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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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February 25, 2016

The Honorable Jacob Lew
Secretary of Treasury
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

Dear Secretary Lew:

Recent events at home and abroad have reinforced the need for a decisive U.S. strategy for defeating the Islamic State. A critical piece of the effort to defeat ISIL at its core relies on the need to disrupt their funding mechanisms and prevent them from exploiting the international financial system. As the richest terrorist group in the world, with an estimated \$2 billion in its reserve, the U.S. and its allies must stop ISIL from raising, moving and using funds. That hinges on having strong financial intelligence and an effective toolkit to support action.

As you know, the Senate Finance Committee has responsibility to conduct oversight of many Treasury Department functions, including efforts related to financial crimes and terrorist financing. In light of the threat the U.S. faces from well-funded global terrorist organizations, I want to be sure that our government is doing everything possible stop the flow of terrorist finances.

One issue I am particularly concerned with is beneficial ownership. There have been numerous examples of anonymous U.S. shell companies used as vehicles for terrorist financing and other crimes. When Viktor Bout, “the merchant of death,” was convicted of conspiring to sell millions of dollars’ worth of weapons to the FARC, an OFAC-designated terrorist organization, he controlled a vast network of shell corporations, several of which were in the United States, including one suspected of having provided weapons to the Taliban.¹ In another case, an anonymous U.S. company called the Assa Corporation owned a large share of a Manhattan skyscraper. In 2007, Assa wire transferred about \$4.5 million in rental payments to Bank Melli, an Iranian bank that was designated by OFAC as a key financier to Iran’s nuclear and ballistic missiles program.²

¹ *Evaluating the Security of the U.S. Financial Sector: Hearing Before the H. Task Force to Investigate Terrorism Financing*, 113th Cong. (2015) (Written Testimony of Cyrus R. Vance, Jr., New York County District Attorney).

² Press Release, U.S. Department of Treasury, Treasury Designates Bank Melli Front Company in New York City (Dec. 12, 2008).

Anonymous shell companies have also been at the center of other abuses within the Committee's jurisdiction. In 2010, Michel Haurte was sentenced to 22 years in prison after using a network of 29 shell companies in several states to defraud Medicare, using the entities to submit claims of more than \$50 million.³ Furthermore, shell corporations are often at the heart of tax evasion schemes, and recent reports indicate that foreign nationals are now beginning to stash their wealth in anonymous U.S. companies as a means of avoiding information sharing requirements.⁴

To assist my review of this matter, I ask that you provide the following information by March 18, 2016:

Beneficial Ownership Authority

- Officials at the Office of Terrorist Financing and Financial Crimes have indicated to my staff that lack of beneficial ownership information has been an impediment to combating terrorist financing. This year's White House budget again included a beneficial ownership proposal which would require all entities formed in the U.S. to obtain an employer identification number from the IRS, a process which requires submitting beneficial ownership information. The IRS would then maintain a database of beneficial ownership information to share with law enforcement. I believe this approach will be unworkable for the foreseeable future. Does Treasury have a preferred alternative proposal? A current Senate proposal would require each State to collect beneficial ownership information and maintain databases of that information. Would such an approach give Treasury adequate access to the beneficial ownership information necessary to combat terrorist financing? A similar House proposal would give authority to the Treasury to collect beneficial ownership information. If such a proposal was implemented, does the Treasury have the resources necessary to collect such information without relying on the IRS?
- The Financial Crimes Enforcement Network (FinCen) has a pending rulemaking regarding customer due diligence requirements for financial institutions. I am concerned that the "ownership" definition contained in this proposed rule is too weak, setting up a standard that could easily be circumvented through minimal legal structuring. The proposed definition is weaker than the standard defined by Congress when it passed FATCA. FinCen even notes that many financial institutions already use the standard defined by Congress. Please explain why the proposed rules contain this lower ownership standard. Has any analysis been conducted concerning the ability of wrongdoers to avoid beneficial ownership disclosure under the proposed definition versus under the definition passed by Congress?

³ Press Release, Federal Bureau of Investigation, Miami Resident Sentenced to 22-Year Prison Term for Medicare Fraud Scheme; Five Others Sentenced to Jail Terms (Jan. 27, 2010).

⁴ Jesse Drucker, *The World's Favorite New Tax Haven Is the United States*, Bloomberg, Jan. 27, 2016.

- FinCen’s proposed rules concerning customer due diligence for financial institutions define “control” as “an individual with significant responsibility to control, manage, or direct a legal entity customer, including (A) An executive officer or senior manager; or (B) Any other individual who regularly performs similar functions.” I am concerned that this language would not identify natural persons who control legal entities, but rather anonymous trusts or shell corporations who may be serving as directors and shareholders. Please explain whether FinCen believes the proposed language is adequate to identify the natural persons who control the legal entities at issue.

Information Sharing

- This year’s White House budget again proposed requiring certain financial institutions to report account balances for U.S. accounts held by foreign persons. Would this requirement lead to increased intergovernmental information sharing? How would this assist the U.S. in stopping the flow of terrorist finances?

I appreciate your prompt response to these important questions. If you have any questions, please have your staff contact Dan Goshorn at (202) 224-7800.

Sincerely,



Ron Wyden
Ranking Member