasury designated Saddam Hussein and many members of his family pursuant to a sanctions program providing for the blocking and transfer of their assets back to the post-Saddam Hussein Government of Iraq. Treasury has also designated senior Iranian government officials for providing financial, material, technological or other support to terrorist groups, and several Syrian government officials pursuant to other sanctions programs. Treasury's designations of individuals results in their assets being blocked and prohibits U.S. persons from dealing with them.

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?

   Answer: No. It does not matter whether the bank account can be accessed by a mobile phone application or by a debit card tied to the bank account. In either case, the currency would not cross the border, it would remain in the bank account. Only the amount that was actually transferred from the bank account and withdrawn in currency, for example, from an ATM, would conceivably constitute cross-border transport of currency. In addition, U.S. banks strictly limit the daily amount of cash that can be withdrawn via ATM from a given account.

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?

   Answer: We agree with the goal of strengthening the government's ability to combat money laundering, terrorist financing, and other financial crimes. There are many parts of the bill that we support, such as expanding the predicate for money laundering to all

unlawful activity, not just specified acts. There are other sections that, as drafted, could have limited effectiveness and unintended negative consequences. We stand ready to discuss these issues with Committee staff. To this end, we propose an in-person meeting with DOJ, Treasury, and Committee and Member staff.

Senator Al Franken

1. During your testimony, you noted that the Department of Treasury is in the process of conducting a study of issues related to money transfer services for individuals in Somalia. What is the status of that study? Do you expect it to be submitted to Congress within the 270 day timeline required by law?

   Answer: The Treasury Department has begun the process of answering this requirement. Specifically, so far we have consulted with the federal banking agencies and started to do preliminary research interviews and outreach. We do anticipate completing the study within the required timeframe.

2. 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.

   Answer: Treasury and the federal regulators maintain close and ongoing dialogue and coordination with Justice on federal laws related to all forms of money transfer regardless of origin or destination. We continue to work together in international bodies, such as the FATF, and in outreach efforts to the private sector to ensure that our laws and regulations are adequate and well understood. For example, Treasury and Justice both participate in the BSAAG and coordinate closely on the issuance of relevant guidance, such as our 2016 correspondent banking fact sheet, as well as enforcement actions for Money Services Businesses.

Senator Mazie K. Hirono

At the hearing, I asked you about the recent announcement by the Treasury Department's Financial Crimes Enforcement Network that it was requiring U.S. title insurance companies to identify the beneficial owners of shell companies used in certain high-end real estate transactions in seven metropolitan areas, one of which was Honolulu.

1. What is currently being done to coordinate efforts among federal, state, and local governments to ensure that these real estate transactions are not used to launder money without chilling legitimate purchases?

Answer: The purpose of the Financial Crimes Enforcement Network (FinCEN) Geographic Targeting Orders (GTOs) is to better understand the money laundering risks that exist in the real estate sector. Specifically, the GTOs are collecting information to identify the beneficial owners of shell companies used to purchase luxury real estate in certain metropolitan areas for cash (i.e., with no external financing), which FinCEN identified as being particularly vulnerable to misuse by criminals.

The FinCEN GTOs are an information gathering tool to further inform law enforcement investigations into money laundering in the real estate market. FinCEN's advisory about the GTOs to financial institutions and real estate professionals provided information about the money laundering risks associated with this particular type of real estate transaction. The advisory also provided real estate professionals with indicators to help determine if a transaction is suspicious, and reminded them that they could report suspicious transactions voluntarily.

2. What more can be done to further such coordination efforts?

Answer: FinCEN has conducted outreach to law enforcement, regulatory partners, and industry in connection with the GTOs, enhancing our understanding of the money laundering vulnerabilities in this sector of the real-estate industry.