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CONGRESSIONAL TESTIMONY

"Financial Privacy in a Free Society: Balancing the Needs of Citizens, Small Businesses, and Government"

Testimony before

The Committee on Ways and Means

Subcommittee on Oversight

United States House of Representatives

at a hearing on

"The Pandora Papers and Hidden Wealth"

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My name is David R. Burton. I am Senior Fellow in Economic Policy at The Heritage Foundation. I would like to express my thanks to Subcommittee Chair Pascrell, Ranking Member Kelly, and members of the committee for the opportunity to be here this morning. The views I express in this testimony are my own and should not be construed as representing any official position of The Heritage Foundation.

Financial Privacy Matters

Financial and personal privacy is a key component of life in a free society. In a free society, individuals and businesses enjoy a broad private sphere free of government involvement, surveillance, and control.[1] The U.S. financial regulatory framework is increasingly inconsistent with these ideas. We should be under no illusion whether personal and financial privacy are inextricably linked. A government, or a private organization for that matter, that knows everything about our financial life will know virtually everything about our private life including our business, political, social and religious associations and inclinations, what we buy and own, where we travel and more. Ever-increasing surveillance and mandatory reporting endanger the freedom of the American people. The recent controversy over the Biden administration's proposed bank account surveillance program demonstrates that Americans care about financial privacy.[2]

The current regulatory regime is overly complex and burdensome, and its ad hoc nature has likely impeded efforts to combat terrorism, enforce laws, and collect taxes. Moreover, the current framework appears to be grossly cost ineffective. To better meet the needs of the citizens these laws are meant to serve, regulators must develop better information about the costs and benefits of the current regime and Congress must implement reforms reducing the burden and intrusiveness of these rules.[3] At the very least, Congress should stop making the problem worse.

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[1] David R. Burton and Norbert J. Michel, "Financial Privacy in a Free Society," Heritage Foundation Backgrounder No. 3157, September 23, 2016 http://thf-reports.s3.amazonaws.com/2016/BG3157.pdf. See also Alan F. Westin, *Privacy and Freedom* (New York: Ig Publishing, 1967) ["The modern totalitarian state relies on secrecy for the regime, but high surveillance and disclosure for all other groups. … The literature of both fascism and communism attacks the idea of privacy as 'immoral," "antisocial,' and 'part of the cult of individualism. … Just as a social balance favoring disclosure and surveillance over privacy is a functional necessity for totalitarian systems, so a balance that ensures strong citadels of individual and group privacy and limits both disclosure and surveillance is a prerequisite for liberal democratic societies."] and J.C. Sharman, "Privacy As Roguery: Personal Financial Information In an Age of Transparency," *Public Administration*, Vol. 87, No. 4, December 2009, pp. 717-731 ["A fundamental shift has occurred in the relationship between the state and the individual regarding financial privacy. The onus is now on citizens to show why governments should not have access to their personal financial information, rather than governments having to show why they should."]. See also the Fourth, Fifth, Ninth and Fourteenth Amendments to the U.S. Constitution and the associated constitutional law (e.g. *NAACP v. Alabama*, 357 U.S. 449 (1958) ["We hold that the immunity from state scrutiny of membership lists which the Association claims on behalf of its members is here so related to the right of the members to pursue their lawful private interests privately and to associate freely with others in so doing as to come within the protection of the Fourteenth Amendment."]).

[2] *General Explanations of the Administration's Fiscal Year 2022 Revenue Proposals*, Department of the Treasury, May 2021, "Introduce Comprehensive Financial Account Reporting to Improve Tax Compliance," pp. 88-89 https://home.treasury.gov/system/files/131/General-Explanations-FY2022.pdf; "The $10,000 IRS Tax Dragnet: Treasury Wants to Snoop on Bank Accounts to Trigger More Audits," *Wall Street Journal*, October 21, 2021.

