



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C.

February 9, 2024

The Honorable Tim Scott
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate
Washington, DC 20510

Dear Ranking Member Scott:

Thank you for your January 19, 2024, letter concerning the Financial Crimes Enforcement Network (FinCEN) and the ways in which FinCEN supported law enforcement in the aftermath of the violent attack on the U.S. Capitol on January 6, 2021, to help identify those responsible and bring them to justice. To date more than 1,200 people have been charged with crimes in connection with the Capitol attack and nearly 900 have been convicted.

FinCEN and the Department of the Treasury (Treasury) take the matters described in your letter extremely seriously. FinCEN's mission is to safeguard the financial system from illicit use, combat money laundering and its related crimes including terrorism, and promote national security through the strategic use of financial authorities and the collection, analysis, and dissemination of financial intelligence. FinCEN is deeply committed to fulfilling this important national security and criminal justice mission in accordance with the law.

As you may know, new leadership took over at FinCEN within the past six months. While we have provided some additional background here, we are still working to ensure that we fully understand FinCEN's activities in supporting the Department of Justice (DOJ) and other law enforcement agencies in the aftermath of the January 6 Capitol attack and in advance of the 2021 Inauguration.

FinCEN and the Bank Secrecy Act

FinCEN's mandate encompasses several roles and responsibilities. First, pursuant to the Bank Secrecy Act (BSA), FinCEN is authorized to collect, analyze, and disseminate financial intelligence to law enforcement, national security, and regulatory agencies for use in connection with criminal investigations and related matters.¹ In this capacity, FinCEN promulgates regulations regarding the filing of certain information by financial institutions and individuals, and FinCEN is also responsible for "maintain[ing] a government-wide access service" to provide authorized users with access to this important data that is extremely valuable to law enforcement.² Second, FinCEN regulates financial institutions for compliance with the BSA and its implementing regulations. In this capacity, FinCEN brings enforcement actions against

¹ 31 U.S.C. 310(c).

² *Id.*

financial institutions and other regulated entities for failure to comply with the BSA and its regulations. Finally, FinCEN serves as the Financial Intelligence Unit (FIU) of the U.S. government, and as such is responsible for receiving (and, as permitted, requesting), analyzing, and disseminating to competent authorities financial information related to certain criminal activity.

BSA Reporting

One of the key sources of information that FinCEN uses to carry out its mission are suspicious activity reports (SARs), which are filed by banks and other financial institutions that possess customer transaction information. The BSA requires that a bank or other financial institution file a SAR whenever it identifies “a suspicious transaction relevant to a possible violation of law or regulation.”³ SARs constitute critical tip-and-lead information that helps law enforcement identify, stop, and apprehend criminal actors. SARs contain personally identifiable information about individuals and entities, details about financial transactions, and unconfirmed information regarding potential violations of law or regulation, and as such they are subject to strong confidentiality protections under the law, and FinCEN takes its responsibility to safeguard SAR information extremely seriously.

Law enforcement agencies use BSA reporting in investigations and prosecutions of criminal activities to detect, target, and disrupt illicit financial networks that threaten our national security. BSA data is used across many types of criminal investigations—from fentanyl and other drug trafficking matters, human trafficking, organized and other violent crime, fraud, public corruption, and other financial crime, as well as national security matters such as sanctions. DOJ and other law enforcement agencies also use information generated from SARs and other BSA reporting on both a proactive and reactive basis in investigations of individuals and entities to identify leads, “connect the dots,” and otherwise expand ongoing investigations. This information is also critical to the ability of law enforcement to identify broader trends and risks in illicit finance.

Banks and other financial institutions subject to the BSA are responsible for maintaining their own anti-money laundering (AML) programs, which must be designed, among other things, to ensure their compliance with the BSA and to assist them in detecting and reporting suspicious activity.⁴ While FinCEN and the prudential regulators provide general guidance to and oversight of banks concerning what constitutes an effective AML program, it is ultimately the banks’ responsibility to ensure that their AML programs are effective; that they file SARs in accordance with the law; and that their AML programs effectively detect and report suspicious activity on their networks. It is also the banks’ responsibility to ensure that they comply with all applicable financial privacy laws.

FinCEN Exchange Program

AML programs benefit from banks engaging with the government, so that banks are aware of law enforcement’s highest priorities and can benefit from current information about

³ 31 U.S.C. § 5318(g)(1).

⁴ 31 U.S.C. § 5318(h).

trends and patterns in money laundering and other crimes. As criminal enterprises expand and adapt, these public-private partnerships between banks and law enforcement are all the more important. By understanding how criminal actors operate financially, banks can design better and more effective AML programs. Similarly, these partnerships allow law enforcement to provide guidance to financial institutions, through FinCEN, on the most useful information to include in SARs—which leads to better, more effective SAR reporting by banks and, in turn, helps law enforcement detect and deter criminal activity.

Congress recognized the value of this public-private information exchange when it enacted—with bipartisan support—the Anti-Money Laundering Act of 2020 (AML Act). The AML Act codified a voluntary program, called FinCEN Exchange, to facilitate the sharing of information between law enforcement, FinCEN, and financial institutions for the purpose of disrupting money laundering, terrorism financing, and other crimes.