[3] David R. Burton, "Thinking Anew About Information Exchange and Reporting," *Cayman Financial Review*, January 2014 https://www.heritage.org/technology/commentary/thinking-anew-about-information-exchange-and-

Beneficial Ownership Reporting and the Corporate Transparency Act

The Corporate Transparency Act (CTA) was incorporated into the National Defense Authorization Act as Title LXIV of the 1480-page bill.[4] It will create a large compliance burden – over $1 billion annually -- on approximately 11 million businesses with 20 or fewer employees or less than $5 million in gross receipts (the only non-exempt category).[5] Assuming a 90 percent compliance rate, it is likely to create as many as a million inadvertent felons out of ordinary small business owners throughout the country.[6] Those most able to abuse the financial system are exempt.[7]

The CTA is a remarkably poorly drafted piece of legislation rife with ambiguities and inapt provisions.[8] I can't count the number of times that I was told by proponents of this legislation how simple it was and how easy it would be for small businesses to comply. These assertions were, to be generous, seriously inaccurate. The FACT Coalition comment letter to FinCEN on the implementing rules goes on for 157 pages.[9] So much for "simple." Congress needs to be much more skeptical about similar false assertions that will undoubtedly be made in the future. They are already being made with respect to the ENABLE Act (see below).

The primary burden created by the beneficial ownership reporting regime is on firms with 20 or fewer employees or less than $5 million in gross receipts. These are the firms least able to absorb yet another increase in the regulatory burden imposed by the federal government. These are the firms most suffering from the calamitous, devastating effects of lock-downs and other government policies aimed squarely at small businesses. These are the firms that are the backbone of our communities.

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reporting; David R. Burton and Norbert J. Michel, "Financial Privacy in a Free Society." ["total BSA/AML costs are estimated to be between $4.8 billion and $8 billion annually."]; David R. Burton and Norbert J. Michel, "Proposals to Foster Economic Growth and Capital Formation," Submission to the U.S. Senate Committee on Banking, Housing and Urban Affairs, March 18th, 2021 https://www.banking.senate.gov/imo/media/doc/David%20Burton%20and%20Norbert%20Michel%20-%202021-3-18.pdf.

[4] Public Law No. 116-283, Title LXIV (§§6401-6403), The William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 https://www.congress.gov/bill/116th-congress/house-bill/6395/text; 31 U.S.C. §5336.

[5] David R. Burton, "The Corporate Transparency Act and the ILLICIT CASH Act," Heritage Foundation Backgrounder No. 3449, November 7, 2019 https://www.heritage.org/sites/default/files/2019-11/BG3449_0.pdf; David R. Burton, "Beneficial Ownership Reporting Regime Targets Small Businesses and Religious Congregations," Heritage Foundation Backgrounder No. 3289, March 5, 2018 https://www.heritage.org/sites/default/files/2018-05/BG3289.pdf.

[6] 31 U.S. Code § 5336(h); David R. Burton, "The Corporate Transparency Act and the ILLICIT CASH Act."

[7] 31 U.S. Code § 5336(a)(11)(B) lists 29 exemptions, most of which are the large corporations or financial services firms most able to abuse the financial system if they were so inclined.

[8] For details, see Comment Letter of David R. Burton regarding Beneficial Ownership Information Reporting Requirements to FinCEN, May 5, 2021 https://www.regulations.gov/comment/FINCEN-2021-0005-0132 and Comment Letter of the National Federation of Independent Business to FinCEN, April 15, 2021 https://www.regulations.gov/comment/FINCEN-2021-0005-0017.

[9] FACT Coalition Comment Letter regarding Beneficial Ownership Information Reporting Requirements to FinCEN May 5, 2021 https://thefactcoalition.org/wp-content/uploads/2021/05/FACT-CTA-ANPRM-Comment-20210505-0329am-FINAL.pdf.

Determining who is and is not a "beneficial owner" under the CTA is complex, highly ambiguous, and will often require hiring legal counsel or a compliance expert. In fact, it will probably take a decade or more of prosecutions and litigation before the meaning of "beneficial owner," "substantial control," "substantial economic benefit," and "directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise" are reasonably well established. Defending these cases will be expensive—and often economically destroy the small businesses and business owners who must defend themselves against the federal government.

The beneficial ownership reporting rules in the CTA are easily and lawfully avoided by the sophisticated, so they will do virtually nothing to achieve their stated aim of protecting society from terrorism or other forms of illicit finance. Furthermore, better beneficial ownership information than the proposed reporting regime will obtain is already provided to the IRS. Allowing the IRS to share this information with the Treasury Department's Financial Crimes Enforcement Network would impose no additional costs on the private sector *and* better meet the needs of law enforcement by providing more comprehensive information and better enforcement than would the proposed reporting regime.[10] The Corporate Transparency Act should be repealed.

If Congress wants FinCEN to be able to acquire *better* beneficial ownership information at *radically lower cost to the public*, an alternative approach would require the Internal Revenue Service to compile a beneficial ownership database based on information already provided to the agency in the ordinary course of tax administration and to share the information in this database with FinCEN. The database would be compiled from information provided on six Internal Revenue Service forms:

1. SS-4 [Application for Employer Identification Number];
2. 1065 (Schedule K-1) [Partner's Share of Income, Deductions, Credits, etc.];
3. 1120S (Schedule K-1) [Shareholder's Share of Income, Deductions, Credits, etc.];
4. 1041 (Schedule K-1) [Beneficiary's Share of Income, Deductions, Credits, etc.];
5. 1099 DIV [Dividends and Distributions]; and
6. (6) 8822-B [Change of Address or Responsible Party — Business]

If policymakers felt that reporting by non-dividend-paying C corporations was required, such a provision could be adopted.

The ENABLERS Act

The ENABLERS Act (Rep Malinowski, H. R. 5525, 117th Congress) would impose AML compliance responsibilities on a host of new small businesses by defining them as "financial institutions." Those that would be defined as financial institutions by the bill include (1) investment advisers, (2) art, antiques, or collectibles dealers, advisors, consultants, custodians, galleries, auction houses, or museums, (3) attorneys, law firms, or notaries "involved in financial activity or related administrative activity on behalf of another person," (4) a "service provider"

[10] This can be accomplished by a modest amendment to Internal Revenue Code §6103.

involved in forming a corporation or other similar entity, (5) registered agents, trustees, or nominees, (6) trust companies, (7) certified public accountants or public accounting firms, (8) a person engaged in the business of public relations, marketing, communications, or other similar services "in such a manner as to provide another person anonymity or deniability," and (9) those providing third-party payment services, including payment processing, check consolidation, cash vault services, or other similar services designated by the Secretary of the Treasury. Additional requirements would be imposed on title insurance companies. The bill also intends to lift the current exemptions for (1) pawnbrokers, (2) travel agencies, (3) vehicle dealers and (4) persons involved in real estate closings and settlements.[11] All of these businesses, generally small firms, would be required to (1) report suspicious transactions, (2) establish formal anti-money laundering programs, (3) establish due diligence policies, procedures, and controls, (4) identify and verify their account holders and (5) be subject to FinCEN audits, enforcement and fines.

This would bureaucratize more and more transactions. Simple things would become as cumbersome as opening a bank or brokerage account is now. And more small businesses would be caught up in the AML/KYC/BSA maelstrom. There is no evidence that any of this would do any good for law enforcement but it is a certainty that it would have a large and broad adverse impact on consumers and small businesses. The ENABLERS Act would be a further assault on any remnant of financial privacy and on small businesses.

The True Progressive Agenda

There is ample evidence that the true progressive agenda is the functional abolition of financial privacy so that political pressure may be brought to bear on businesses and individuals. The efforts to 'cancel' those who disagree with the progressive agenda are now ubiquitous. Protestors have increasingly shown up at people's place of business or their home. People have lost their jobs because of their contributions to causes that progressives disagree with. The various assaults on financial privacy are part of this effort. Otherwise, the proposals would not be structured as they are. Further "transparency" will simply make it easier to intimidate those who disagree with the progressive agenda. As discussed above, in a free society, large parts of our lives should be free from surveillance, politics and intimidation. With certain obvious and long-standing exceptions, whether information is disclosed should generally be up to each person or business.