FinCEN Exchange is a valuable tool not just for our law enforcement partners, but for the financial institutions themselves. FinCEN and Treasury greatly appreciate the bipartisan support for this program, which FinCEN has used to advance law enforcement efforts on a variety of topics of critical importance to national security, criminal justice, and that of our allies. For example, recent FinCEN Exchange events have addressed: Russian sanctions evasion; the terrorist financing networks that support Hamas; fentanyl trafficking; human smuggling; and the abuse of the digital financial ecosystem by North Korea.⁵ In these Exchange events, law enforcement or FinCEN have shared critical information on financial methods used by bad actors and ways in which they try to evade detection, which in turn enhances the ability of participating banks to improve their AML programs and better identify and report illicit activity.

Participation in FinCEN Exchange is voluntary, and no bank is required to implement changes to their AML programs based on the information shared. Further, banks continue to use their judgment in assessing transaction information holistically, as reflected in their overarching AML program, to determine whether it is required to be reported under the BSA.

FinCEN Exchange Events Relating to the January 6 Attack on the Capitol

In the wake of the violent assault on the U.S. Capitol on January 6, 2021, FinCEN convened a series of FinCEN Exchange events. While we are still looking into the details of these events, we understand that these FinCEN Exchange events included government and private sector representatives who voluntarily participated in discussions and information exchanges focused on identifying the perpetrators of this attack and providing support to ongoing law enforcement investigations. The purpose of these FinCEN Exchange events was for law enforcement, FinCEN, and banks to share trends, analysis, and information that banks could consider incorporating into their existing AML/CFT programs to more effectively identify perpetrators of crimes during the January 6 attack or individuals who may have been plotting or conspiring to disrupt the 2021 Inauguration.

As part of these Exchange events, which began shortly after January 6 under the prior Administration, FinCEN and banks shared information about methodologies that banks could

⁵ See <https://www.fincen.gov/resources/fincen-exchange/fincen-exchange-press>.

consider using as part of their AML/CFT programs to identify indicia of suspicious activity relevant to the January 6 attack on the Capitol or threats of violence in connection with the then-upcoming presidential Inauguration.⁶ Many of these typologies were based on previous efforts to develop robust AML/CFT programs that could identify specific types of illegal activity, including activity related to violent extremists or active shooters. For example, one typology suggested methodologies for identifying active shooters based on, for example, series of large weapons-related purchases from multiple stores over a short period of time, in a pattern that was out of the ordinary for the customer, which was to be considered together with other indicators that the customer had already or was about to engage in imminent, mass violence—not to identify normal, lawful gun purchases.

FinCEN provided these typologies so that the participating banks could integrate this information into their AML/CFT programs to the extent they found it helpful. Banks consider a variety of factors and inputs as part of their AML/CFT efforts, including a bank’s existing knowledge of its customers and their histories and information about the nature and purpose of specific transactions. No one specific word or transaction code included in these typologies was designed to be used in isolation to “flag” or “target” any individuals. Rather, to the extent key words or phrases were suggested, it was expected they would be used alongside other factors and data that banks regularly analyze as part of their AML programs to detect and report suspicious activity. For example, a document distributed on January 15, 2021 suggested that banks could review payment messages for indications that an individual participated in the assault on the Capitol and included terms such as “antifa,” “MAGA,” “Trump,” “Biden,” “Kamala,” “Schumer,” and “Pelosi,” along with terms indicating an intent to do violence, such as “shoot,” “kill,” “murder” and “storm the Capitol.”

We understand that FinCEN convened these Exchange events starting under the prior Administration and continuing until approximately mid-February 2021. During this time period, law enforcement was actively investigating the January 6 Capitol attack and was also concerned about efforts to disrupt or threaten the upcoming presidential Inauguration. FinCEN’s primary role through these Exchange events was to support law enforcement efforts.

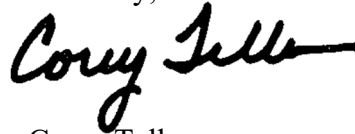
* * * * *

AML programs and the resulting suspicious activity reporting are a vital part of the government-wide effort to prevent the financial system from being used to finance terrorism, drug trafficking, money laundering, and other crimes, and ensure that those who use the financial system for illicit ends are brought to justice. While FinCEN provides guidance, it is ultimately a bank’s responsibility to determine when—consistent with the BSA and its implementing regulations—a bank must file a SAR. Once filed, FinCEN takes its obligations to safeguard BSA data, including SARs, extremely seriously for many reasons, including to protect the privacy and civil liberties of citizens who use the financial system.

⁶ In mid-January 2021, law enforcement publicly warned of violence in connection with the upcoming inauguration. See <https://www.foxnews.com/us/fbi-warns-substantial-danger-explosives-protests-domestic-hot-spots-outside-capitol>.

Thank you again for your continued support for the people and mission of FinCEN.
Please reach out to the Office of Legislative Affairs if you have further questions.

Sincerely,

A handwritten signature in black ink that reads "Corey Tellez". The signature is written in a cursive style with a long horizontal stroke at the end.

Corey Tellez
Acting Assistant Secretary
Office of Legislative Affairs

cc: The Honorable Sherrod Brown, Chairman