For example, the original Corporate Transparency Act was designed to create a *public* beneficial ownership database. After strenuous objections from state officials who did not want to serve this function, it was dropped. For now. There are various petitions to the SEC and legislation aimed at forcing issuers to disclose political, charitable and trade association giving.[12] The motivation for implementing this requirement is not that this giving is financially material. If it were, then the existing disclosure requirements under Regulation S-K would suffice.

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[11] It appears to me that the bill *meant* to direct Treasury to repeal 31 CFR §1010.205 - Exempted Anti-Money Laundering Programs for Certain Financial Institutions but *actually* directs the agency to repeal 31 CFR §103.170.
[12] Bill Flook, "After Years of Congressional Block, SEC Political Spending Rules Finally in Sight." August 18, 2021 https://tax.thomsonreuters.com/news/after-years-of-congressional-block-sec-political-spending-rules-finally-in-sight/; Petition by The Committee on Disclosure of Corporate Political Spending, August 2, 2011 https://www.sec.gov/rules/petitions/2011/petn4-637.pdf and https://www.sec.gov/comments/4-637/4-637.shtml; Letter from former SEC Chairs, May 27, 2015 https://www.sec.gov/comments/4-637/4637-3105.pdf. See also, for example, S.530, 117th Congress; H.R.1087, 117th Congress; H.R.1053, 116th Congress.

The Assault on Small Businesses.

Regulatory costs do not increase linearly with size, so heavy regulation accords a competitive advantage to large firms. The number of broker-dealers has declined by about 30 percent over the past 15 years. We lose two to three hundred small broker-dealers each year. A large reason for this decline is the ever-increasing regulatory burden that crushes the profitability of small broker-dealers. The decline in small broker-dealers harms small entrepreneurs because small broker-dealers are more likely to assist them to raise capital than large investment banks. The currently regulatory framework has imposed enormous costs on banks and undoubtedly contributed to the decline in the overall number of banks and the increased concentration in the banking industry.[13] Out of the 5,001 FDIC insured depository institutions,[14] the largest 10 account for nearly half of the deposits.[15] Non-financial regulations (tax, labor, employment, environmental, etc.) also contribute substantially to this ever-increasing onslaught on small firms. You should not have to be a lawyer to operate a small business in this country.

U.S. International Taxation Reform

Much of the impetus for ever more information reporting comes from claims that multinational corporations are abusing the tax system and not paying their fair share. I contend, however, that the problem is primarily a Congressionally created one. Subchapter N, which governs international taxation, is a mind-numbingly complex, intellectually incoherent mess. In practice, its effects are almost random. It needs to be scrapped. More information reporting is not the solution. An intellectual coherent international tax reform is.

We have deferral but we also have a panoply of complex anti-deferral provisions (CFCs and subpart F, PFICs, FPHCs, etc.). We have the foreign tax credit but many limitations on it. We tax FDAP income (primarily dividends, interest, rents and royalties) at the source at a 30 percent rate[16] but we really don't. 90 percent of such income is exempt from tax due to treaties and the portfolio interest exemption.[17] We have moved from a nominal world-wide system to a nominal territorial system but it is really neither. Our new "territorial" system has a worldwide tax on global intangible low-taxed income (GILTI) that is likely to become the basis of the Biden Administration's global minimum tax. The 2017 tax bill also gave us foreign-derived intangible income (FDII) and the base erosion and anti-abuse tax (BEAT). Transfer pricing issues employ legions of lawyers, accountants and economists but the current rules are a mess.

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[13] See Hester Peirce and Stephen Matteo Miller, "Small Banks by the Numbers, 2000–2014," Mercatus Center, March 17, 2015, http://mercatus.org/publication/small-banks-numbers-2000-2014. The FDIC's resolution process has also contributed to industry concentration because the FDIC promotes the acquisition of failing banks by healthy, larger banks, thus concentrating assets in a smaller number of larger banks.

[14] "Number of FDIC-Insured Institutions," FDIC, https://www7.fdic.gov/qbp/grtable.asp?rptdate=%2FQBP%2Fcontent%2F2020dec&selgr=DSTRUA1; "Statistics at a Glance," FDIC https://www.fdic.gov/bank/statistical/stats/2020dec/industry.pdf.

[15] "FDIC - Statistics on Depository Institutions Report," FDIC https://www7.fdic.gov/sdi/main.asp?formname=standard; "The Biggest US Banks by Total Deposits (2020)," MX Technologies https://www.mx.com/moneysummit/biggest-us-banks-by-deposits/.

[16] Internal Revenue Code §871 and §881.

[17] Number, Total U.S.-Source Income, and U.S. Tax Withheld, Tax Treaty Countries and Total Non-Tax Treaty Countries, Internal Revenue Service https://www.irs.gov/pub/irs-soi/19it01tc.xlsx.

Tax Competition

Tax competition has a salutary economic impact globally notwithstanding the decades-long effort by the OECD, the EU and the UN to fight "harmful tax competition," to create a global tax cartel and to fight for higher taxes. Tax competition among countries (and among jurisdictions within the U.S.) places a modest limit on how much damage governments can inflict by raising taxes. More information reporting, the nascent global minimum tax and so-called base erosion and profit shifting (BEPS) efforts are part of the effort to create a tax cartel.[18]

Tax Information Reporting Generally

There were 240 million (with an 'm') tax returns filed in 2020.[19] There were 3.4 billion (with a 'b') information reports filed with the IRS in FY 2020.[20] The tax information reporting requirements imposed on the private sector are vast. And expensive. How much is enough? When will it stop getting more burdensome? Conservative estimates put tax compliance costs at over $400 billion annually, about two percent of GDP and about 12 percent of federal revenues.[21] Congress needs to seriously consider these costs as they consider proposed additional tax compliance requirements and not focus entirely on the tax revenue that the JCT staff and the Treasury assert would be raised. For decades, the JCT staff, the IRS and Treasury have wanted (and got) more and more information reporting and higher penalties. They have claimed again and again that these provisions will make a major dent in the tax gap. They have not. Congress needs to actually require the JCT staff and tax administration officials to do more than make unsubstantiated assertions and stop allowing and uncritically accepting "scores" that emerge from a very black, secret box.[22] It is likely that if Congress were to open that black box, it would find that there is nothing in it other than air.

International Tax Information Sharing

Various existing tax treaties and tax information exchange agreements require the U.S. government to share financial information with foreign governments. The Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the even worse Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information combined with the OECD Standard for Automatic Exchange of Financial Account Information in Tax Matters would commit the U.S. government to provide participating foreign

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[18] Chris Edwards and Daniel J. Mitchell, *Global Tax Revolution: The Rise of Tax Competition and the Battle to Defend It*, (Washington: Cato Institute, 2008); David R. Burton, "Towards a Global Tax Cartel?," *Policy*, Vol. 18, No. 4 (Summer 2002-03) https://www.cis.org.au/app/uploads/2015/04/images/stories/policy-magazine/2002-summer/2002-18-4-david-r-burton.pdf.

[19] *Internal Revenue Service Data Book, 2020*, Table 2. Number of Returns and Other Forms Filed, by Type, Fiscal Years 2019 and 2020, p. 4 https://www.irs.gov/pub/irs-pdf/p55b.pdf

[20] *Internal Revenue Service Data Book, 2020*, Table 22. Information Reporting Program, Fiscal Year 2020, p. 54 https://www.irs.gov/pub/irs-pdf/p55b.pdf.

[21] See, for example, Scott Hodge "The Compliance Costs of IRS Regulations," Tax Foundation Fiscal Fact No. 512, June, 2016 https://files.taxfoundation.org/legacy/docs/TaxFoundation_FF512.pdf.

[22] For more on JCT revenue estimates and the tax policy making process, see Dan R. Mastromarco, David R. Burton, and William W. Beach, *The Secret Chamber or the Public Square? What Can Be Done to Make Tax Analysis and Revenue Estimation More Transparent and Accurate* (Washington: The Heritage Foundation, 2005).

governments—regularly, automatically, and in bulk—with the private tax, banking, brokerage account, and insurance information of almost all foreign individuals or businesses with accounts in the United States and of many American businesses and citizens. They would result in the automatic sharing of bulk taxpayer information among governments worldwide, including many that are hostile to the United States (Russia and China, for example), corrupt, or have inadequate data safeguards. The idea that this information would not be abused is extraordinarily naïve. These treaties would create a series of databases around the globe that would be incredibly lucrative sources of information for malevolent hackers. They would lead to substantially more identity theft, crime, industrial espionage, and suppression of political dissidents. They would add another layer to the already voluminous compliance requirements imposed on financial institutions and have a disproportionately adverse impact on small banks and broker-dealers.[23]

Trusts and the GST

Trusts have countless legitimate purposes. A very large proportion of family farms, ranches and small businesses have trusts. There now seems to be a sustained political assault on trusts. Whether they are perpetual (like most corporations and LLCs) is irrelevant and should remain a question of state law.

Some commentators opine that trusts can be a vehicle for avoiding the generation-skipping tax (GST).[24] If Congress is worried about that it can solve the problem through the simple expedient of amending the GST to address perceived problems by making the GST apply notwithstanding the existence of a trust. This was proposed by the JCT staff over 15 years ago.[25] There is ample precedent for such an approach in the tax law. For example, under Internal Revenue Code §7704, certain publicly traded partnerships are taxed as corporations. All of the angst about trusts and transparency is a smoke screen.

That said, it would be much better were Congress to repeal the estate and gift tax. There is strong evidence that it is among the most economically destructive of federal taxes and it raises relatively little revenue. At the very least, the unified credit should be increased so that reasonably successful small businesses, farms and ranches are not crippled by the estate tax liability and forced to sell outside of the family.

AML/CFT

Neither FinCEN nor the Internal Revenue Service has ever produced an estimate of the aggregate costs imposed by the Bank Secrecy Act regulatory and reporting regime and the associated tax reporting. A colleague and I have produced one of the few extant such estimates and found that the system imposes costs of $4.8-$8 billion annually. It is important to note that this estimate is undoubtedly a significant underestimate of the actual burden because we took OMB burden hour

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[23] David R. Burton, "Two Little Known Tax Treaties Will Lead to Substantially More Identity Theft, Crime, Industrial Espionage, and Suppression of Political Dissidents," Heritage Foundation Backgrounder No. 3087, December 21, 2015 http://thf-reports.s3.amazonaws.com/2015/BG3087.pdf.

[24] Internal Revenue Code §2601 et seq.

[25] See "Limit Perpetual Dynasty Trusts (secs. 2631 and 2632)" in *Summary of Joint Committee Staff "Options to Improve Tax Compliance and Reform Tax Expenditures"* April 12, 2005 (JCX-19-05R) https://www.jct.gov/CMSPages/GetFile.aspx?guid=0c8c7d1a-35d9-4590-b608-c65180ef5dd9.

estimates at face value. For example, the OMB estimates that FinCEN's "Future Commission Merchants and Introducing Brokers Customer Identification" requirements can be met in *two minutes per customer*, an assumption which is, at the least, questionable. The OMB makes a similar estimate regarding the Broker-Dealers Customer Identification Program. We do not believe that people typically can fill out any government form in two minutes. We also only looked at BSA requirements and not IRS requirements.

Congress should require FinCEN and the GAO to conduct a detailed, comprehensive estimate of the aggregate costs incurred because of U.S. AML, CFT, KYC/customer due diligence and BSA requirements both before and after the survey that we recommend. Congress should require FinCEN to send a survey to all regulated businesses. The survey should be structured so that the responses can be anonymous (in the sense that the FinCEN staff cannot determine which business provided which survey response). The use of an independent third-party who would collect the surveys and redact information identifying respondents should be authorized (BEA or the Census Bureau, for example). The survey should seek information regarding the costs imposed by various requirements and total costs incurred. It should also seek recommendations for improvement to the system. The Congress should require that FinCEN consult with the Census Bureau, the Bureau of Economic Analysis and the Bureau of Labor Statistics before undertaking the survey because these agencies have extensive experience in collecting survey data. FinCEN should compile this information (including cost data and a detailed compilation of recommendations made by regulated businesses) and issue a report to Congress within one year.

From regulators that demand massive information reporting and transparency from the private sector, it is not too much to expect a modest degree of transparency and data provision about how the current system is actually working and to move past the "trust us, we know best and we need not explain ourselves" paradigm that has existed for decades. The hypocrisy and opaqueness that regulators routinely exhibit towards the public and Congress is astounding.

Congress should also direct the Department of Justice (in consultation with the IRS and FinCEN) to annually report the number of AML referrals, prosecutions, and convictions (including those that were made without a simultaneous prosecution for a predicate crime), and the number of occasions where BSA/AML customer requirements lead to a criminal prosecution or conviction for a non-money-laundering crime. To the extent possible, the data should report retroactively for the previous 10 years.

Oversight

Congress needs to move beyond blind acceptance of unsubstantiated assertions by bureaucrats at FinCEN, the IRS, the OECD and FATF and elsewhere. For decades, these assertions have taken one of two forms. The first type is "there is a problem (drugs dealers, money laundering, organized crime, terrorists); we need to do something; this is something." The second type is "trust us, if you do what we ask, then the problem will be solved or at least greatly mitigated." This has been going on since the 1980s. There is virtually no evidence that they have been right. Seriously. Ask for it. It will not be forthcoming. The same is true in the EU. It is often promised but never delivered. Moreover, any consideration of cost, the adverse impact on small firms or the invasion of citizens' privacy is entirely absent. Actual data should be provided to

policymakers. Congress should demand *actual evidence* (story-telling, anecdotes and assertions do not count as data) about what works and what does not work. Then Congress can assess the situation. Congress should not once again makes the situation worse blithely proceeding without any evidence.

Economic Impact

Tax compliance costs exceed $400 billion. AML compliance costs are probably in the neighborhood of $8-10 billion in the real world and are overwhelmingly borne by banks, credit unions and broker-dealers. Beneficial ownership reporting costs are likely to exceed $1 billion and primarily borne by the smallest businesses in the country. These figures are conservative in that they take OMB paperwork time estimates at face value. Nevertheless, these are big numbers. And they are having a demonstrable, important, adverse impact. Small broker-dealers are becoming an endangered species. These figures are also conservative in that they only consider out-of-pocket costs and do not consider the adverse economic effects in terms of lost wages, higher prices or reduced return associated with these costs (i.e. they do not include the excess burden or deadweight loss caused by these policies).

Community banks are stressed and a few large banks control the majority of deposits. Small businesses in all sectors are suffering. In addition, AML KYC rules make it increasingly difficult for lower income people to participate in the financial system.[26] Lastly, an increasingly large number of countries in the developing world are in danger of being cut off from the international banking system.[27]

Conclusion

Congress needs to engage in much more robust oversight of FinCEN, the IRS and the Department of Justice with respect to tax information reporting and tax information sharing, AML/CFT provisions and enforcement, and beneficial ownership reporting. Congress should be much more skeptical of unsubstantiated assertions by advocates for these provisions and by JCT staff, the IRS, FinCEN, the OECD and FATF. Congress should require the development and publication of better information to guide policymakers (details above). The Senate should not ratify the Multilateral Convention on Mutual Administrative Assistance in Tax Matters and the even worse Multilateral Competent Authority Agreement on Automatic Exchange of Financial Account Information. And Congress should reverse the ever-increasing regulatory burden imposed on small businesses, starting with repeal of the CTA.

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[26] See, for example, Tracey Durner and Liat Shetret, "Understanding Bank De-Risking and its Effects on Financial Inclusion," Global Center on Cooperative Security November 2015 https://www-cdn.oxfam.org/s3fs-public/file_attachments/rr-bank-de-risking-181115-en_0.pdf.

[27] See, for example, Michaela Erbenová et al., "The Withdrawal of Correspondent Banking Relationships: A Case for Policy Action," International Monetary Fund, June 2016, https://www.imf.org/external/pubs/ft/sdn/2016/sdn1606.pdf.